



# Annual Report of the Inter-American Commission on Human Rights 2019

VOLUME II

ANNUAL REPORT  
OF THE SPECIAL  
RAPPORTEUR  
FOR FREEDOM  
OF EXPRESSION



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# Annual Report of the Inter-American Commission on Human Rights 2019

## VOLUME II

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

Edison Lanza  
Special Rapporteur for Freedom of Expression



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**ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF  
EXPRESSION  
2019**

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

## CHAPTER I: GENERAL INFORMATION

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

1. The Inter-American Commission on Human Rights, by the unanimous decision of its members, created the Office of the Special Rapporteur for Freedom of Expression during its 97th period of sessions, held in October 1997. This office was created by the Commission as a permanent, independent office that acts within the framework and with the support of the IACHR. Through the Office of the Special Rapporteur, the Commission sought to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system and in protecting, guaranteeing, and promoting other human rights. During its 98th period of sessions, held in March 1998, the IACHR defined in general terms the characteristics and functions of the Office of the Special Rapporteur and decided to create a voluntary fund to provide it with economic assistance.

2. The Commission's initiative to create a permanent Office of the Special Rapporteur for Freedom of Expression found full support among the OAS Member States. Indeed, during the Second Summit of the Americas, the hemisphere's Heads of State and Government recognized the fundamental role of freedom of thought and expression, and noted their satisfaction over the creation of the Office of the Special Rapporteur. Since then, both the Summit of the Americas and the OAS General Assembly have shown their support to the Office of the Special Rapporteur, and have entrusted it with follow-up or analysis of some of the rights that comprise freedom of expression, as well as the monitoring and promotion of the right to access public information.<sup>1</sup> During the last years, the OAS General Assembly has expanded its objectives' agenda to the Office of the Special Rapporteur pursuant to the situation of the right to freedom of expression in the region.

3. In the framework of the VIII Summit of the Americas, held on April 13 and 14, 2018 in Lima, Peru, the "Democratic Governance against Corruption" commitment was adopted, through which the representatives of participating States expressed their commitment to keep on strengthening different anti-corruption measures, such as the strengthening of the transparency and access to public information bodies, the protection to plaintiffs and journalists regarding threats and reprisal for investigating or informing on corruption acts<sup>2</sup>.

4. In 2018, the IACHR adopted resolution 1/18 on "Corruption and Human Rights," through which it recommends the States to adopt a series of measures strengthening the access to public information as a key factor in the fight regarding corruption, protection to journalists and the media, among others<sup>3</sup>.

5. The General Assembly of the OAS, by means of resolution 2928 (XLVIII-O/18) on "Human Rights Promotion and Protection," requested the Office of the Special Rapporteur, together with other bodies, to prepare "practical guidelines in the form of recommendations for guaranteeing freedom of expression and access to information from a variety of the Internet sources during electoral processes without improper interference."<sup>4</sup> In 2017, the OAS General Assembly adopted resolution AG/RES. 2908 (XLVII-O / 17) regarding the right to freedom of thought and expression and the safety of journalists and media workers in the hemisphere. The proposal was presented by the delegation of Uruguay and co-sponsored by the delegations of Argentina, Bolivia, Chile, Costa Rica, Mexico, Peru, and the Dominican Republic. The Office of the Special Rapporteur joins the commitment that the States make in this resolution to implement strategies and resources that end with the prevailing impunity in crimes against journalists.

<sup>1</sup> With regard to freedom of expression, the General Assembly of the OAS has adopted resolutions in different years through which it restated the right to freedom of expression and acknowledged the important contributions of the Office of the Special Rapporteur for Freedom of Expression; Moreover, it urged the States to follow the Special Rapporteur's recommendations indicated in the annual reports. In 2005, it passed resolution 2149 (XXXV-O/05); In 2006, resolution 2237 (XXXVI-O/06); In 2007, resolution 2287 (XXXVII-O/07); In 2008, resolution 2434 (XXXVIII-O/08); resolution 2523 (XXXIX-O/09); In 2011, resolution 2679 (XLI-O/11).

On the subject of access to public information, the General Assembly has also made several statements supporting the work of the Office of the Special Rapporteur and urging the adoption of its recommendations. In 2003, it passed resolution 1932 (XXXIII-O/03); In 2004, resolution 2057 (XXXIV-O/04); In 2006, resolution 2252 (XXVI-O/06); In 2007, resolution 2288 (XXXVII-O/07); In 2008, resolution 2418 (XXXVIII-O/08); In 2009, resolution 2514 (XXXIX-O/09). In that same resolution, the General Assembly entrusted the Department of International Law, with the collaboration of the Office of the Special Rapporteur, the Inter-American Juridical Committee and the Department of State Modernization and Governance, as well as the cooperation of Member States and civil society, with drafting a Model Law on Access to Public Information and a guide for its implementation, in keeping with the Inter-American standards on the issue. In addition, in 2011, it approved resolution 2661 (XLI-O/11); In 2012, resolution AG/RES. 2727 (XLII-O/12); In 2013, resolution AG/RES 2811 (XLIII-O/13); In 2014, resolution AG/RES. 2842 (XLIV-O/14); In 2016, resolution AG/RES was approved. 2885 (XLVI-O/16). In this resolution, the General Assembly of the OAS instructs the Office of the Special Rapporteur for Freedom of Expression to develop and disseminate the content of the inter-American legal framework on access to information, including the inter-American Model Law on Access to Public Information, through the preparation of reports on the scope of the law and the application of its principles. Additionally, it also instructed the Office of the Special Rapporteur to assist Member States and to organize and participate in capacity building programs for public officials of national authorities on access to information and justice operators.

<sup>2</sup> Summit of the Americas. Lima Commitment. "Democratic Governance against Corruption". April 14, 2018.

<sup>3</sup> IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018.

<sup>4</sup> OEA. Resolution AG/RES. 2928 (XLVIII-O/18). [Human Rights Promotion and Protection](#)



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

7. In the framework of its 163rd Period of Sessions, the IACHR renewed the mandate of Special Rapporteur Edison Lanza for a new period of three years, in accordance with Article 15 of its Rules of Procedure<sup>5</sup>.

8. In the framework of the 173rd Period of Sessions in Washington D.C., the IACHR approved the document Directive on the performance of the IACHR's Special Rapporteurships concerning the activities and roles held in their mandates. For the first time the Special Rapporteurships have a protocolized framework for action.

## **B. Main Activities of the Office of the Special Rapporteur**

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

10. This section of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2019:

### **1) Individual Case System**

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

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

13. Likewise, since its creation, the Office of the Special Rapporteur has advised the IACHR in the presentation of important cases involving freedom of expression to the Inter-American Court of Human Rights (hereinafter, the "Court" or the "Inter-American Court")<sup>6</sup>.

14. The cases solved by the IAHR Court in 2018 are as follows:

**A.** *Álvarez Ramos v. Venezuela*. Judgment of August 30, 2019. The Inter-American Court of Human Rights handed down the judgment by which it declared the international responsibility of the State of Venezuela for the violation of the right to freedom of expression, the right to participate in government, freedom of movement, the right to a fair trial, and right to judicial protection to the detriment of Mr. Tulio Álvarez Ramos. These violations arose from the criminal proceedings against Mr. Tulio Álvarez Ramos for the crime of continued aggravated defamation, and the consequent conviction, due to the publication of an opinion article on alleged irregularities in the financial management of the Savings Bank of the National Assembly of Venezuela. Mr. Tulio Álvarez was sentenced to 2 years and 3 months in prison and to a penalty of political disqualification. Regarding the right to freedom of expression, in the present case, the Court recognized for the first time that the punitive response of the State through criminal law is not "conventionally appropriate" to protect the honor of an official, in cases where the speech is protected for being of public interest, as are the behaviors of public officials in the exercise of their functions. The Court considered that the note published in the newspaper "Así es la Noticia" i) referred to the actions of a public official; ii) referred to the exercise of the functions of a public official, which was even subject to pronouncements by other State bodies; and that iii) the management of money or public resources was a matter of public interest. The Court highlighted that, in relation to matters of public interest,

<sup>5</sup> IACHR. Periods of Sessions. Available at <http://www.oas.org/es/cidh/actividades/sesiones.asp>

<sup>6</sup> Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Judgment of February 5, 2001; Case of Ivcher Bronstein v. Peru. Judgment of February 6, 2001; Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004; Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004; Case of Palamara Iribarne v. Chile. Judgment of November 22, 2005; Case of Claude Reyes et al. v. Chile. Judgment of September 19, 2006; Case of Kimel v. Argentina. Judgment of May 2, 2008; Case of Tristán Donoso v. Panama. Judgment of January 27, 2009; Case of Ríos et al. v. Venezuela. Judgment of January 28, 2009; Case of Perozo et al. v. Venezuela. Judgment of January 28, 2009; Case of Usón Ramírez v. Venezuela. Judgment of November 20, 2009; Case of Manuel Cepeda Vargas v. Colombia. Judgment of May 26, 2010; Case of Gomes Lund et al. v. Brazil. Judgment of November 24, 2010; Case of Fontevecchia and D'Amico v. Argentina. Judgment of November 29, 2011; Case of González Medina and Family v. Dominican Republic. Judgment of February 27, 2012; Case of Vélez Restrepo and Family v. Colombia. Judgment of September 3, 2012; Case of Uzcátegui et al. v. Venezuela. Judgment of September 3, 2012; Case of Norín Catrimán et al. (leaders, members and activists of the Mapuche Indigenous People) v. Chile. Judgment of May 29, 2014; Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Judgment of June 22, 2015; Case of López Lone et al. v. Honduras. Judgment of October 5, 2015; Case of I.V v. Bolivia. Judgment of November 30, 2016; Case of Lagos del Campo v. Peru. Judgment of August 31, 2017.

not only the issuance of harmless or well-received expressions by public opinion is protected, but also those expressions that clash, irritate, or disturb public officials or any sector of the population. Likewise, the Court reiterated that the use of the criminal sanction for disseminating news of public interest could produce, directly or indirectly, a chilling effect that, in short, would limit freedom of expression and prevent public conduct of interest from being publicly scrutinized, thus weakening public control over the powers of the State, with noticeable damage to democratic pluralism.

## 2) Precautionary Measures

15. The Office of the Special Rapporteur has worked, within its mandate, with the IACHR Protection Group with regard to recommendations on the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that OAS Member States adopt precautionary measures to protect the right to freedom of expression.

16. During 2019, the Office of the Special Rapporteur collaborated in the study of 14 requests for precautionary measures, among which were granted the extension of measures CM 873-18 (Nicaragua) Lucía Pineda Ubau and her family nucleus, on February 11; MC 75-19 (Honduras) José David Ellner Romero, on March 21; MC 250-19 (Venezuela), on March 29; MC 1025-18 (Cuba), April 4; and MC 399-19 (Nicaragua) Sergio Warren León Correa and members of his family (General Director of “La Costeñísima” in the Autonomous Region of the South Caribbean), on June 15. On the other hand, in May, the IACHR presented to the Inter-American Court a request for provisional measures of protection for 17 persons deprived of liberty at extreme risk in Nicaragua. Among the beneficiaries were the Director and the Head of Press of *Canal 100%*, Miguel Mora and Lucía Pineda Ubau, respectively. Said request was granted by the Inter-American Court on May 21, 2019.

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

## 3) Public Hearings

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

19. Below is a summary of the hearings in which the Office of the Special Rapporteur participated during 2019:

State / Region	Period of Sessions	Title of the hearing	Date/ Place
<b>Regional</b>	171 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Maintenance and upkeep of sites, memorials, archives, museums, and remembrance spaces in the region	13 February 2019 Sucre, Bolivia
<b>Mexico</b>	171 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Constitutional reform in Mexico	13 February 2019 Sucre, Bolivia
<b>Venezuela</b>	171 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: General human rights situation in Venezuela	13 February 2019 Sucre, Bolivia
<b>Nicaragua</b>	171 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: General human rights situation in Nicaragua	14 February 2019 Sucre, Bolivia

<b>Regional</b>	171 Period of Sessions of the Inter-American Commission on Human Rights	Ex-Officio Hearing: Good Practices on Prevention, Investigation and Protection of Human Rights Defenders in the Region	15 February 2019 Sucre, Bolivia
<b>Cuba</b>	171 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Constitutional Reform and Human Rights in Cuba.	15 February 2019 Sucre, Bolivia
<b>Regional</b>	172 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Human rights, development, and freedom of association.	May 8, Kingston Jamaica
<b>United States</b>	172 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Criminalization of human rights defenders of indigenous peoples and the extractive industry in the United States.	May 9, Kingston Jamaica
<b>Venezuela</b>	172 Period of Sessions of the Inter-American Commission on Human Rights	Hearing RFOE: Freedom of Expression in Venezuela.	May 9, Kingston Jamaica
<b>Venezuela</b>	172 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Political crisis, the National Assembly, and justice in Venezuela	May 9, Kingston Jamaica
<b>Cuba</b>	172 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Complaints of criminalization of social activists and journalists in Cuba	9 de Mayo, Kingston Jamaica
<b>Brazil</b>	172 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Criminal System and violations allegations of the rights of African descendant people in Brazil	May 9, Kingston Jamaica
<b>Colombia</b>	172 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Special Jurisdiction for Peace in Colombia	May 9, Kingston Jamaica
<b>Guatemala</b>	172 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Complaints of threats to judicial independence in Guatemala	May 10, Kingston Jamaica
<b>Cuba</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Serious Human Rights Violations in Cuba	September 23rd, 2019, Washington D.C.

<b>Haiti</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Violence and Security in the Context of the Social Protests in Haiti	September 23rd, 2019, Washington D.C.
<b>Regional</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Limitations on Access to Asylum and Refuge in the United States for Citizens of the Northern Triangle Countries	September 24th, 2019, Washington D.C.
<b>Venezuela</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Political Persecution in Venezuela	September 25th, 2019, Washington D.C.
<b>Nicaragua</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Ex-Officio Hearing: Implementation of Protective Precautionary Measures in Favor of Independent Journalists in Nicaragua	September 25th, 2019, Washington D.C.
<b>Honduras</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Violence and Security in the context of social protests in Honduras	September 25th, 2019, Washington D.C.
<b>Colombia</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Threats Against and Murders of Social Leaders in Colombia	September 25th, 2019, Washington D.C.
<b>El Salvador</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Right to Truth and Historical Impunity in the Context of the Internal Armed Conflict in El Salvador	September 26th, 2019, Washington D.C.
<b>Mexico</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing RFOE: Judicial protection of victims of terrorist acts inspired by hate speech	September 26th, 2019, Washington D.C.
<b>Regional</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Misuse of Criminal Justice Systems to Retaliate Against Environmental Human Rights Defenders	September 27th, 2019, Washington D.C.
<b>Brazil</b>	173 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Social Participation and Control in Human Rights Policies in Brazil	September 27th, 2019, Washington D.C.

Nicaragua	174 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Amnesty Law in Nicaragua	November 11, 2019 Quito, Ecuador
Nicaragua	174 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Challenges to the autonomy and independence of the judicial system in Nicaragua	November 11, 2019 Quito, Ecuador
Uruguay	174 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Challenges in the search for truth and justice in Uruguay	November 11, 2019 Quito, Ecuador
El Salvador	174 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Violence and citizen security in El Salvador	November 11, 2019 Quito, Ecuador
Chile	174 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Human rights situation in the context of social protests in Chile	November 11, 2019 Quito, Ecuador
Venezuela	174 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Torture, extrajudicial execution, and gross human rights violence due to State repression in Venezuela	November 11, 2019 Quito, Ecuador
Guatemala	174 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Human rights violations of defenders in Guatemala	November 11, 2019 Quito, Ecuador
Colombia	174 Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Freedom of expression and access to information in criminal trials in Colombia	November 11, 2019 Quito, Ecuador

#### **4) Seminars and workshops with strategic actors in the region**

20. Seminars, workshops, and training are a critical tool the Office of the Special Rapporteur uses to promote the Inter-American system for the protection of human rights and the right to freedom of expression. In the last twenty two (22) years, the Office of the Special Rapporteur has organized seminars throughout the region, in many cases with the cooperation of universities, government institutions, and nongovernmental organizations.

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

22. The meetings with those involved open the door for more people to be able to use the Inter-American human rights system to present their problems and complaints. The seminars also enable the Office of the Special Rapporteur to expand its network of contacts. In addition, the workshops and working meetings have

allowed the Office of the Special Rapporteur to work closely with strategic actors to advance the application of international standards in domestic legal systems.

23. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2019.

Date / Place	Event	Organizers	Summary
<p>January 30, 2019, San Jose, Costa Rica</p> <p>University of Costa Rica</p>	<p>Workshop: Update of the hemispheric agenda on Internet and digital rights: The phenomenon of misinformation in electoral contexts.</p>	<p>Special Rapporteur for Freedom of Expression of the IACHR</p> <p>With the support of the University of Costa Rica</p>	<p>The Office of the Special Rapporteur for Freedom of Expression held an expert consultation with civil society organizations on freedom of expression in the digital age.</p> <p>This meeting was held at the facilities of the University of Costa Rica and aimed to serve as a forum for the exchange of information regarding the proposal being made by the Office of the Special Rapporteur to fulfill the mandate assigned to it by the OAS General Assembly in its 48th. Period of Session, Resolution AG/RES. 2928 (XLVIII-O/18), which consists of coordinating the preparation of a guide of recommendations to address the problem of deliberate misinformation in electoral contexts.</p>
<p>January 30, 2019, San Jose, Costa Rica</p> <p>University of Costa Rica</p>	<p>Regional Conference: “Misinformation in the digital age and its impact on freedom of expression and electoral processes”</p>	<p>IACHR RFOE</p> <p>Observacom</p> <p>Article19</p> <p>Proledi</p>	<p>The Office of the Special Rapporteur held a regional conference in which the Special Rapporteur Edison Lanza participated as a speaker. This conference was held together with Observacom, Art. 19 Mexico and Proledi of the University of Costa Rica and had a panel of experts and representatives of civil society from Central America and Mexico where the topic of misinformation in the digital era and its impact on freedom of expression and electoral processes was discussed.</p>
<p>14 February 2019 Sucre, Bolivia</p>	<p>Public Consultation on the right to protest</p>	<p>Article 19 Brazil</p>	<p>Special Rapporteur Edison Lanza was invited to participate in this public consultation to present his general considerations and impressions on the outcome of it.</p>
<p>14 February 2019 Sucre, Bolivia</p>	<p>Regional Conversation: Right of Access to Information: progress and perspectives</p>	<p>Foundation Construir</p> <p>DPLF</p> <p>Konrad Adenauer Stiftung</p>	<p>Special Rapporteur Edison Lanza participated as a speaker in the discussion within the panel: Access to Public Information in Latin America: Status of Situation, Good Practices, and Challenges and was responsible for presenting the Inter-American Model Law on Access to Public Information and IACHR standards in the field.</p>

<p><b>15 February 2019</b> Sucre, Bolivia</p>	<p>Event: Situation of Situation of Freedom of Expression in Latin America: Challenges and set backs</p>	<p>Foundation Observatory of Human Rights and Justice</p> <p>Konrad Adenauer Stiftung – Rule of Law Program for Latin America</p>	<p>Special Rapporteur Edison Lanza participated as a speaker at this event and presented the guiding principles of Freedom of Expression.</p>
<p><b>18 February</b> Mexico City</p>	<p>International Meeting of Human Rights Defenders and Journalists: To Defend is not forgetting.</p>	<p>CMDPDH - Mexican Commission for the Defense and Promotion of Human Rights.</p>	<p>Special Rapporteur Edison Lanza was invited to participate in this meeting as a panelist in the keynote conference that aimed to address the situation of human rights defenders and journalists belonging to indigenous peoples who have been forcibly displaced for their journalistic</p>
<p><b>26 February 2019</b> Washington D.C.</p>	<p>Session: Global State of the Press Freedom - Venezuela</p> <p>(Video conference)</p>	<p>Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development of the House of Commons of Canada.</p>	<p>Special Rapporteur Edison Lanza appeared as a witness before the International Human Rights Subcommittee of the Standing Committee on Foreign Affairs and International Development of the House of Commons of Canada.</p> <p>In that session, the Rapporteur presented information regarding the serious situation of Freedom of Expression facing Venezuela and the monitoring work that the Office of the Special Rapporteur has been developing on this issue.</p>
<p><b>27 February 2019</b> Washington D.C.</p>	<p>Event Can the use of social networks be regulated? A. (Video conference)</p>	<p>Law School Universidad de los Andes - Bogotá, Colombia</p>	<p>Special Rapporteur Edison Lanza participated via video conference from Washington D.C.</p> <p>In this event, he presented the work that the Office of the Special Rapporteur has been developing with respect to the issue of how the use of social networks and the Internet should be regulated and their impact on Freedom of Expression.</p>
<p><b>February 28, 2019,</b> Bogotá Colombia</p>	<p>“Colombian Constitutional Court Hearing on Social Networks and Freedom of Expression.</p>	<p>Colombian Constitutional Court</p>	<p>Special Rapporteur Edison Lanza was present during the hearing in the Constitutional Court of Colombia on the topic of social networks and freedom of expression, which addressed issues such as how far should freedom of expression reach in social networks, taking into account that they are platforms for practices such as injury, slander, phishing, and spreading fake news, among others.</p>

<b>March 1, 2019, Bogotá Colombia</b>	Talk on freedom of expression in the inter-American sphere	Colombian Constitutional Court.	Special Rapporteur Edison Lanza delivered a training and preparation talk to the staff of the Colombian Constitutional Court on the subject of Freedom of expression in the inter-American sphere.
<b>6 March 2019 Washington D.C.</b>	Photo Exhibition	Fundamedios  IACHR RFOE  Embassy and Permanent Mission of Ecuador to the OAS	On March 6 2019, a photographic exhibition of the Ecuadorian photojournalist Paul Rivas, who was one of the three journalists of El Comercio killed on the Ecuadorian Colombo border in April 2018, was held at the IACHR's premises, which resulted in the creation of the Special Monitoring Team for the precautionary measures granted for their protection – ESE
<b>7 March 2019 Washington D.C.</b>	Open meeting Media and Democracy in the Americas	Fundamedios  Inter-American Dialogue  IACHR RFOE	The Special Rapporteur, Edison Lanza participated during the inauguration of the event Media and Democracy in the Americas II. During this same event he also participated as a panelist in the segment “The state and future of protection mechanisms for Journalists”
<b>7 March 2019 Washington D.C.</b>	Closed discussion table: National Protection Mechanisms, exchange of experiences and lessons learned.	IACHR RFOE  Inter-American Dialogue	This activity carried out by the Office of the Special Rapporteur was attended by the Special Rapporteur Edison Lanza and Melissa Cabrera, a consultant for RFOE, to present the recommendations and standards produced by the office in relation to protection of journalists and the obligations of prevention, protection, and prosecution.  This activity was attended by the Director of the mechanism to protect journalists in Colombia, Pablo Gonzalez, who explained the operation of the mechanism and implementation of measures to protect journalists in Colombia. Civil society organizations such as CPJ, FLIP, Article 19 Mexico, Trade Union of Journalists of Paraguay among other organizations and academics for the protection of journalists also participated in an information exchange exercise.



<p><b>8 March 2019</b> <b>Washington D.C.</b></p>	<p>Presentation of the thematic report "Women journalists and freedom of expression. Discrimination and gender-based violence against women journalists for the exercise of their profession"</p>	<p>IACHR RFOE  George Washington University - Law</p>	<p>The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) presented the thematic report "Women journalists and freedom of expression. Discrimination and gender-based violence against women journalists for the exercise of their profession" In the framework of the presentation of this report, three discussion panels were developed</p> <p>Panel I - Journalist Security: A gender perspective Panel II - The digital environment and the special risks for women journalists Panel III - Recommendations for the prevention of violence and discrimination against women journalists</p>
<p><b>13 March 2019</b> <b>Mexico City</b></p>	<p>Workshop with Civil Society Organizations and Journalists of Cuba</p>	<p>Participants</p> <p>Edison Lanza, Rapporteur for Freedom of Expression</p> <p>Antonia Urrejola - Commissioner Rapporteur Country Cuba</p> <p>Tatiana Teubner - RFOE</p> <p>IWPR</p> <p>Melissa Cabrera - RFOE Journalists and organizations of Cuban civil society</p>	<p>The lawyer of the Office of the Special Rapporteur, Tatiana Teubner, imparted a closed workshop for journalists and civil society in Cuba, to inform about the findings of the report made by the Office of the Special Rapporteur in which it analyzes the situation on freedom of expression in Cuba through the standards of Inter-American System and from that, offers recommendations to the State that contribute to the effective enforcement of this right in the country.</p> <p>The workshop also allowed to hear experiences of Cuban journalists, who have used the mechanisms of the IACHR, such as public hearings and precautionary measures and provided the opportunity for the office to know first-hand the most recent challenges and obstacles that they have confronted to exercise their right to freedom of expression in the country.</p>
<p><b>13 March 2019</b> <b>Mexico City</b></p>	<p>Presentation of the special report of the IACHR RFOE on the situation of freedom of expression in Cuba.</p>	<p>IWPR Participation: David Kaye - United Nations Freedom of Expression Rapporteur (via videoconference) Antonia Urrejola - Commissioner, Country Rapporteur Edison Lanza, Special Rapporteur IACHR RFOE</p>	<p>The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) presented in Mexico City the special report on the situation of freedom of expression in Cuba. The event was convened in conjunction with the IWPR organization and was attended by prominent members of the independent media of Cuba, as well as representatives of civil society organizations working to promote the right to freedom of expression in the mentioned country.</p>

<p><b>15 March 2019</b> Mexico City</p>	<p>Event: Social networks and democracy: between regulation and freedom of expression.</p>	<p>Institute for democracy and electoral assistance - IDEA</p>	<p>The Rapporteur Edison Lanza, participated as a speaker in the event social networks and democracy, within the working table "between regulation and freedom of expression"</p>
<p><b>19 March 2019</b> Palais des Nations Geneva, Switzerland</p>	<p>Human Rights Council - 40th Session Event: Human rights abuses in Venezuela</p>	<p>Freedom House U.S. Mission in Geneva United Nations Canada UK Germany Other allies</p>	<p>Special Rapporteur Edison Lanza participated as a panelist at the meeting held at the Palais de Nations in Geneva to address the issue of human rights abuses in Venezuela.</p> <p>After that session, the ER was invited to participate as a speaker at the press conference on the same topic.</p>
<p><b>28 March 2019,</b> Bogotá Colombia</p>	<p>Inter-American Standards and national legislation workshop on access to environmental information in the context of extractive industries</p>	<p>IACHR RFOE University of the Andes MASP - Legal Environment and Public Health Clinic Network for the rights of access, information, participation, and justice in environmental matters</p>	<p>The Office of the Special Rapporteur conducted the Inter-American Standards and National Legislation Workshop on access to environmental information in the context of extractive industries - Colombia. This workshop was aimed at officials, representatives of civil society and other relevant actors; and aimed to disseminate the inter-American standards regarding access to public information applied to environmental information in the context of the reinforced protection that the inter-American instruments grant to this fundamental right.</p>
<p><b>March 29,</b> Cartagena Colombia</p>	<p>Mid-year meeting  IAPA Inter-American Press Society</p>	<p>Inter-American Press Society IAPA</p>	<p>Special Rapporteur Edison Lanza was invited by the IAPA to participate in the public act of acknowledgment of international responsibility (State of Colombia) in the framework of the Carvajal vs. Colombia case.</p>

<p><b>Mexico City, Mexico</b>  <b>23, 24 April, UNAM</b></p>	<p>Panel of Experts on Misinformation in Electoral Contexts</p>	<p>Office of the Special Rapporteur for Freedom of Expression of the IACHR</p> <p>National Electoral Institute of Mexico, INE</p> <p>UNAM</p>	<p>The Office of the Special Rapporteur for Freedom of Expression of the IACHR carried out a panel made up of 28 experts on Disinformation in electoral contexts.</p> <p>This panel aimed to promote a multidisciplinary and multisectoral debate to address the issue of misinformation in the digital era and the challenges that the phenomenon presents for electoral processes.</p> <p>Thematic axes related to the causes, impacts and responses to the phenomenon of misinformation and elections in the hemisphere were analyzed, with the objective of making contributions for the elaboration of the "Practical guide of recommendations to guarantee freedom of expression, access to information from various sources on the Internet during the development of electoral processes, without undue interference" in compliance with the mandate requested to this office by the OAS.</p>
<p><b>Mexico City, Mexico</b>  <b>25 April, UNAM</b></p>	<p>INE event internet and social networks in electoral contexts.</p>	<p>National Electoral Institute of Mexico, INE</p>	<p>The Special Rapporteur, Edison Lanza was invited to participate as an expert speaker at the panel organized by the INE, "The impact of the internet and social networks on political culture and political - electoral behavior"</p>
<p><b>Mexico City, Mexico</b>  <b>April 25th</b>  <b>Congress of the State of Mexico</b></p>	<p>Presentation of the Special Report of the RFOE "Women Journalists and Freedom of Expression, Discrimination and gender-based violence against women journalists in the exercise of their profession"</p>	<p>Congress of the State of Mexico</p>	<p>Special Rapporteur Edison Lanza presented in the Senate of the Republic the Special report of the RFOE "Women Journalists and Freedom of Expression, Discrimination and gender-based violence against women journalists in the exercise of their profession" in coordination with the Equality Commission of Gender and the Human Rights Commission</p>

<p>May 3, 2019 San Jose, Costa Rica Inter-American Court of Human Rights,</p>	<p>Regional celebration of World Press Freedom Day.</p>	<p>Office of the Special Rapporteur for Freedom of Expression of the IACHR  UNESCO  The Inter-American Court of Human Rights</p>	<p>The Special Rapporteur, Edison Lanza participated as an organizer and panelist in the international celebration of World Press Freedom Day in Latin America.</p> <p>During the celebration, a series of panels open to the public were developed at the headquarters of the Inter-American Court, with the participation of renowned journalists, jurists, and international activists.</p> <p>Topics such as the operation of the Internet and its impact on the right to seek, receive, and disseminate information were addressed during the presentations</p>
<p>Mexico City May 14 - 16 2019</p>	<p>Facebook Oversight Board</p>	<p>Facebook</p>	<p>Special Rapporteur Edison Lanza was invited to participate in the Facebook Oversight Event, where the current plans for the conformation of the Facebook Oversight Board were discussed.</p> <p>In this event, issues such as decision-making regarding what content violates or not the Facebook community norms and how those decisions ultimately affect the global policy development process were addressed.</p> <p>Similarly, group conversations and activities were conducted, specially designed to request contributions on the structure, objectives, and design of the Oversight board.</p>
<p>Lima, Peru May 20-22, 2019</p>	<p>Training Course Freedom of Expression and Access to Information at the Academy of the Magistracy of Peru  Meetings with civil society and journalists</p>	<p>Office of the Special Rapporteur for Freedom of Expression of the IACHR  UNESCO</p>	<p>The Office of the Special Rapporteur participated together with UNESCO and the Universidad de los Andes in the training course for Judges in Peru. Attorney Cecilia La Hoz presented the session on the inter-American system and standards of freedom of expression.</p> <p>In addition, the lawyer held meetings with members of civil society and journalists in order to monitor priority issues and current issues regarding the right to freedom of expression in Peru.</p>

<p>Panama City, Panama 22-24 May 2019</p>	<p>Workshop Community Content - Facebook Latin-America</p>	<p>Facebook  Regional Office of the United Nations Development Program (UNDP)</p>	<p>The Office of the Special Rapporteur participated in the Workshop for Community Content of Facebook for civil society and defenders of Central America, and international organizations with a presence in the region.</p>
<p>Tunisia, Tunisia June 12, 2019</p>	<p>Rightscon 2019</p>	<p>Article 19</p>	<p>Special Rapporteur Edison Lanza was invited by the organization Article 19 Brazil to participate as speaker of the Panel: What(went)'sApp at the Brazilian elections? Held during the framework of the Righthtcon 2019 human rights convention in Tunisia.</p>
<p>Tunisia, Tunisia June 13, 2019</p>	<p>Rightscon 2019</p>	<p>Article 19</p>	<p>Special Rapporteur Edison Lanza was invited by the organization Article 19 to participate as a panel member: <i>Returning protest to the people: A campaign to destigmatize protesters.</i> carried out during the framework of the Righthtcon 2019 human rights convention in Tunisia.</p>
<p>Lima, Peru 17 June 2019</p>	<p>Meeting with SCO Peru</p>	<p>RFOE  Pacific University</p>	<p>The Office of the Special Rapporteur convened a meeting with members of civil society and journalists from Peru with the aim of providing a space to share information on priority issues and current issues regarding the right to freedom of expression in Peru. The meeting also served as a forum to advance the implementation of inter-American standards in the country through the discussion of joint strategies and the use of the mechanisms of the system.</p>
<p>Lima, Peru 18 June 2019</p>	<p>Talk Should crimes against honor be decriminalized in Peru?</p>	<p>RFOE  Pacific University</p>	<p>The Office of the Special Rapporteur and the University of the Pacific convened the Talk: Should crimes against honor be decriminalized in Peru?</p>
<p>20-21 June 2019 Buenos Aires, Argentina</p>	<p>Defending the Integrity of the Latin American Information Space</p>	<p>Forum  Cadaf  National Endowment for Democracy</p>	<p>The Office of the Special Rapporteur participated in the event Defending the Integrity of the Information Space in LAC together with more than 15 organizations specialized in freedom of expression and digital rights in the region. During the event, the project coordinator Melissa Cabrera, presented the current process of developing the guide to address online misinformation in electoral contexts and participated in discussions on regional priorities in the field.</p>

<p><b>Monday, 24 June 2019</b> Geneva, Switzerland</p>	<p>Presentation of the Report on Freedom of Expression in Cuba</p>	<p>41st United Nations Human Rights Council  United Nations Special Rapporteur for Freedom of Opinion and Expression  IWPR  CPJ</p>	<p>The Special Rapporteur Edison Lanza and the Special Rapporteur for the promotion and protection of the rights to Freedom of opinion and expression of the UN, David Kaye, presented the Report on Freedom of Expression in Cuba at the Palais des Nations. The Panel was also made up of representatives from IWPR, CPJ and three Cuban activists who traveled from the island and from Miami: Hugo Landa, Luis Manuel Alcántara, and Maikel Gonzalez.</p>
<p><b>Wednesday, 26 June 2019</b> Medellin, Colombia</p>	<p>Presentation of Progress of the “Guide to address online Misinformation in electoral contexts” 48th OAS General Assembly</p>	<p>RFOE  Secretariat for Strengthening Democracy, OAS</p>	<p>The Office of the Special Rapporteur organized a parallel event to the OAS General Assembly to present the progress in the guide for online misinformation in electoral contexts that is being developed based on the mandate given by the OAS General Assembly in 2018.</p> <p>The panel consisted of the National Electoral Institute of Mexico, Facebook, the Secretariat for Strengthening Democracy of the OAS, and the Green Lantern organization.</p> <p>The audience, consisting of permanent missions and observers to the OAS, had the opportunity to ask questions and provide comments based on the experience of their countries and the needs that have been identified in this topic.</p>
<p><b>Wednesday, 26 June 2019</b> Medellin, Colombia</p>	<p>Presentation of Progress of the “Guide to address online Misinformation in electoral contexts” 48th OAS General Assembly</p>	<p>CEJIL  WOLA  FLIP  IACHR  Office of the United Nations High Commissioner for Human Rights in Colombia</p>	<p>Rapporteur Edison Lanza was invited to participate in the Defenders Under Attack event within the framework of the OAS General Assembly in Medellin. The Rapporteur shared with the audience the work carried out by the Office of the Special Rapporteur on the protection of journalists and defenders through the protection mechanisms and reiterated in this regard the obligations of the States. The panel was accompanied by Cecilia Lozano, Mapiripan leader, Isabel Zuleta of Rios Vivos Movement, Sebastian Escobar of CAJAR, and Paulo Abrao, Secretary of the IACHR</p>

<p><b>Monday 8 July 2019</b> New York, United States</p>	<p>High Level Meeting to discuss the Role of the Judicial Sector in SDG16 - Strengthening the Rule of Law and Human Rights to achieve Peaceful, Fair and Inclusive Societies</p>	<p>Iberoamerican Judicial Summit  UNESCO  UNDP  AIAMP</p>	<p>The Project Coordinator Melissa Cabrera participated in the high-level forum to advance SDG16 Strengthening the Rule of Law and Human Rights to achieve Peaceful, Fair and Inclusive Societies, held at the United Nations headquarters in New York.</p> <p>This event aimed to present regional justice systems as key actors for the promotion of peace, justice, and strong institutions, and discuss future joint activities.</p>
<p><b>Tuesday 9 July 2019</b> New York, United States</p>	<p>Closed Meeting Strengthening the Rule of Law and Human Rights to achieve Peaceful, Fair and Inclusive Societies</p>	<p>I/A Court  Iberoamerican Judicial Summit  UNDP COMJIB  AIAMP</p>	<p>The Project Coordinator Melissa Cabrera attended the closed meeting following the Forum on Strengthening the Rule of Law and Human Rights where issues were discussed regarding the next steps to be taken regarding SDG 16 and potential donors for the project.</p>
<p><b>July 9th, 2019</b> Washington D.C.</p>	<p>Regulation and Telecommunications Summit, Freedom of Expression, Media, and Press: Meeting of Regulatory Bodies of Latin America</p>	<p>OAS  CITEL  CERTAL</p>	<p>The lawyer of the Office of the Special Rapporteur Cecilia la Hoz was invited to participate in the Summit Regulation and Telecommunications, Freedom of Expression, Media and Press where she was in charge of presenting the situation of freedom of expression in the region and the challenges of this right in the next decade, in accordance with the provisions of the Joint Declaration of the Twentieth Anniversary of the Rapporteurs for Freedom of Expression of the OAS, UN, ACHPR, and OSCE.</p>
<p><b>10 July 2019</b> London, England</p>	<p>“MEDIA FREEDOM CONFERENCE 2019”</p>	<p>Article 19  Centre for Law and Democracy, CLD  Global Campaign for Free Expression</p>	<p>Special Rapporteur Edison Lanza participated and signed together with the United Nations Special Rapporteur (UN) for Freedom of Opinion and Expression, the Representative of the Organization for Security and Cooperation in Europe (OSCE) for Freedom of Media, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR), at the launch of the joint Declaration of the 20th anniversary: “Challenges for Freedom of Expression in the next decade ”</p>

<p><b>11 July 2019</b> London, England</p>	<p>“MEDIA FREEDOM CONFERENCE 2019”</p>	<p>UK Government Canada Government</p>	<p>Special Rapporteur Edison Lanza was invited to participate as a panelist in the event in the following panels: Delegation Leaders Dinner Navigating misinformation organized by the Government of Canada. Safety of Women Journalists</p>
<p><b>Monday 29 July 2019</b> El Salvador, San Salvador</p>	<p>Inauguration V edition of the diploma:  “General aspects of political systems and public management” - ECADE</p>	<p>Salvadoran Foundation for Economic and Social Development - FUSADES  ECADE Central American School of Government and Democracy  Hanns Seidel Foundation</p>	<p>Special Rapporteur Edison Lanza was invited by the Salvadoran Foundation for Economic and Social Development to participate in the Inauguration of the fifth edition of the diploma "General aspects of political systems and public management" held at the Central American School of Government and Democracy in the city of El Salvador where he was in charge of giving the keynote conference "Misinformation in times of social networks" risk for democracy?</p>
<p><b>Monday 29 July 2019</b> El Salvador, San Salvador</p>	<p>Lunch</p>	<p>Salvadoran Foundation for Economic and Social Development - FUSADES  ECADE Central American School of Government and Democracy  Hanns Seidel Foundation  Netherlands Institute for Multiparty Democracy</p>	<p>Rapporteur Edison Lanza was invited to participate in a lunch to address issues related to the state of Freedom of expression in the region.</p>
<p><b>Tuesday, 30 July 2019</b> Mexico City, Mexico</p>	<p>Inter-American Standards and national legislation workshop on access to environmental information in the context of extractive industries</p>	<p>IACHR RFOE</p>	<p>The Office of the Special Rapporteur held the Inter-American Standards and National Legislation Workshop on access to environmental information in the context of extractive industries - Mexico. This workshop was for officials, representatives of civil society, and other relevant actors; and aimed to disseminate the inter-American standards regarding access to public information applied to environmental information in the context of the reinforced protection that the inter-American instruments grant to this fundamental right.</p>



Tuesday, 20 August 2019 Tegucigalpa, Honduras	<i>Closed Event</i>	C-LIBRE	The Special Rapporteur attended a dinner organized by C-Libre which was attended by around 80 people linked to the fight for freedom of expression in the country, including journalists, Civil Society Organizations in the field of Freedom of Expression, and Directors of media.
Tuesday, 20 August 2019 Tegucigalpa, Honduras	<i>Closed Event</i>	Frente a Frente	Special Rapporteur Edison Lanza was invited to participate in the television program conducted by the journalist Renato Álvarez Frente a Frente where he spoke about the situation of Freedom of Expression in the Hemisphere, during which the program also participated in the debate table journalists from Honduras and the C-Libre Organization
Wednesday, 21 August 2019 Tegucigalpa, Honduras	Event: Forum Violence against journalists within the framework of covering social protest.	C-Libre	Special Rapporteur Edison Lanza was invited to participate as in the Violence against journalists forum in the framework of the covering social protest, within which he was in charge of giving a keynote lecture on “The obligations of the states in relation to journalists covering social protest situations”.
Wednesday, 21 August 2019 Tegucigalpa, Honduras	Event: Dinner with Women's Human Rights Organizations	Women's Civil Society Organizations	Special Rapporteur Edison Lanza attended a dinner organized by different Women's Organizations to discuss issues of access and dissemination of information regarding issues concerning women's rights and freedom of expression in Honduras.
Wednesday, 21 August 2019 Tegucigalpa, Honduras	Inter-American Standards and national legislation workshop on access to environmental information in the context of extractive industries	IACHR RFOE  Institute of Access to Public Information IAIP Honduras	The Office of the Special Rapporteur held the Inter-American Standards and National Legislation Workshop on access to environmental information in the context of extractive industries - Honduras. This workshop was for officials, representatives of civil society, and other relevant actors; and aimed to disseminate the inter-American standards regarding access to public information applied to environmental information in the context of the reinforced protection that the inter-American instruments grant to this fundamental right.

<b>Friday 23 August 2019</b> <b>Tegucigalpa, Honduras</b>	Talk with Honduran journalists	C-Libre	Special Rapporteur Edison Lanza attended a talk attended by around 35 journalists, this space was an opportunity for journalists from different states of the region to present their cases and discuss their experience regarding the challenges they face during the exercise of their profession in the country.
<b>Monday, 26 August 2019</b> <b>Buenos Aires, Argentina</b>	“Launch of the Cybersecurity Campaign”	Center for Global Impact  International Republican Institute	Special Rapporteur Edison Lanza was invited by the International Republican Institute to participate as a panelist in the launch of the Cybersecurity Campaign in Argentina within the Panel: Why is cybersecurity important for the Argentine elections?
<b>Tuesday 10 September 2019</b> <b>Sao Paulo, Brazil</b>	Seminar on intermediary responsibility and freedom of expression:	Brazilian Institute of Consumer Defense IDEC	Special Rapporteur Edison Lanza was invited by the Brazilian Institute of Consumer Defense IDEC to participate as a panelist in the Seminar on intermediary responsibility and freedom of expression in Sao Paulo, Brazil.
<b>Tuesday 17 September, Mexico City</b>	Training diploma in the Inter-American Human Rights system “Hector Fix Samudio 2019”	UNAM Legal Research Institute  IACHR  UNAM General Advocacy Office IDH Court	Special Rapporteur Edison Lanza participated in the training diploma in the Inter-American Human Rights system "Hector Fix Samudio 2019" in which he was in charge of giving the class on "Violence against journalists and media"
<b>Thursday 19 September 2019,</b> <b>Buenos Aires, Argentina</b>	Celebration of the tenth anniversary of the Center for Studies on Freedom of Expression and Access to Information	CELE  University of Palermo	Special Rapporteur Edison Lanza participated in the celebration of the tenth anniversary of the Center for Studies on Freedom of Expression and Access to Information, in which he delivered the keynote lecture: "Perspectives on freedom of expression in Latin America."
<b>Saturday, September 21, 2019, Washington D.C.</b>	Expert Dialogue on Secularism and Religious Freedom	IACHR	The Special Rapporteur participated in the Dialogue of Experts on Secularism and Religious Freedom event organized by the IACHR during the 173 Period of Sessions.

Monday, September 23, 2019, Washington D.C.	Event: Victims of the Dictatorship in Venezuela	Freedom House Defend Venezuela A world without gag Criminal Forum	Special Rapporteur Edison Lanza was invited to participate in the Victims of the Dictatorship event in Venezuela, organized by different organizations of Human Rights Defenders of the mentioned country. The Rapporteur was in charge of presenting the Threats to Freedom of Expression segment in Venezuela.
September 25-27, 2019, Lima, Peru	Training course for trainers for Directors and Directors of Schools of Public Ministries of Latin America	UNESCO The Office of the Special Rapporteur for Freedom of Expression	The lawyer, Cecilia La Hoz, participated as a speaker in the course in order to raise awareness of the standards, jurisprudence and work of the Office of the Special Rapporteur in relation to violence against freedom of expression and the role of the judiciary to counter it and fight impunity
September 25-27, 2019, Washington D.C.	International Course on Public Policies in human rights of the IPPDH.	IACHR - IPPDH	On September 25 and 27, in Washington-DC, Tatiana Guasti, lawyer of the RFOE, gave the workshop on the right of access to information in the Inter-American System of Human Rights, to the participants of the International Public Policy Course in human rights of the IPPDH.
2 de octubre de 2019, Washington D.C.	Course on the Inter-American System for the Protection of Human Rights for agents of the State, IACHR-IIDH	-Robert F. Kennedy Human Rights  -Washington College of Law, American University	The lawyers Tatiana Teubner and Cecilia La Hoz, participated as speakers in the course in order to publicize the mandate of the Office of the Special Rapporteur, its creation, its functions and work methodology. They also presented the situation of freedom of expression in the region, the work areas of the Office of the Special Rapporteur and the challenges of this right in the future.
October 4, 2019, Aguascalientes, Mexico	XXVI International Law Workshop.	Ministry of Foreign Affairs of Mexico  Pan American University of Aguascalientes	Special Rapporteur Edison Lanza was invited to give a talk on Freedom of Expression and Violent Extremism in the framework of the International Law Workshop offered by the Ministry of Foreign Affairs of Mexico and organized by the Pan American University of Aguascalientes.
October 6, 2019, Miami United States	75th General Assembly of the Inter-American Press Society	Inter-American Press Society	Special Rapporteur Edison Lanza participated in the 75th General Assembly of the Inter-American Press Association within the panel, Freedom of Expression and Violent Extremism in International Law

<p><b>2-4 October 2019, Panama</b></p>	<p>UNESCO Regional Forum of Allies for Latin America and the Caribbean</p>	<p>UNESCO</p>	<p>The Project Coordinator Melissa Cabrera participated in the Plenary Panel “Access to Information and Freedom of Expression” during the Forum that brought together more than 300 UNESCO allies in the region. The presentation focused on the challenges for freedom of expression in the digital age.</p>
<p><b>1 November 2019, Caracas Venezuela</b></p>	<p>Conference: Media and Freedom of Expression in Venezuela</p>	<p>RFOE - IACHR  Embassy of the United Kingdom in Caracas  Public space</p>	<p>On the occasion of the international day against impunity for crimes against journalists, the Office of the Special Rapporteur organized this in coordination with the Public Space Foundation, the Media and Freedom Conference (Creativity, Innovation and communication tools) in Caracas, Venezuela.</p> <p>More than 70 journalists from all regions of the country attended, who were able to access and participate interactively in different panels and activities focused on addressing the problem of the exercise of journalism in Venezuela according to the current context of the country showing the challenges and opportunities presented to carry out the same.</p>
<p><b>November 2, 2019, Caracas Venezuela</b></p>	<p>Workshops: Protection Mechanisms of the Inter-American Human Rights System to exercise freedom of expression in Venezuela.</p>	<p>RFOE - IACHR  Embassy of the United Kingdom in Caracas  Public space</p>	<p>The Office of the Special Rapporteur for Freedom of Expression organized, in coordination with the Public Space Foundation, two workshops attended by more than 75 Venezuelan journalists from different regions of the country and Civil Society Organizations of Venezuela focused on defending Freedom of Expression.</p> <p>These workshops aimed to provide tools and inform these groups on how to access and use the different protection mechanisms by dynamically offering them various materials and information that allow them to exercise journalism more safely.</p>

<p><b>7 November 2019</b> Quito, Ecuador</p>	<p>Forum of the Inter-American Human Rights System</p> <p>Panel: Impunity as a factor of violence against journalists and media workers. Proposals for the use of the SDG 16.10 indicator reporting system</p>	<p>Voices of the South</p> <p>IACHR</p> <p>OAS</p> <p>Inter-American Court of Human rights</p>	<p>The Special Rapporteur for Freedom of Expression of the IACHR, Edison Lanza participated in the IACHR Forum in the Impunity panel as a factor of violence against journalists which aimed to formulate proposals for the use of the Sustainable Development Goal Indicator Reporting System SDG 16.10 that measure the level of press freedom, access to information and the security of journalists, in order to be used by the Inter-American Human Rights System in the reports of the IACHR RFOE with the ultimate goal of reducing impunity in crimes against the press.</p> <p>During the panel he also carried out a comparative analysis of the national mechanisms of journalists' security in the region and of the common solutions to the problem of violence against the press.</p> <p>Participants: Dr. Frank LaRue, in his capacity as Former UN Rapporteur for Freedom of Expression, Fundamedios, Voces del Sur and RFOE.</p>
<p><b>10 November 2019</b> Mexico City</p>	<p>RFOE AWARD 2019 Colpin 2019</p>	<p>IPYS - COLPIN</p> <p>RFOE IACHR</p>	<p>Special Rapporteur Edison Lanza traveled to Mexico City to present and deliver the prize to the winners of the second edition of the RFOE AWARD ceremony that took place within the framework of the Latin American conference of investigative journalism COLPIN 2019.</p>
<p><b>13th November</b> Quito, Ecuador</p>	<p>Workshop on protection of communication workers in Ecuador</p>	<p>Council for Regulation, Development and Promotion of Information and Communication</p>	<p>Special Rapporteur Edison Lanza participated as a speaker in the forum: Freedom of expression, responsibility and diversity in the face of new communication scenarios; which had the assistance and participation of communication workers, media, unions, social organizations and academic institutions.</p> <p>This was a space for reflection on the challenges that Ecuadorian society has with regard to the protection of communication workers, as fundamental actors to strengthen democracy.</p>
<p><b>14 November 2019</b> Panama City</p>	<p>XIV Inter-American Meeting of Electoral Authorities</p>	<p>Electoral Tribunal - Panama</p> <p>OAS - DECO</p>	<p>Special Rapporteur Edison Lanza participated in the XIV Inter-American Meeting of Electoral Authorities, organized by the Electoral Tribunal of Panama and the Department of Electoral Cooperation and Observation of the OAS within the Social Media Laboratory Segment: Political strategies in digital media.</p>

<b>15 November 2019</b>	Freedom of Expression, Law and Justice conference	National Journalism Council	Special Rapporteur Edison Lanza delivered the conference Freedom of Expression, Law and Justice organized by the National Journalism Council of Panama.
<b>21-22 November 2019 Bogotá, Colombia</b>	Event: Digital Security and Journalism in Restrictive Societies	RFOE - IACHR  United Kingdom  FLIP Press Freedom Foundation	Special Rapporteur Edison Lanza and Project Manager Melissa Cabrera participated in Bogotá's workshop on Digital Security and Journalism in Restrictive Societies: Protection tools for the exercise of investigative journalism in Venezuela - Organized by RFOE - IACHR.  This workshop was attended by journalists from several regions of Venezuela and Colombian journalists, who participated in digital security panels, among which the following stand out: online violence against women journalists dictated by Amalia Toledo of the Karisma Foundation, Introduction to Digital Security and Digital Security workshop dictated by Pablo Arcuri of Internews, inter-American standards related to investigative journalism and digital rights dictated by Luisa Isaza of FLIP, and surveillance and blockades in Latin America dictated by Daniela Alvarado of IPYS Venezuela.
<b>25th November Berlin, Germany</b>	Event  Internet Governance Forum - 14th Annual Meeting of the Internet Governance Forum - IGF	Digital Rights	Special Rapporteur Edison Lanza participated in the IGF as a panelist in the forum organized by Digital Rights on Technology and Surveillance in Latin America: Towards human rights standards
<b>26th November Berlin, Germany</b>	Event Facebook: Encryption	Facebook	Special Rapporteur Edison Lanza was invited to participate in a closed meeting organized by Facebook where he was responsible for addressing the issue of encryption threats and the effect it has on freedom of expression.
<b>26th November Berlin, Germany</b>	Roundtable: Panel: 5G, IoT and Zero Rating Challenges for Net Neutrality	FGV Law School	Special Rapporteur Edison Lanza participated in the IGF as a panelist in the forum organized by FGV law school on 5G, IoT and Zero Rating Challenges for Net Neutrality.
<b>27th November Berlin, Germany</b>	Forum How to deal with terrorist content and extreme violence online	FGV Law School	Special Rapporteur Edison Lanza participated in the IGF as a panelist in the forum How to address terrorist content and extreme violence online.

<b>28th November Berlin, Germany</b>	Forum: Community Networks: Policy and Regulations	FGV Law School	Special Rapporteur Edison Lanza participated in the IGF as a panelist in the forum organized by FGV law school: on Community Networks: Policy and Regulations.
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### 5) Working visits and meetings

24. Below is a summary of the working visits and meetings carried out by the Office of the Special Rapporteur in 2019:

#### Working visits

Country	Date/ Place	Institution	Description
<b>Costa Rica</b>	22 to 29 January 2019, San José	129 Regular Period of Sessions I/A Court HR	Special Rapporteur for Freedom of Expression Edison Lanza attended the 129 Regular Period of Sessions of the Inter-American Court related to the alleged violation of the right to freedom of expression, political rights and freedom of movement of Mr. Tulio Álvarez Ramos, for a criminal proceedings against him due to the alleged commission of the crime of aggravated defamation.
<b>Guatemala</b>	20 - 22 May, 2019.	Office of the United Nations High Commissioner - Guatemala	The Office of the Special Rapporteur for Freedom of Expression made an academic visit to Guatemala to discuss issues regarding the situation of freedom of expression in that country.  The following activities were carried out within the agenda of the visit:  -Public launch of the joint OHCHR-PDH report on human rights defenders and journalists.
<b>Quito, Ecuador</b>	October 28 to 31, 2019	IACHR Work Visit to Ecuador	The Special Rapporteur Edison Lanza was part of the IACHR delegation during the Work Visit to Ecuador, to address the human rights situation in the context of the protests.  During the visit, the Rapporteur attended three meetings with journalists and representatives of different media from all regions of the country, one of them in the company of Commissioner Luis Ernesto Vargas.  Similarly, the rapporteur had the opportunity to visit several media directly affected during the protests such as the newspaper "El Comercio", Radio Pichincha, and Teleamazonas.  Finally, the Rapporteur met with authorities of the Municipality of Quito and members of the forensic team of legal medicine.
<b>Bolivia</b>	November 22nd - 25th	Work visit of the IACHR to Bolivia	The lawyer of the Office of the Special Rapporteur Tatiana Guasti traveled to Bolivia as a representative of the Office in the IACHR delegation during this work visit that the Commission carried out to address the serious situation of human rights violations that had been occurring since the beginning of the month of November in the mentioned country.

<b>El Salvador</b>	2-4 December 2019	On-site visit of the IACHR to El Salvador	<p>The Special Rapporteur for Freedom of Expression was part of the IACHR delegation during the on-site visit in El Salvador to discuss issues regarding the situation of freedom of expression in that country.</p> <p>The following activities were carried out within the agenda of the visit:</p> <p>Meeting organized and convened by the Office of the Special Rapporteur attended by more than 30 Civil Society organizations on freedom of expression and journalists from different regions of the country, to collect inputs and get a current perspective on the situation of freedom of expression and safety of journalists in El Salvador.</p> <p>Similarly, Rapporteur Edison Lanza and Commissioner Antonia Urrejola held a meeting with the board of commissioners of the Institute of Access to Information where it was possible to obtain inputs regarding the progress and projects the Institute has been carrying out regarding access.</p> <p>Finally, the Rapporteur met with authorities such as the DA of Human Rights, and the President of the Supreme Electoral Tribunal.</p> <p>Finally, Rapporteur Edison Lanza attended, in the company of Commissioner Antonia Urrejola, multiple meetings with state authorities, MFA, Attorney General's Office, Ministry of Defense, Supreme Court of Justice, Public Defender, among others. Similarly, visits to communities and different meetings with victims and civil society were made.</p>
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### **Work Meetings**

<b>Country</b>	<b>Date/Place</b>	<b>Institution</b>	<b>Description</b>
<b>Bolivia</b>	171 Period of Sessions of the Inter-American Commission on Human Rights.	Press Freedom and Expression Monitoring and Surveillance Unit in Bolivia - ANP	Special Rapporteur Edison Lanza met with the Board of the ANP to discuss the situation of freedom of expression in Bolivia.
<b>Bolivia</b>	171 Period of Sessions of the Inter-American Commission on Human Rights.	Presentation Thematic report of the RFOE to the IACHR	Special Rapporteur Edison Lanza presented the report on children and media of the RFOE during the internal session of the IACHR.



<b>Bolivia</b>	171 Period of Sessions of the Inter-American Commission on Human Rights.  February 11, 2019	Presentation of the ESE Final Report to the IACHR	Special Rapporteur Edison Lanza presented in the internal session of the IACHR final report of the Special Follow-up Team to the precautionary measure 309/18 (ESE)
<b>Mexico</b>	March 14th, 2019	IACHR RFOE	Melissa Cabrera, a RFOE consultant, met with more than 15 civil society organizations that make up the CSO Space in Mexico and work for the protection of human rights and journalists in that country. The organizations presented to the IACHR / RFOE and the Swedish Cooperation, the challenges they identified for the next sexennial in relation to freedom of expression and civic space.
<b>Mexico</b>	March 14th, 2019	IACHR RFOE	Special Rapporteur Edison Lanza, together with Melissa Cabrera, a consultant for RFOE and Swedish Cooperation, met with 7 Mexican journalists from different States, currently beneficiaries of the protection mechanism of the Protection Mechanism of that country. The journalists presented to the Special Rapporteur the challenges they faced as journalists both in their home cities and in Mexico City.
<b>Jamaica</b>	May 7, 2019 Kingston	172 Period of Sessions of the Inter-American Commission on Human Rights.  Article 19 Brazil and other organizations	Special Rapporteur Edison Lanza met with the organization Article 19 Brazil, Civil Society Organizations on Freedom of Expression of Brazil, the Conectas Organization, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association of the UN, M. Clément Voule, to follow up and discuss issues of joint interest regarding violations of freedom of expression in the context of public protests.
<b>Jamaica</b>	May 7, 2019 Kingston	Meeting with the Special Rapporteur on the rights to freedom of peaceful assembly and of association of the UN, Mr. Clément	Special Rapporteur Edison Lanza met with the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Clément Voule, to follow up and discuss issues of joint interest regarding violations of freedom of expression in the framework of public protests.
<b>Jamaica</b>	May 7, 2019 Kingston	Work meeting: Precautionary measure David Romero  172 Periodo de Sesiones Extraordinario de la Comisión Interamericana de Derechos Humanos.	The Special Rapporteur attended the working meeting held by the IACHR, headed by the Country Rapporteur, Joel Hernández, regarding the precautionary measure of David Romero - Honduras

<b>Jamaica</b>	May 9, 2019 Kingston	Meeting with Jamaican Civil Society Organizations on Freedom of Expression  172 Period of Sessions of the Inter-American Commission on Human Rights.	Special Rapporteur Edison Lanza met with Civil Society Organizations and Journalists from Jamaica and the Caribbean to discuss and collect inputs regarding the situation of Freedom of Expression in the region.
<b>Colombia</b>	June 26, 2019, Medellín	48 OAS General Assembly  Meeting and Press Conference with Nicaraguan journalist Lucía Pineda	Special Rapporteur Edison Lanza met with the journalist Lucía Pineda of 100% Noticias, after her release after 6 months detained since December 2018. The meeting was followed the morning after a press conference organized by Race and Equality, with the participation of national and international media.
<b>Geneva</b>	24 June 2019 Geneva	Meeting with civil society  41st United Nations Human Rights Council	The Special Rapporteur and Commissioner Joel Hernandez held a meeting with 25 representatives of civil society organizations in Geneva in which they presented the greatest concerns regarding human rights and freedom of expression in the region. The meeting was attended by 3 Cuban activists who traveled to the event of the launch of the Report on freedom of expression in Cuba.
<b>Honduras</b>	21 August 2019 Tegucigalpa	Meeting with the Institute of Access to Public Information (IAIP) of Honduras	Special Rapporteur Edison Lanza attended a meeting with the Institute of Access to Public Information (IAIP) of Honduras in which the following topics were discussed:  The renewal of the information reserve agreement of the Ministry of Defense.  Reserve information on the financing of political parties.  Reserve decree of environmental information, My Environment.
<b>Honduras</b>	23 August 2019 Tegucigalpa	Meeting Secretariat of Human Rights Honduras	Special Rapporteur Edison Lanza met with the Secretary of Human Rights of Honduras Judge Karla Cuevas to discuss issues related to the serious situation of Freedom of Expression in Honduras.
<b>Honduras</b>	23 August 2019 Tegucigalpa	Meeting with Center for Research and Promotion of Human Rights- CIPRODEH	Special Rapporteur Edison Lanza met with Ariel Diaz Director of the Center for Research and Promotion of Human Rights - CIPRODEH to discuss issues related to the case of the precautionary measure granted to Honduran journalist David Ellner
<b>Honduras</b>	23 August 2019 Tegucigalpa	Meeting with Journalists Coalition	Special Rapporteur Edison Lanza met with Dina Meza and other members of the Coalition of journalists, media and civil society organizations in Honduras to discuss issues of specific cases of journalists who have suffered violations to their rights of free exercise of journalistic work, as well as other issues that affect the exercise of Freedom of Expression in the country.

Brazil	Tuesday 10 September 2019 Sao Paulo	Meeting with Civil Society Organizations of Brazil Organized by IDEC	Special Rapporteur Edison Lanza met with Civil Society Organizations and Journalists of Brazil to discuss and collect inputs regarding the situation of freedom of expression in the country.
Brazil	Tuesday 10 September 2019 Sao Paulo	Meeting with Civil Society Organizations of Brazil Organized by Article 19	Special Rapporteur Edison Lanza met with different Civil Society Organizations and Journalists from Brazil where the following topics of interest were discussed.  Criminalization and protests Civic Space Reduction Misinformation
Mexico	Tuesday 17 September, Mexico City	Meeting with the Office of the Specialized Prosecutor for Human Rights	Special Rapporteur Edison Lanza met with the Minister. Sara Irene Herrerías Guerra, Prosecutor Specialized in Human Rights Matters to discuss issues related to the safety of journalists in Mexico among other threats to the free exercise of freedom of expression in Mexico.
United States	Tuesday, September 24, 2019, Washington D.C.	173 Period of Sessions of the Inter-American Commission on Human Rights.	Special Rapporteur Edison Lanza met with Gustavo Gómez - Director of Observacom, Uruguay to discuss different topics of interest and upcoming projects and events to be carried out together regarding freedom of expression in the region.
United States	Tuesday, September 24, 2019, Washington D.C.	173 Period of Sessions of the Inter-American Commission on Human Rights.	The Special Rapporteur Edison Lanza and the Office's team met with the IFEX Network to follow up on issues of common interest and discuss upcoming opportunities for development and joint work regarding activities in defense of Freedom of Expression.
United States	Tuesday, September 24, 2019, Washington D.C.	173 Period of Sessions of the Inter-American Commission on Human Rights.	The Special Rapporteur Edison Lanza and the Office's team met with several Cuban journalists and representatives of civil society to exchange information and receive inputs regarding the situation and challenges to exercise Freedom of Expression in that country.
United States	Tuesday, September 24, 2019, Washington D.C.	173 Period of Sessions of the Inter-American Commission on Human Rights.	Special Rapporteur Edison Lanza met with the Pro Bono Network of the Americas where opportunities for collaboration and joint work between both parties were discussed.
United States	Thursday, September 26, 2019, Washington D.C.	173 Period of Sessions of the Inter-American Commission on Human Rights.	Special Rapporteur Edison Lanza and Attorney Tatiana Guasti met with representatives of the Race and Equality organization and Nicaraguan journalists Carlos Fernando Chamorro, Aníbal Toruño, Sergio León and Lucía Pineda to discuss the issue of the serious safety situation and restrictions on the exercise of journalism and freedom of expression in Nicaragua.
United States	Thursday, September 26, 2019, Washington D.C.	173 Period of Sessions of the Inter-American Commission on Human Rights.	Special Rapporteur Edison met with the Regional Human Rights Advisory Foundation - INREDH to discuss issues, exchange information and receive inputs regarding the situation of Freedom of Expression and communicators and journalists in Ecuador.

United States	Friday, September 27, 2019, Washington D.C.	173 Period of Sessions of the Inter-American Commission on Human Rights.	The Office's team met with Carlos Correa, director of Venezuela Public Space to review the situation of freedom of expression in Venezuela and discuss possible promotion and training events that will take place during the month of November in Caracas regarding to the issue of journalist's safety.
United States	Friday, September 27, 2019, Washington D.C.	173 Period of Sessions of the Inter-American Commission on Human Rights.	Special Rapporteur Edison Lanza met with the Minister. Luis Raúl González Pérez, President of the National Human Rights Commission of Mexico to discuss issues related to the safety situation of journalists and threats to the free exercise of freedom of expression in Mexico.

## 6) Annual Report and Development of Expert Knowledge

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

26. Besides its annual reports, the Office of the Special Rapporteur periodically produces specific reports on particular countries. For example, it has prepared and published special reports on the situation regarding the right to freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), Colombia (2005), Honduras (2009, 2010 and 2015), Venezuela (2009 and 2010), Mexico (2010 and 2015), Chile (2017), Cuba (2018) and Ecuador (2019)

27. In 2019, the Office of the Special Rapporteur published on March 8 the special report "Women Journalists and Freedom of Expression: Discrimination and gender-based violence against women journalists for the exercise of their profession",<sup>7</sup> then on March 13 it was presented to the public in Mexico City the Special Report on Freedom of Expression in Cuba.<sup>8</sup> Also, during 2019, the Office of the Special Rapporteur also completed the special reports: "Report on Protest and Human Rights"; "Final Report of the Special Follow-up Team (ESE) Designated by the Inter-American Commission on Human Rights: Follow-up of the component to investigate the facts that resulted in the kidnapping and murder of Javier Ortega, Paúl Rivas, and Efraín Segarra, members of the newspaper's ("El Comercio") journalistic team and; "Report on the Rights of Children and the Media in the Americas".<sup>9</sup>

28. Likewise, in October 2019, the office presented to the OAS Permanent Council a "[Practical guide of recommendations to guarantee freedom of expression and access to information from various sources on the Internet in electoral contexts, without undue interference](#)"<sup>10</sup>, culminating thus, the elaboration process led by this Office in coordination with the Department of Electoral Cooperation (DECO) of the OAS, and in response to the mandate granted by the General Assembly through the AG/RES. 2928-XLVIII-O/18. The Guide complements the efforts of this Office to address this issue and which began with the Joint Declaration on Freedom of Expression and "Fake News", disinformation, and propaganda, together with the other Rapporteurs on freedom of expression in 2017. Other actions within this initiative include the advice of the RFOE to the electoral observation mission of the OAS during the presidential elections in Brazil, Bolivia, and Panama. The process of preparing the guide managed to reach a thematic, geographical, and sectorial balance. Multilateral organizations -such as UNESCO-, civil society organizations, electoral organizations in the region, representatives of the private sector, and academia participated in the process.

## 7) Special Statements and Declarations

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

30. The Office of the Special Rapporteur receives many emails, which mainly refer to alerts, press releases, requests for information, and queries on freedom of expression in the region. Likewise, a small group of the

<sup>7</sup> Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/MujeresPeriodistas.pdf>

<sup>8</sup> Available at: <https://cidhoea.wixsite.com/cuba/english>

<sup>9</sup> Available at: [http://www.oas.org/es/cidh/expresion/informes/Informe\\_Final\\_ESE\\_MC\\_Dicc2019.pdf](http://www.oas.org/es/cidh/expresion/informes/Informe_Final_ESE_MC_Dicc2019.pdf)

<sup>10</sup> Available at: [http://www.oas.org/en/iachr/expression/publications/Guia\\_Desinformacion\\_VF%20ENG.pdf](http://www.oas.org/en/iachr/expression/publications/Guia_Desinformacion_VF%20ENG.pdf)

emails refers to formal requests to the IACHR Individual Case System, and another group refers to topics that are not within the Office's jurisdiction. The Office of the Special Rapporteur reviews, filters, and classifies the information received to establish the actions to be taken.

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

32. Joint statements constitute an important tool for the work of the Office of the Special Rapporteur. In previous years, these statements have covered different topics related to freedom of expression, according to context and time<sup>11</sup>.

33. On July 10, experts for the freedom of expression of the UN, OSCE, IACHR, and the African Commission on Human and Peoples' Rights issued their 2019 Joint Declaration<sup>12</sup> at an event that took place in London, England. The Declaration addresses the various current threats to the freedom of the press, including threats to their safety and threats of a legal, political, technological, and economic nature, and the measures that States must take to address them.

34. The Declaration was signed by the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, the Representative for Freedom of the Press of the Organization for Security and Cooperation in Europe (OSCE), Harlem Desir, the Special Rapporteur for Freedom of Expression of the Organization of American States (OAS), Edison Lanza, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR), Lawrence Mute.

35. During 2019, the Office of the Special Rapporteur issued different press releases to raise awareness on facts related to freedom of thought and expression. These statements highlight especially worrying facts and the best local practices, and explain the respective regional standards. Press releases issued during 2018 can be seen in the webpage of the Office of the Special Rapporteur for Freedom of Expression of the IACHR<sup>13</sup>.

Country	Topic	Number	Title	Place / Date
Mexico	Violence against journalists	R16/19	The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of José Rafael Murúa Manríquez and observes with concern the continuity of violence against journalists in México.	Washington, D.C. January 25, 2019
Venezuela	Violence against journalists – Restrictions to freedom of expression	R23/19	Office of the Special Rapporteur demands the immediate release of journalists detained in Venezuela and refrain from expelling foreign correspondents	Washington, D.C. February 1st, 2019
Venezuela	Restrictions to freedom of expression	R62/19	Freedom of Expression experts of the UN and the IACHR express alarm over expansion of censorship measures in Venezuela	Washington, D.C. March 8, 2019

<sup>11</sup> Available at: <http://www.oas.org/en/iachr/expression/docListCat.asp?catID=16&IID=>

<sup>12</sup> Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1146&IID=1>

<sup>13</sup> Available at: <http://www.oas.org/en/iachr/expression/artListCat.asp?year=&countryID=&IID=1&catID=1>

<b>Regional</b>	Announcement	R60/19	On the occasion of 2019 international women's day, The Office of the Especial Rapporteur for Freedom of Expression presents the report "Women Journalists and Freedom of Expression: Discrimination and Gender-Based violence faced by women journalist in the exercise of their profession".	Washington, D.C March 8, 2019
<b>Cuba</b>	Announcement	R63/19	Office of the Special Rapporteur presents Special Report on the Situation of Freedom of Expression in Cuba	Washington, D.C. March 13, 2019
<b>Honduras</b>	Violence against journalists	R71/19	The Office of the Special Rapporteur Condemns the Murder of Journalist in Honduras and Urges to Investigate Connection to Journalistic Activity	Washington, D.C. March 20, 2019
<b>Regional</b>	Situation of FoE in the Region	R73/19	Office of the Special Rapporteur for Freedom of Expression of the IACHR presents its 2018 Annual Report	Washington, D.C. March 21, 2019
<b>Regional</b>	Announcement	N/A	The Office of the Special Rapporteur for Freedom of Expression presents the list of members of the Expert Group on disinformation in electoral contexts that will meet April 23-24	Washington D.C. April 16, 2019
<b>Regional</b>	Freedom of Expression	R107/19	The Office of the Special Rapporteur for Freedom of Expression, UNESCO, and the Inter- American Court of Human Rights celebrate World Press Freedom Day with a Panel on the protection of freedom of expression and the Internet.	Montevideo, San Jose, Washington A April 30, 2019
<b>Venezuela</b>	Restrictions to Freedom of Expression	R116/19	The Office of the Special Rapporteur condemns closure of Radio Caracas Radio 750 AM, the censorship of television channels, restrictions on the Internet, and the arrest of journalists in Venezuela.	Washington, D.C. May 15, 2019
<b>Mexico</b>	Violence against journalists	R120/19	The Office of the Special Rapporteur condemns the continuance of murders of journalists and communicators in Mexico and urges the State to implement decisive measures to protect and combat impunity.	Washington, D.C. May 17, 2019
<b>Guatemala</b>	Elections and FOE	R147/19	Guatemala: Freedom of Expression and the media's role are crucial to guaranteeing free and transparent elections this June 16.	Washington D.C. June 12, 2019

<b>Haiti</b>	Violence against journalists	R151/19	The Office of the Special Rapporteur condemns the murder of journalist Petión Rospide and expresses its concern over the ongoing violence against journalists in the framework of the public demonstrations' coverage in Haiti	Washington D.C. June 14, 2019
<b>Mexico</b>	Violence against journalists	R153/19	The Office of the Special Rapporteur condemns the murder of journalist Norma Sarabia in Mexico and notes with concern the ongoing attacks against journalists.	Washington D.C. June 17, 2019
<b>Brazil</b>	Violence against journalists	R164/19	Experts on freedom of expression of the UN and the IACHR express their concern over death threats against journalist Glenn Greenwald, director of The Intercept Brasil, and his family	Washington D.C. July 1, 2019
<b>Regional</b>	Freedom of Expression	R173/19	Twentieth Anniversary of the Joint Declaration: Challenges to Freedom of Expression in the Next Decade.	Washington D.C. July 10, 2019
<b>Colombia</b>	Violence against journalists	R177/19	On July 16, the IACHR presented before the Inter-American Court of Human Rights the case Jineth Bedoya Lima and other, regarding Colombia.	Washington D.C. July 19, 2019
<b>Mexico</b>	Violence against journalists	R189/19	Office of the Special Rapporteur condemns increased violence against journalists and the media in Mexico and urges the State to strengthen strategies for prevention, protection, and fight against impunity at federal and state levels.	Washington, D.C. August 5, 2019
<b>Regional</b>	Access to public information	Anuncio	Apply for the RELE 2019 Award: "Access to Public Information and Investigative Journalism.	Washington, D.C., August 8, 2019
<b>Cuba</b>	Violence against journalists	R206/19	Office of the Special Rapporteur condemns prison sentence against journalist Roberto Quiñones and expresses concern about the persistence of criminalization and harassment against communicators and human rights defenders in Cuba.	Washington, D.C. 20 August 2019
<b>Nicaragua</b>	Violence against journalists	R212/19	Nicaragua: Nicaragua: Must stop reprisals against journalists, say human rights experts	Washington, D.C. 26 August 2019

<b>Mexico</b>	Violence against journalists	R213/19	Special Rapporteur condemns the murder of journalist Nevith Condes in Mexico; urges the State to review and strengthen protection measures and the prosecutor's office action in the face of the serious situation of violence against communicators.	Washington, D.C. 29 of August 2019
<b>Venezuela</b>	Violence against journalists / Detentions	R232/19	Office of the Special Rapporteur condemns that communicators Pedro Jaimes and Jesús Medina have served one year in prison in Venezuela without being convicted.	Washington, D.C. September 18th 2019
<b>Chile</b>	Social Protest	No. 270/19	IACHR condemns excessive use of force and rejects all forms of violence in the context of social protests in Chile.	Washington, D.C. 23rd September 2019
<b>Ecuador</b>	Violence against journalists	No. 252/19	IACHR and its Special Rapporteurship express concern about the excessive use of police force against demonstrators and attacks on journalists in protests in Ecuador.	Washington D.C. 9 October 2019
<b>Haiti</b>	Violence against journalists	No. 258/19	IACHR and its Special Rapporteur's Office express concern about acts of violence and increased political tension in Haiti.	Washington D.C. October 11, 2019
<b>Regional</b>	Missinformation	N/A	Office of the Special Rapporteur of the IACHR presents a Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts.	Washington D.C., October 18, 2019
<b>Mexico</b>	Violence against journalists	R295/19	Freedom of expression experts concerned by slow progress into investigation and prosecution for murder of Mexican journalist Javier Valdez .	Washington D.C., 19 November 2019
<b>Honduras</b>	Violence against journalists	R316/19	Office of the Special Rapporteur condemns murder of journalist José Arita in Honduras and urges to investigate relation to his journalistic activity.	Washington D.C., December 4, 2019

### C. Funding

36. The Office of the Special Rapporteur would like to express very special thanks for the contributions it has received from OAS Member States, observer countries, and international cooperation agencies. In 2019, the Office of the Rapporteur calls attention to the projects that have been carried out satisfactorily thanks to the financial contributions made by the States of Costa Rica, France, Kingdom of the Netherlands, the United States of America, Uruguay, United Kingdom as well as the Swedish Agency for International Development Cooperation, the Swiss Confederation, Open Society Foundations, and the National Endowment for Democracy (NED), Ford Foundation, Freedom House and Google Inc. This funding has allowed the Office of the Special Rapporteur to fulfill its mandate and continue its work of promoting and defending the right to freedom of



expression. Once the OAS has released the official figures on the resources received and executed by this office, they will be published in the audited financial statements available on the webpage of the organization<sup>14</sup>.

#### **D. Staff**

37. The Office of the Special Rapporteur has worked under the coordination of the Special Rapporteur, with a team of two or three lawyers who are experts in subjects related to freedom of expression, a journalist in charge of monitoring the situation of freedom of expression in the region, and a person who performs administrative assistance tasks. Since July of 2009, the Office of the Special Rapporteur has had a person in charge of managing projects and mobilizing resources. Any additional resources that have been obtained have served to provide greater stability and better working conditions for the members of this team. The Office of the Special Rapporteur has also benefited from the presence of interns who have been an essential part of the team. During 2019, in the capacity of interns Sol Bensadon (Argentina), Augusta Saravia (Brazil) and Jessica Montes (Mexico) collaborated in a constructive and enthusiastic manner to their work at the Office of the Special Rapporteur. In 2019, the Office of the Special Rapporteur has also counted on the participation of Fellow María José Ferrel (Bolivia) (Fellowship Orlando Sierra, 2019).

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<sup>14</sup> All the financial information is available for consultation at OAS web page, section [External Audit Reports](#): OAS Board of External Auditors. Report to the Permanent Council 2013. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2013 and 2012. Section II. Specific funds. Pp 62-64; OAS Board of External Auditors. Report to the Permanent Council 2012. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2012 and 2011. Section II. Specific funds. Pp 75-77; OAS Board of External Auditors. Report to the Permanent Council 2011. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2011 and 2010. Section II. Specific funds. Pp 79-81; OAS Board of External Auditors. Report to the Permanent Council 2010. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2010 and 2009. Section II. Specific funds. Pp 79-81; OAS Board of External Auditors. Report to the Permanent Council 2009. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2009 and 2008. Section II. Specific funds. Pp 71-73; OAS Board of External Auditors. Report to the Permanent Council 2008. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2008 and 2007. Section II. Specific funds. Pp 73-74; OAS Board of External Auditors. Report to the Permanent Council 2007. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2007 and 2006. Section II. Specific funds. Pp 85-86; OAS Board of External Auditors. Report to the Permanent Council 2006. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2006 and 2005. Section II. Specific funds. Pp 73; OAS Board of External Auditors. Report to the Permanent Council 2005. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2005 and 2004. Section II. Specific funds. Pp 63-64; OAS Board of External Auditors. Report to the Permanent Council 2004. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2004 and 2003. Section II. Specific funds. Pp 41-42; Board of External Auditors. General Secretariat OAS. Report to the Permanent Council 2003. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2003 and 2002. Section II. Specific funds. Pp 41-42; OAS Board of External Auditors. Report to the Permanent Council 2002. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2002 and 2001. Section II. Specific funds. Pp 53; OAS Board of External Auditors. Report to the Permanent Council 2001. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2001 and 2000. Section II. Specific funds. Pp 52; OAS Board of External Auditors. Report to the Permanent Council 2000. Annual Audit of Accounts and Financial Statements December 31, 2000 and 1999. Section II. Specific funds. Annex 4. Page 4.

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

### Introduction and Methodology

1. This chapter describes some of the most important aspects of the situation of freedom of expression in the hemisphere during 2018. Its objective is to foster a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this year. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote resolutely the right to freedom of expression and, to that end, publicizes their best practices, reports some serious problems observed, and offers viable and practical recommendations rooted in the Declaration of Principles.

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

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

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

5. In preparing this chapter of its 2018 Annual Report, the Office of the Special Rapporteur generally took into account information received until December 15, 2018. Information regarding incidents that occurred after the date the 2018 Annual Report went to press is available in the press release section of the websites of the Office of the Special Rapporteur ( <http://www.oas.org/en/iachr/expression/index.asp> ) and the IACHR (<http://www.oas.org/en/iachr/expression/index.asp> ).

6. Finally, the Office of the Special Rapporteur acknowledges the collaboration of the OAS Member States and the civil society organizations that, following existing practice, contributed information about the situation of the exercise of freedom of expression in the hemisphere. As it does every year, the Office of the Special Rapporteur encourages the continuation of such practice, which are indispensable to the value of future reports.

## 1. ANTIGUA AND BARBUDA

7. During 2019 in Antigua and Barbuda there were allegations of deliberate dissemination of disinformation in connection with the Barbuda local government elections. In August 2019, the Senate approved a new amendment to the Electronic Crimes Bill [2013], which incorporated the possibility of applying for a search warrant to obtain data from electronic devices, so that they can be used as evidence in possible legal proceedings. Recent amendments to the Act have made it clearer what offenses are covered by the Act, such as sending offensive messages through communication services, violation of privacy and child pornography, so as to avoid restrictions on freedom of expression.

### A. Freedom of expression in electoral contexts

8. During 2019 in Antigua and Barbuda there were allegations of deliberate dissemination of disinformation in connection with the Barbuda local government elections. In August 2019, the Senate approved a new amendment to the Electronic Crimes Bill [2013], which incorporated the possibility of applying for a search warrant to obtain data from electronic devices, so that they can be used as evidence in possible legal proceedings. Recent amendments to the Act have made it clearer what offenses are covered by the Act, such as sending offensive messages through communication services, violation of privacy and child pornography, so as to avoid restrictions on freedom of expression. The Barbuda Council Elections were held on March 27, with the Barbuda People's Movement (BPM) winning all four contested seats.<sup>15</sup>The election monitoring group "Free and Fair Elections Inc." was designated an official observer.<sup>16</sup>

9. Faced with this setback for the Labour Party, Prime Minister Gaston Browne claimed that the BPM had disseminated false information and that this information had taken root among the public.<sup>17</sup>

10. The Office of the Special Rapporteur recalls that, "Elections are tightly linked to freedom of expression and information as it is essential for citizens to have as much information as possible to make a decision in casting their votes. Accordingly, free circulation of facts, ideas, and opinions is crucial. Unquestionably, the most common way for citizens currently to inform themselves is through the media."<sup>18</sup>

11. In 2019, at the request of the General Assembly of the Organization of American States (OAS), the Office of the Special Rapporteur presented a guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts. In that report, this Office underscored that disinformation "is of particular concern in electoral contexts since—if effective—it could affect the legitimacy of a process that is critical to the functioning and very existence of a democratic society."<sup>19</sup>

### B. Subsequent liability

12. According to available information, former Barbados MP Wilmoth Daniel is said to have sued Prime Minister Gaston Brown for civil defamation under the Defamation Act, based on events that occurred in January 2018 when the latter accused Daniel, during a parliamentary recess, of setting fire to buildings in order to obtain insurance money.<sup>20</sup>The court of first instance ruled in favor of Wilmoth Daniel, stating that parliamentary immunity only applies when parliament is in session. However, on September 19, the Court of Appeals found for the Prime Minister, stating that immunity extends to all words spoken in parliament.<sup>21</sup>

13. This Office recalls that Principle 10 of the IACHR's Declaration of Principles on Freedom of Expression states that "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest." On this point, the Inter-American Court has held, with regard to potential civil liability, that civil judgments in matters concerning freedom of expression must be strictly proportionate, so as to not have a chilling effect on freedom of expression, since "the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official."<sup>22</sup>

<sup>15</sup>The Daily Observer. March 29, 2019. [Politicians react to Barbuda Council elections](#); Antigua News Room. March 27, 2019. [BPM Dominates Barbuda Council Elections](#).

<sup>16</sup>The Daily Observer. March 25, 2019. [Free and Fair Elections League to monitor Barbuda Elections](#).

<sup>17</sup>Antigua News Room. March 31, 2019. [PM Says ABLP Should Not Have Contested Barbuda Elections](#).

<sup>18</sup>IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI Freedom of Expression and the Electoral Process: The Case of Opinion Polls and Exit Polls. OEA/Ser.L/V/II.124 Doc. 77 February, 2006. Para. 2.

<sup>19</sup>IACHR. [Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts](#). October 17, 2019.

<sup>20</sup>IACHR. [Annual Report 2018. 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. 30. March 17, 2019. Para. 8.

<sup>21</sup>Antigua News Room. September 23, 2019. [PM Warns those who plan to sue him for defamation to come good](#); ABS TV Radio. September 19, 2019. [PM wins challenge in defamation case](#).

<sup>22</sup>I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para.129.

### C. Legal reforms

14. In its 2018 Annual Report, the Office of the Special Rapporteur noted that a draft amendment to the 2013 Electronic Crimes Act was under discussion, the objectives of which included protecting freedom of expression and clarifying the offenses provided for in the law.<sup>23</sup> This amendment was passed and published in the official gazette on December 20, 2018.<sup>24</sup>

15. In addition, in August 2019 the Senate passed a new amendment to the Act, making it possible to request a search warrant to obtain data from electronic devices, for use as evidence in judicial proceedings.<sup>25</sup> The offenses provided for in that law include, *inter alia*, sending offensive message through communication services, violation of privacy, and child pornography.

16. During the debate of this most recent amendment, Minister of Social Transformation and Gender Affairs Samantha Marshall asserted that police should arrest people who deliberately circulate sexual images and videos using cell phones and other electronic devices.<sup>26</sup>

17. The Office of the Special Rapporteur reiterates that it is important for any legislation regulating the Internet not to contain vague and general definitions and not to disproportionately affect the free flow of information and legitimate websites and services.<sup>27</sup>

18. This Office further recalls that, “In exceptional cases of clearly illegal content or speech that is not covered by the right to freedom of expression (such as war propaganda and hate speech inciting violence, direct and public incitement to genocide, and child pornography) the adoption of mandatory measures to block and filter specific content is admissible. In these cases, the measure must be subjected to a strict balance of proportionality and be carefully designed and clearly limited so as to not affect legitimate speech that deserves protection. In other words, [filtering] or blockings should be designed and applied so as to exclusively impact the illegal content without affecting other content.”<sup>28</sup>

### D. Pluralism and media diversity

19. During 2019 a dispute arose between the government of Antigua and Barbuda and the Irish-based telecommunications company Digicel. The dispute began in May, when the government ordered the company to return part of its spectrum to the state-owned Antigua Public Utilities Authority (APUA) for a more equitable distribution of the band.<sup>29</sup> In response, Digicel obtained a court order to prevent the government from confiscating the spectrum and turning it over to APUA, stating that its intention was “to protect its customers and services from the administration’s anti-competitive and protectionist decision.”<sup>30</sup>

20. In August, the government announced an agreement with Digicel for the redistribution of the spectrum, whereby the company would transfer part of its spectrum in the 850MHz and 900MHz bands to the State-owned competitor APUA. According to publicly available information, the government agreed as part of the settlement to renew the company’s operating licenses in 2021. Finally, a hearing was held in which the court was informed of the agreement reached, ending the legal dispute.<sup>31</sup>

21. The “Observer Goodwill” Project was also organized in 2019 in order to raise funds to support NEWS CO Limited as an independent media entity, thus ensuring the sustainability of free and independent media in the country. The organizers expressed the need for Antigua to have an independent radio station.<sup>32</sup> According to the information gathered, NEWS CO Limited reportedly acquired the assets of the Observer media group, which ceased operations in November 2018.

22. The Office of the Special Rapporteur reiterates that the allocation of radio and television licenses should be guided by democratic criteria and preestablished, public, and transparent procedures that will act as a brake

<sup>23</sup> IACHR. [Annual Report 2018. 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. 30. March 17, 2019. Para. 14

<sup>24</sup> Antigua and Barbuda. Ministry of Justice and Legal Affairs. [Electronic Crimes Amendment Act 2018](#). December 20, 2018.

<sup>25</sup> Antigua and Barbuda. Ministry of Justice and Legal Affairs. [Electronic Crimes Amendment Bill, 2019](#); The Daily Observer. August 2, 2019. [Electronic Crimes Amendment Bill gets Senate approval](#).

<sup>26</sup> The Daily Observer. July 25, 2019. [MP Marshall advocates for arrest of those responsible for circulating inappropriate videos](#); 268 Today. July 25, 2019. [Marshall upset at use of pictures of young women on internet](#).

<sup>27</sup> UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [Joint Declaration](#).

<sup>28</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. IACHR/RELE/INF. 11/13. December 31, 2013. Para. 85.

<sup>29</sup> The Daily Observer. August 30, 2019. [Government brags about spectrum sharing deal, Digicel refuses to confirm](#); B N Americas. September 2, 2019. [Digicel settles spectrum dispute with Antigua & Barbuda govt](#).

<sup>30</sup> Dominica News Online. June 25, 2019. [Antigua & Barbuda government proposes to buyout Digicel as dispute over spectrum sharing continues](#); The Daily Observer. August 30, 2019. [Government brags about spectrum sharing deal, Digicel refuses to confirm](#).

<sup>31</sup> The Daily Observer. August 30, 2019. [Government brags about spectrum sharing deal, Digicel refuses to confirm](#); Dominica News Online. September 1, 2019. [Digicel ends battle with Antigua & Barbuda](#); B N Americas. September 2, 2019. [Digicel settles spectrum dispute with Antigua & Barbuda govt](#); The Daily Observer. September 25, 2019. [Digicel and gov't settle spectrum-sharing dispute](#).

<sup>32</sup> The Daily Observer. May 10, 2019. [Call to support Observer Goodwill Project](#); The Daily Observer. May 15, 2019. [Observer Goodwill Day Launches Fight for Independent Media](#); The Daily Observer. May 16, 2019. [A success story: NEWS CO Limited says thanks](#)

on the potential arbitrariness of the State and guarantee equal opportunities for all persons and sectors concerned. Principle 12 of the Declaration of Principles has stressed that, “the concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

23. Article 13.3 of the American Convention establishes that “the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

24. Similarly, Principle 13 of the Inter-American Commission’s Declaration of Principles on Freedom of Expression indicates that, “the exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

## 2. ARGENTINA

25. During 2019, the Office of the Special Rapporteur monitored with special concern various attacks, threats, and intimidation of journalists and communicators, perpetrated by both individuals and public authorities and officials. There are also continuing reports of the use of police force in the context of protests and arrests of demonstrators. This Office was also informed about the criminal complaint filed by the government against the organization Greenpeace due to a demonstration held during an official event. On the other side, the Special Rapporteur received worrying information about a request by a prosecutor's office to a news program to report the names of journalists involved in a story, judicial decisions prohibiting media from reporting on certain subjects, and the conviction by the Supreme Court of a former trade union leader for her criticism of a public official. In this regard, the Special Rapporteur's office follows with particular concern the prosecution of journalist Daniel Santoro for the alleged crimes of "coercion and extortion in the form of an attempt", linked to information he received from a confidential source. Finally, the Rapporteur highlights progress in the allocation of definitive licenses to community radio stations in various provinces of the country. Similarly, it highlights the respect for freedom of expression and the free circulation of ideas and information during the electoral process, which took place without any minor incidents.

### A. Progress

26. On February 14, the criminal, contravention, and offenses Prosecutor of Buenos Aires, Federico Tropea, would have archived all the proceedings that were initiated against 17 people detained by the Buenos Aires Police in October 2018, in the framework of a mobilization in front of the National Congress Against the approval of the budget. The Prosecutor's Office would have concluded that there was no evidence that the accused individuals had thrown stones or resisted authority. The prosecutor would have dismissed the police statements because they were considered vague and inaccurate and ordered their possible criminal responsibilities to be investigated<sup>33</sup>.

27. The National Communications Agency (Enacom) awarded in July definitive licenses for FM radios to stations that had Provisional Precarious Permits [*Permisos Precarios Provisorios*] (PPP). Among the stations benefiting from the licenses, from different provinces of the country, there was *FM Sur* of Córdoba, *FM En Tránsito* of Buenos Aires, *FM Aire Libre* of Rosario, and *FM La Tribu* of the City of Buenos Aires<sup>34</sup>.

28. On August 21, the Senate would have unanimously approved a bill that protects the reserve of journalistic sources. The project, which obtained half sanctions and must be analyzed by Congress Deputies, amends article 64 of the Constitutional Procedures Law and corrects a wording that had raised questions of interpretation. Faced with possible ambiguities that could affect the right of journalists to reserve their sources, the new wording reaffirms the will of the Legislature to preserve freedom of the press. The Entrerriano Union of Press and Communication Workers [*Sindicato Entrerriano de Trabajadores de la Prensa y la Comunicación*] (Setpyc) highlighted the half sanction of the bill<sup>35</sup>.

### B. Attacks, threats, and intimidation against journalists and the media

29. The graphic reporters Bernardino Ávila, of the newspaper *Página 12*, and Juan Pablo Barrientos, of the magazine *Cítrica*, would have been arrested on February 21 with two other people when they covered the incidents during a demonstration in front of the National Congress for the closure of a cooperative. Both photographers, who would have been released hours later, reported receiving blows and ill-treatment by the police<sup>36</sup>.

30. The director and owner of the newspaper and portal *Semanario* of Junín, Javier Orellano, would have been the victim of at least three attacks and threats during July; one from a prison officer, another from a municipal official, and on a third occasion he received a death threat from a stranger<sup>37</sup>.

<sup>33</sup>CELS. March 6, 2019. [Protestas en caba: más pruebas de que las detenciones policiales son arbitrarias](#); Pagina 12. February 20, 2019. [Al Gobierno se le derrumbó el montaje](#); El Tribuno. February 19, 2019. [Revés para el Gobierno: archivan la causa de los extranjeros detenidos en una protesta](#).

<sup>34</sup>Observacom. July 22, 2019. [Adjudican licencias definitivas a radios comunitarias en Argentina. FM La Tribu y otras radios históricas entre ellas](#); Ente Nacional de Comunicaciones (Enacom). July 18, 2019. [Nuevas licencias FM para mayor pluralidad de voces](#); La Tribu. July 15, 2019. [Licencia FM La Tribu 88.7mhz. ¡Una larga lucha y un triunfo colectivo!](#).

<sup>35</sup>AIM. August 21, 2019. [Media sanción al proyecto que preserva el derecho a las fuentes periodísticas](#); Análisis. August 21, 2019. [Senado: ingresó el Juicio por Jurados y se aprobó la protección de la fuente periodística](#).

<sup>36</sup>Twitter account of Asociación de Entidades Periodísticas Argentinas (@Adepaargentina). [February 20, 2019](#); Fundación Led. February 21, 2019. [Incidentes con reporteros gráficos en la Ciudad Autónoma de Buenos Aires](#); Perfil. February 21, 2019. [Liberaron al fotógrafo de Página/12 detenido: "Recibí golpes de todo tipo"](#); Sumario. February 20, 2019. [La Policía de la Ciudad reprimió violentamente a fotógrafos que cubrían el #Cuadernazo](#); Revista Cítrica. [Bajen las armas, no nos vamos a callar](#).

<sup>37</sup>Semanario. July 22, 2019. [Amenazan de muerte al director de Semanario de Junín](#); Foro de Periodismo Argentino (FOPEA). August 7, 2019. [FOPEA repudia las repetidas amenazas contra el director del diario Semanario de Junín](#); Diputados Bonaerenses. August 9, 2019. [Miedo a la palabra: en un mes, amenazaron tres veces al director de un medio de Junín](#).

31. Photographer Nicolás Ramos, who took pictures of how security personnel from the Coto supermarket chain beat a 68-year-old man who had stolen food until he was dead, said he received threats from strangers so he wouldn't talk to the press about the incident<sup>38</sup>.

32. The Prosecutor of Complex Investigations of the province of Jujuy, Marcelo Cuellar, would have ordered the authorities of *Canal Siete* "under warning" to deliver information on the full payroll of the staff that writes for the *Jujuy Investiga* program, after the program issued a report on complaints involving the Attorney General of the Superior Court of Justice, Alejandro Ficosco, and three members of the Court of Auditors. The prosecutor, who depends on the Public Prosecutor's Office, whose head is Sergio Lello Sánchez, also requested details on the production and editing of the report, and the complete list of the show's hosts. Several trade, judicial, and journalistic associations repudiated the action of the Prosecutor, which they described as a maneuver that seeks to intimidate journalistic work. Among them, the Council of Procurators, Prosecutors, Defenders, and General Advisers of the Argentine Republic issued a statement questioning "the attack on the freedom of the press suffered by the *Jujuy Investiga*" and expressing its repudiation of the prosecutor's actions<sup>39</sup>.

33. In August the company ParexKlaukol would have sent a letter document to the journalist Andrés Masotto, of *Radio Presente*, intimidating him to delete a series of tweets in which he reported an alleged contamination caused by the plant, located in La Matanza, Buenos Aires. The company would have warned him that if he did not do so, and publicly recanted, they would initiate legal action against him<sup>40</sup>.

34. Cameraman Mariano Simes, of *El Doce*, would have been attacked and threatened by a group of people with covered faces, while covering the detention of one of the leaders of the Single Union of Waste and Sweepers Collectors of Córdoba [*Sindicato Único de Recolectores de Residuos y Barrido de Córdoba*]<sup>41</sup>. The journalist Daniel Gómez Perri, of the radio program "Bajo la Lupa", of CNR, would have been physically assaulted and threatened by the Undersecretary of Public Works and Services of the Municipality of San Pedro de Jujuy, Mariano Solsona, due to the opinions he disseminates in his program<sup>42</sup>. The journalist filed a complaint with the Justice system, and the Public Prosecutor's Office would have charged the official with the crime of "minor damages" and issued a restraint order<sup>43</sup>.

35. The Office of the Special Rapporteur reiterates that principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "[t]he murder, kidnapping, intimidation of, and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation."

### C. Social Protes

36. Four former workers of the Eastern Line of La Plata collectives were arrested in April on charges of "aggravated coercion" for a traffic cut on March 16, 2017, in the context of a protest for labor claims<sup>44</sup>.

37. The Ministry of Security, led by Minister Patricia Bullrich, filed a criminal complaint for the crime of "public intimidation" against the Greenpeace environmental organization, after it deployed, during the opening ceremony of the 133rd edition of the Palermo Rural Exhibition, in Buenos Aires, two banners with the legends "Cattle Ranchers: enough clearing" and "Destroying forests is a crime", in protest against the environmental effects of livestock. According to the information available, the posters were quickly removed by members of the property's security. President Mauricio Macri and members of the government were at the event, and the Ministry of Security would have questioned the protest for violating the security of the president and his team. The complaint was filed in the federal court under Judge María Eugenia Capuchetti. The coordinator of the

<sup>38</sup>Twitter account of Radio Realpolitik FM (@RealpolitikFM). [August 22, 2019](#); Mendoza Post. August 27, 2019. [El video de los empleados de Coto forcejeando con el jubilado que murió](#); Real Politik FM. August 24, 2019. [Asesinato en Coto: El fotógrafo que registró al jubilado muerto, aseguró que lo amenazaron](#).

<sup>39</sup>La Política Online. September 19, 2019. [El procurador de Gerardo Morales intimidó a periodistas](#); Perfil. September 19, 2019. [Repudio a la intimidación a periodistas de Jujuy por una investigación que involucra al Poder Judicial](#); El Tribuno. September 19, 2019. [Lamentable actitud de amedrentamiento del MPA](#); Todo Jujuy. September 19, 2019. [El Colegio de Abogados y ATA rechazaron el accionar del MPA contra la libertad de expresión](#).

<sup>40</sup>Notas. August 27, 2019. [Klaukol busca ocultar sus crímenes persiguiendo periodistas](#); Tiempo. August 28, 2019. [ParexKlaukol, la empresa contaminante que amenaza la vida y la libertad de expresión](#); Twitter account of Andrés Masotto (@andresmasotto). [August 22, 2019](#).

<sup>41</sup>Foro de Periodismo Argentino (FOPEA). August 27, 2019. [FOPEA repudia la agresión a un camarógrafo de El Doce](#); La Voz. August 27, 2019. [Un video registró a los agresores del camarógrafo de El Doce cuando filmaba la casa de Catrambone](#).

<sup>42</sup>Foro de Periodismo Argentino (FOPEA). October 12, 2019. [FOPEA repudia la agresión física y las amenazas que recibió el periodista Daniel Gomez Perri](#); El Tribuno. October 2, 2019. [Un concejal electo de San Pedro le pegó y dejó tirado a un periodista en plena calle](#).

<sup>43</sup>Agencia NOVA. October 4, 2019. [Imputan a un funcionario jujeño que agredió físicamente a un periodista en la vía pública](#); Jujuy es Noticia. No date. [Inadmisibles violencia contra la prensa en San Pedro](#).

<sup>44</sup>CELS. April 15, 2019. [ex choferes criminalizados por una protesta de hace dos años en la plata](#); ANRed. April 6, 2019. [La Plata: detienen de manera arbitraria a 4 choferes de la Línea Este](#); Contexto. April 6, 2019. [La Línea Este de nuevo en lucha: detuvieron a cuatro choferes por las protestas de 2017](#).

Greenpeace Forest campaign, HernánGiardini, declared publicly that the complaint was "ridiculous" because it was a "completely peaceful activity" and that "the right to protest" should be respected<sup>45</sup>.

38. In accordance with the powers established in Article 41 of the American Convention on Human Rights, on August 20, the Office of the Special Rapporteur sent a letter requesting information on the basis of the alleged criminal complaint filed by the Ministry of Security against Greenpeace and its procedural status. In a note signed on September 24, the State informed the Office of the Special Rapporteur that proceedings were initiated under the title of "public intimidation investigation" in the Department of Intelligence Against Organized Crime of the General Directorate of Criminal Intelligence of the Federal Police, which were referred to the Federal Criminal and Correctional Court No. 5. The State did not provide further details on the status of the investigation or the grounds of the investigation.

39. Journalists of the *C5N* news channel would have been attacked and insulted by people participating in a march in support of President Mauricio Macri in the Plaza de Mayo in Buenos Aires<sup>46</sup>.

40. On October 21, while individuals protested in front of the Chilean Consulate in Buenos Aires due to the social crisis in that country, violent groups would have insulted and assaulted several journalists; among them, chroniclers and cameramen of *Crónica TV*, *LN +*, *A24* and *TN*. The most serious cases were that of *Crónica TV* cameraman Ernesto Medina, who would have been assaulted with beatings and kicks and had to be hospitalized, and that of cameraman Fabio Soria, *LN +*, who would have received four stitches in the head due to the blows. Protesters who assaulted the press would also have burned down and destroyed urban furniture, and the City Police would have arrested six people, who were reportedly prosecuted for resistance to authority, injuries, and damages<sup>47</sup>. Among the detainees was a worker in the Communication area of the Center for Legal and Social Studies (Cels), Myriam Selhi, who was recording the demonstration and the police operation deployed. The organization reported that the police tried to break Selhi's phone, in which she had recorded violent arrests of protesters. The organization also reported that the detainees were held for about 20 hours, without receiving water or food, and that it took several hours for them to communicate with their lawyers. It also questioned that the arrests were "arbitrary" and that they reproduce "practices of repression and criminalization of protest"<sup>48</sup>.

41. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical, political, and social expression of the activities of the authorities. The Commission has pointed out that "it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly"<sup>49</sup> and that "the exercise of the right of assembly through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its realization"<sup>50</sup>.

#### D. Stigmatizing statements

42. The councilor of the city of Córdoba Tomás Méndez would have aggravated and disqualified the journalist Sergio Carreras after he published a news in *La Voz del Interior* about a conviction against him of the Chamber of Civil and Commercial Appeals 2 °. The ruling would order the councilor, also a *C5N* host, to rectify information disclosed in his program in 2011<sup>51</sup>.

43. Congress Deputy Elisa Carrió, leader of the Civic Coalition, warned in a newspaper interview that individuals who "through the newspapers communicate false meetings and pretend to also make the president wobble" would be convicted<sup>52</sup>.

44. The IACHR recalls that public officials have a duty to ensure that with their statements they are not damaging the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, the media, and human rights organizations, and they must pay attention to the context in which they express themselves to ensure that their expressions do not constitute, in the words of

<sup>45</sup>Perfil. August 3, 2019. [Patricia Bullrich denunció a Greenpeace por la protesta en La Rural](#); Clarín. August 3, 2019. [La ministra Patricia Bullrich presentó una denuncia penal contra Greenpeace](#); Página 12. August 3, 2019. [Bullrich denunció a Greenpeace por colocar dos carteles](#); La Nación. August 3, 2019. [Greenpeace, tras la denuncia de Patricia Bullrich por la protesta en La Rural: "Nos parece ridículo"](#).

<sup>46</sup>Twitter account of C5N (@C5N). August 24, 2019; Clarín. August 24, 2019. [Repudio del Gobierno a la agresión a periodistas de C5N durante la masiva marcha de apoyo a Mauricio Macri](#).

<sup>47</sup>Infobae. October 21, 2019. [Grupos de izquierda atacaron salvajemente a periodistas frente al consulado de Chile en Buenos Aires: 6 detenidos](#); Asociación de Entidades Periodísticas Argentinas (ADEPA). October 21, 2019. [Adepa repudia las agresiones a periodistas frente al Consulado de Chile en Buenos Aires](#); Infobae. October 21, 2019. [Para Patricia Bullrich, los ataques a la prensa frente al consulado de Chile son "responsabilidad de grupos vinculados al kirchnerismo, la izquierda y el anarquismo"](#).

<sup>48</sup>Centro de Estudios Legales y Sociales (CELS). October 22, 2019. [protestar no es delito, registrar detenciones tampoco](#).

<sup>49</sup>IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197

<sup>50</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. 139.

<sup>51</sup>La Voz. December 20, 2018. [Nueva condena contra Tomás Méndez](#)

<sup>52</sup>The deputy's exact words were: "We will condemn those who, through the newspapers, communicate false meetings and seek at the same time to make the president falter". Todo Noticias. August 19, 2019. [Carrió: "Estoy segura de que ganamos en octubre" | DESDE EL LLANO \(Entrevista completa\)](#).



the Court, “forms of direct or indirect interference or damaging pressure on the rights of those who intend to contribute to public deliberation through expression and dissemination of their thought”<sup>53</sup>.

### **E. Subsequent Liabilities**

45. On October 17, the Supreme Court of Justice of the Nation, by a majority made up of Judges Juan Carlos Maqueda, Ricardo Lorenzetti, and Horacio Rosatti, confirmed a judgment that resulted from a lawsuit for damages initiated by Guillermo Horacio De Sanctis against the teacher and former unionist, Ana María López de Herrera. The plaintiff, current president of the Court of Justice of San Juan, considered that critical statements made by López de Herrera in 2006, when he was Secretary General of the Union of Provincial Unionized Teachers, in different media outlets in the province of San Juan on the governor's proposal to appoint him Minister of Education, were detrimental to his honor and personal reputation. The Supreme Court of Justice considered that while freedom of expression occupies a pre-eminent place in a republican regime, the unionist's expressions that were not linked to De Sanctis' performance as a public official and referred to other aspects of his life, as those who described him as "a maximum representative" of drug-generated violence and "a person who beats his family", exceeded the framework of constitutional protection of the right to criticism and it was appropriate to safeguard the right to honor of the plaintiff. "Such terms exceeded a harsh or irritating criticism and were unnecessary for the purpose of giving an opinion regarding the way in which he served the public function or his possible appointment as provincial minister," Judge Maqueda said in the ruling. As a result of the conviction, the teacher must indemnify De Sanctis with the payment of 90,000 Argentine pesos, plus interest.

46. Judges Carlos Rosenkrantz and Elena Highton de Nolasco, who voted to revoke the sentence and reject the lawsuit, considered that the defendant's expressions were inserted within the framework of a public debate that arose around the appointment of De Sanctis as Minister of Education of the province of San Juan, they were not “strictly and undoubtedly insulting”, they were related to the ideas or opinions contained in them and they did not constitute insult or free and unjustified vexation. Therefore, they argued that the defendant's statements “did not exceed the constitutional framework that, for the purpose of promoting a robust public debate, protects the expression of opinions in matters of public interest”<sup>54</sup>.

47. The IACHR has argued that “[the] type of political debate that gives rise to the right to freedom of expression will inevitably generate certain critical or even offensive speeches for those who hold public office or are closely linked to the formulation of public policy”<sup>55</sup>. Therefore, as stated in principle 10 of the Declaration of Principles, “[t]he protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official.” Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression<sup>56</sup>.

### **F. Criminalization and source confidentiality**

48. According to the information received by the Office of the Special Rapporteur, on August 7 the federal judge of Dolores, Alejo Ramos Padilla, ordered the prosecution of the journalist Daniel Santoro of *Clarín* for the alleged crimes of “coercion and extortion in the degree of attempt”. The journalist would be investigated in the context of a case that looks into alleged cases of illegal espionage and extortion that would have been perpetrated by a criminal organization led by Marcelo D'Alessio, who is currently detained and being prosecuted. The investigation would have been initiated following a complaint filed by an agricultural producer against D'Alessio and the prosecutor Carlos Stornelli, who the plaintiff would have accused of extorting him to not involve him in the judicial investigation known as the “case of the notebooks,” which investigates an alleged network of bribery between businesspersons and members of the previous government.

49. According to the order of prosecution, Santoro was a “necessary participant” of the crimes committed by the organization led by D'Alessio. “Daniel Santoro was aware that his actions and contributions were linked to a prior, concomitant, and/or subsequent illegal maneuver of espionage, extortion or coercion,” says the sentence. “It has become clear that Santoro knew that D'Alessio carried out intelligence, espionage, and criminal

<sup>53</sup> I/A Court H. R. *Case of Perozo et al v. Venezuela. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 195. Para. 151. See I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

<sup>54</sup> Centro de Información Judicial. October 17, 2019. [La Corte Suprema confirmó condena a una gremialista por declaraciones lesivas al honor de un funcionario público](#); Diario de Cuyo. October 17, 2019. [La Corte Suprema ratificó una condena contra Ana María López por daño moral a De Sanctis](#).

<sup>55</sup> IACHR. *Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

<sup>56</sup> IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

investigation work without possessing any type of legal power for it and, in what regards the specific case, he used them despite the notorious knowledge of its illicit origin," says Judge Ramos Padilla. The judge did not order pre-trial detention for the journalist, although he imposed a restriction on leaving the country and ordered a hold of his property for 3 million Argentine pesos. On the other hand, the magistrate did not grant the accusation of "illicit association" that fell on Santoro. In the development of his investigation, the magistrate obtained the detail of "all incoming and outgoing calls" from Santoro's phone between January 2016 and April 2019, whose delivery was ordered to the telecommunications company Telefónica Móviles Argentina (Movistar).

50. Santoro appealed his prosecution before the Federal Chamber of Mar del Plata. The journalist publicly denied the judge's accusations and described his citation as "a step towards the criminalization of journalism." Likewise, local organizations such as the National Academy of Journalism, the Association of Argentine Journalistic Entities (Adepa), and the Argentine Journalism Forum (FOPEA) warned about the seriousness of the judge's decision, which compromises freedom of the press and expression. FOPEA also expressed concern about the possibility that the judge of the case "tries to force Santoro to reveal information about his confidential communications with sources of information and the identity of those people", since that would represent "a significant break in the respect for professional secrecy" of journalists. In the same vein, the international organization Committee for the Protection of Journalists said that by obtaining the list of calls from Santoro, "the Argentine authorities are sending an alarming message to the national journalistic guild," and questioned that these actions "endanger the principle of the confidentiality of journalistic sources, one of the pillars of freedom of the press"<sup>57</sup>.

51. In accordance with the powers established in Article 41 of the American Convention on Human Rights, on July 12, the Office of the Special Rapporteur sent a letter to the State of Argentina requesting information on the investigative process carried out regarding journalist Daniel Santoro and on the respect of his right to source confidentiality, guaranteed in principle 8 of the Declaration of Principles on Freedom of Expression. In response to the request, on August 6, the Secretariat of Human Rights and Cultural Pluralism of the Nation sent to the Special Rapporteur a report produced by the judge responsible for the case, Alejo Ramos Padilla. In it, the magistrate said that in the process "no measure that could affect source confidentiality was taken", and that during the interrogation the journalist was not required "to reveal his sources of information". According to the judge, no information was requested from other journalists who were interrogated in the context of the investigation, although some made their cell phones "freely" available to the headquarters, allowing access to emails and conversations via the messaging platform Whatsapp. He also explained that there were no "tasks of investigation, intelligence, raids, confiscation, or any other invasive measures on any journalist." However, in the specific case of Santoro, the judge indicated that a "single measure of proof was provided, at the request of the representative of the Federal Public Prosecutor involved, who requested that cell phone companies be requested to inform the ownership of the telephone line and incoming and outgoing calls from one of his phones." In the case, the judge informed that because it is sensitive information "access to such information was limited, and at the time the investigation took place, the journalist and his defense lawyer were consulted if that information could compromise his work in any way as a journalist or his professional secret"<sup>58</sup>.

52. In the context of the judicial investigation, Judge Ramos Padilla would also have requested an expert analysis from the Provincial Commission for the Memory (CPM) of Buenos Aires to examine part of the evidence proving the cause for the purpose of establishing whether there were actions related to illegal espionage. In its analysis, the CPM, an organization dedicated to the promotion of public policies of memory and human rights, would have mentioned some journalists who appeared in the documentation due to their interaction with those close to D'Alessio - among them, Santoro - and would have concluded that "the media constituted a necessary element for the development and carrying out of intelligence operations" of the criminal group<sup>59</sup>.

53. The Argentine Journalism Forum (FOPEA) and the Association of Argentine Journalistic Entities (ADEPA) expressed their rejection of the judge's decision and the content of the Commission's report. "Pretending that a government agency audits the journalistic task contradicts the very essence of freedom of the press, violates the National Constitution, and ignores international treaties. Indeed, both the request for said

<sup>57</sup> Página 12. August 7, 2019. [Daniel Santoro fue procesado por coacción y extorsión](#); Perfil. August 23, 2019. [Caso D'Alessio: el periodista Daniel Santoro apeló su procesamiento](#); Clarín. June 10, 2019. [Caso D'Alessio: citan a indagatoria al periodista Daniel Santoro](#); Télam. June 23, 2019. [FOPEA advirtió sobre la "gravedad institucional" de la citación al periodista Daniel Santoro](#); Página 12. March 17, 2019. [Caso D'Alessio: cronología del escándalo que sacude a la mafia](#); Perfil. June 21, 2019. [Caso D'Alessio: los argumentos para la defensa de Daniel Santoro](#); Infobae. June 24, 2019. [Postergaron la indagatoria del periodista Daniel Santoro en la causa D'Alessio](#); Perfil. June 21, 2019. [La Academia Nacional de Periodismo emitió una declaración en defensa de Daniel Santoro](#); Clarín. June 28, 2019. [Daniel Sabsay: "En el caso de Daniel Santoro se corre el riesgo de la criminalización del periodismo"](#); Committee to Protect Journalists (CPJ). July 16, 2019. [Argentine journalist Daniel Santoro summoned, phone records seized in extortion investigation](#); Foro de Periodismo Argentino (FOPEA). March 1, 2019. [Los periodistas no son sus fuentes y la entrevista no es un acto criminal](#); Foro de Periodismo Argentino (FOPEA). July 15, 2019. [Más de 400 periodistas y docentes de periodismo firmaron un petitorio contra la criminalización del periodismo profesional](#); Perfil. August 7, 2019. [Adepa expresó su "preocupación" por el procesamiento de Daniel Santoro](#).

<sup>58</sup> Letter from the Argentine State sent to the Office of the Special Rapporteur in response to a request for information. August 6, 2019. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

<sup>59</sup> Comisión Provincial por la Memoria. October 8, 2019. [La CPM entregó al juez Ramos Padilla un nuevo informe sobre espionaje ilegal](#).

report by Judge Alejo Ramos Padilla and its drafting by the Commission constitute dangerous precedents against the free expression and professional practice of journalism," Adepa wrote in a statement<sup>60</sup>.

54. After the negative reactions of these and other local journalistic organizations, the Commission indicated that the expert analysis carried out "does not associate the information with criminal offenses or make accusations: it only describes and interprets the documentation provided following the requirements of the judge, who is the one who must decide whether a crime is configured or not by evaluating all the evidence collected in the case. The journalists mentioned in the reports previously delivered to the Federal Court, as well as in this fourth report, refer to the appearance of their names in telephone communications, screenshots, photographs or mails from D'Alessio. It is not true - as stated - that we accuse journalists of any crime; that is not the function of the agency. We only describe and analyze documents"<sup>61</sup>.

55. This Office reiterates the important role played by the media for democracy, especially when it comes to active investigative journalism. Consequently, journalists investigating cases of corruption or improper actions by public authorities should not be subjected to judicial harassment or other harassment in retaliation for their work. Similarly, the protection of journalistic sources constitutes a principle that is part of the right to freedom of expression, given its invaluable value for society to access information of public interest that, without this protection, would hardly take on public status<sup>62</sup>. Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that "every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential". Likewise, at international level, the confidentiality of the sources derives from the guarantees of the right to seek, receive, and disseminate information, which is enshrined in article 19 of the International Covenant on Civil and Political Rights.

### **G. Prior censorship / Direct and indirect censorship**

56. The judge of Guarantees N° 7 of the province of Salta, María Edith Rodríguez, would have ordered the digital newspapers *VerNoticias* and *Aerom* the immediate cessation of any publication that could be considered aggravating, disrespectful, or damaging to the honor and dignity of the mayor of the City de Salta, Gustavo Sáenz, and his collaborators Nicolás Demitrópulos and Pablo Outescon. The judge would have thus granted an *amparo* writ initiated by the three officials and would have ordered that all existing publications that referred to the officials in their "personal character" be removed from these sites, as well as those that "exceed the purpose of criticism of public management". In her sentence, the judge would have argued that although freedom of expression is guaranteed for all citizens, "when a rational, limited, and respectful use of a right has already stopped, directly damaging the personal rights of human beings, such as the right to honor, personal dignity, and freedom of work, that should be guaranteed in peace without constant harassment, and are principles that are above any other by the sole condition of being human, the use of a misused and misrepresented press should be limited." The media owner, Víctor Hugo Elías, would have appealed the decision<sup>63</sup>.

57. In another similar ruling, Judge Rodríguez would have granted a precautionary measure requested by the defense lawyers of the members of Los Nocheros, and would have ordered the media to refrain from publishing images or information about the musical group and its members in the framework of the informational coverage of a judicial case for alleged sexual abuse for which Lautaro Teruel, the son of one of the group members, is detained. The judge would have also ordered the elimination of "all computer records of images, videos, data, comments, stories, sites, links, or search engines" linked to the case and containing images or the name of any of the members of the musical group, and would have communicated her decision to the National Communications Agency (Enacom)<sup>64</sup>. On July 12, the Second Nomination Guarantees judge, Ignacio Colombo, would have granted the appeal filed by the prosecutor Cecilia Flores Toranzos against the judge's decision, and would have ordered the nullity of the precautionary measure<sup>65</sup>.

58. On April 17, the Federal Administrative Contentious Court No. 10 would have partially granted a precautionary measure requested by a Catholic group and ordered to transfer a work of art on display to a closed room, with the prohibition of the entry of children and adolescents. The Secretariat of Human Rights and Cultural Pluralism would not have appealed the decision and subsequently ordered that the work be permanently

<sup>60</sup>Clarín. October 15, 2019. [Eopea advierte que la Comisión Provincial de la Memoria considera "ilegal" las técnicas del periodismo de investigación](#); La Voz. October 14, 2019. [Adepa y Eopea advirtieron sobre la criminalización del periodismo](#)

<sup>61</sup>Perfil. October 15, 2019. [Caso D'Alessio: la Comisión por la Memoria denunció una campaña sucia contra Pérez Esquivel](#); Pagina 12. October 16, 2019. [El informe que la Comisión Provincial de la Memoria le entregó al juez Ramos Padilla](#).

<sup>62</sup>IACHR. Special Rapporteurship for Freedom of Expression. July 1, 2019. [Press Release R164/19. Experts on freedom of expression of the IIN and the IACHR express their concern over death threats against journalist Glenn Greenwald, director of The Intercept Brasil, and his family](#).

<sup>63</sup>Adepa. February 1, 2019. [Preocupa a Adepa un fallo que impone censura a medios digitales en Salta](#); Voces Críticas. January 30, 2019. [Fallo a favor del intendente Gustavo Sáenz: el revés es para dos diarios digitales](#); El Destape. February 1, 2019. [Salta: Saenz presentó un polémico amparo que habilita la censura previa para periodistas](#); Nuevo Diario. February 1, 2019. [El amparo mediático a favor de Sáenz fue apelado y pasó a la Corte](#); Noticias Iruya. January 30, 2019. [Una jueza de Salta prohíbe a dos medios digitales propalar injurias contra Sáenz y dos de sus funcionarios](#).

<sup>64</sup>Adepa. June 29, 2019. [Claro intento judicial de censura en Salta](#); El Tribuno. June 29, 2019. [La jueza Rodríguez dictó un nuevo fallo de censura a los medios](#); Salta Noticias 247. July 1, 2019. [Jueza salteña prohibió a los medios hablar del caso Teruel](#).

<sup>65</sup>El Tribuno. July 13, 2019. [Golpe de gracia al fallo de censura de la jueza Rodríguez](#).

removed. The work, made by the artist Silvia Lucera and named "MaríaFeminista", consists of a statuette of the Virgin Mary intervened with the drawing of a handkerchief symbol of the activists in favor of the legalization of abortion. It was exhibited from March 9 in the exhibition "Para todes, tode - Plan de Lucha", in the Cultural Center of Memory Haroldo Conti<sup>66</sup>.

59. Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. Additionally, principle 5 of the Declaration of Principles on Freedom of Expression enshrines that "[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression".

## H. Community broadcasting

60. The community television channel *Barricada TV*, of the Autonomous City of Buenos Aires, winner of a license to broadcast on digital television, would face a judicial process because its director, Natalia Vinelli, would be indicted for a protest held in 2018 to demand the integration of their signal within the grid of the Telecentro and Cablevision cable operators. In addition to Vinelli, there would be an indictment against the political leader Juan Grabois, the referent of the Argentine Community Radio Forum, Pablo Antonini, the delegate of the Press Union of Buenos Aires (Sipreba), TomásEliashev, Omar Zanarini, of *Radio Gráfica*, and the leader José María Di Bello. The defendants would have been summoned to testify in the 12th Criminal and Prosecution Prosecutor's Office of the City of Buenos Aires under the title of "right of admission". The case would have been opened ex officio by the City Police after community and social communication organizations protested in the parking lot of the *Canal 13* building to demand a meeting with the directors of the media group<sup>67</sup>.

## I. Impunity

61. The Correctional and Criminal Judge No. 3 of the city of Bahía Blanca, Susana González, would have acquitted an individual accused of threatening and intimidating journalist GermánSasso, director of *La Brújula 24*, and other media reporters. The threats, made over the phone and in writing, would have occurred in 2017 with the aim of preventing the media from continuing to report on drug trafficking activities in the area. Some of the phrases used to intimidate reporters would have been: "the streets are messed up and we all have a family," "either cut it with the topic or you are going to see black," and "you have to be careful who you report on." The judge would have valued that the sayings "do not meet the requirements of the announcement of a serious and suitable evil", that no "intimidating tone" would have been noticed in the message, and that the accused had clarified in the call that it was not "a threat, but a warning." Prosecutor AgustinaOlguín, who had requested three years in prison for the crime of "aggravated coercion," announced that she would appeal the decision<sup>68</sup>.

## J. Other relevant situations

62. Chamber V of the National Chamber of Labor Appeals would have ordered the reinstatement of 68 workers from the state news agency *Télam* who had been laid off in 2018 in the framework of a restructuring process initiated by the new Board of the media that let go of a total of 357 employees, approximately 40% of the workforce<sup>69</sup>. According to the court ruling, the authorities would have acted "illegally, illegitimately, and unreasonably" by firing hundreds of workers, failing to comply with the Crisis Preventive Procedure provided by law 24.013 to enable mass layoffs<sup>70</sup>.

63. According to a survey of the Press Union of Buenos Aires (Sipreba) on the employment situation of press workers, since 2016 at least 3,127 jobs would have been lost, only in the City of Buenos Aires. Of those, 990 would have occurred during 2018 and 288 between January and May 2019. Across the country the figure would exceed 4,500 jobs. As detailed by the guild, at the beginning of the year the *AM750* radio of GrupoOctubre would have fired the journalist Paula "Poli" Sabatés due to her union duties. Editorial Atlántida would have laid off

<sup>66</sup> CELS. May 10, 2019. [Censura a la virgen abortera](#); Página 12. April 18, 2019. [La censura celeste de la virgen abortera](#); 24 CON. May 6, 2019. [Polémica y censura con una virgen María "abortera"](#); TN. April 27, 2019. [Las cosas por su nombre: la censura a María Feminista](#); La Otra Voz. May 6, 2019. [CENSURA DEFINITIVA DEL GOBIERNO A LA OBRA DE ARTE LA VIRGEN FEMINISTA](#)

<sup>67</sup> Contexto. May 28, 2019. [Persiguen a medios comunitarios por protestar contra la concentración de voces](#); Página 12. May 27, 2019. [Una amenaza a la libertad de expresión](#).

<sup>68</sup> La Brújula 24. [Para una jueza, la frase "tienen que tener cuidado, todos tenemos familia" no es una amenaza](#); Fundación Led. April 17, 2019. [Preocupación por la absolución a un acusado de amenazas a periodistas](#); Infobae. April 16, 2019. [Para la Justicia, las amenazas que recibió un periodista que denunciaba a handas de narcos "no constituyen delito"](#).

<sup>69</sup> IACHR. Annual Report 2018. [Volume II. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Oea/ser.l/v/ii. Doc. 30. March 17, 2019. Para. 88-91.

<sup>70</sup> Twitter account of Somos Télam (@somostelam). [June 27, 2019](#); Sindicato de Prensa de Buenos Aires. June 27, 2019. [La Justicia ordenó la reincorporación definitiva de 68 trabajadoras y trabajadores de Télam](#); RT. June 28, 2019. [Justicia argentina ordena la reincorporación de 68 trabajadores de la agencia Télam](#).

more than 60 workers, the Clarín-AGEA company, which publishes the *Clarín* and *Olé* newspapers, would have laid off 65 employees, and Publiexpress three others<sup>71</sup>.

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<sup>71</sup> Sindicato de Prensa de Buenos Aires. June 10, 2019. [Relevamiento de situación laboral en los medios de CABA durante 2018-2019, SiPreBA](#).

### 3. BAHAMAS

64. During 2019, the Office of the Special Rapporteur received information with concern about the lack of progress in implementing the Freedom of Information Act (FOIA), which was passed in 2017. There have also been several cases in which the authorities have criminally denounced journalists or threatened to do so under the guise of defamation [libel] as a mean to limit freedom of expression

#### A. Stigmatizing statements

65. Speaker of the House Halson Moultrie delivered a speech criticizing the work of the media in the country. According to public information, Moultrie said that the media had reduced the quality and accuracy of information by trying to compete with social networks, and that they had presented false or out-of-context information. He also stated that the Legislative Assembly must be protected from these violations, accusing journalists of being “unscrupulous persons.”<sup>72</sup>

66. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that their statements do not undermine the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations, and should be sensitive to the context in which they speak, so as to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and [dissemination] of their thoughts.”<sup>73</sup>

#### B. Subsequent liability

67. Social networking commentator Gorman Bannister was reportedly sent to prison on July 8 on charges of using the Internet to spread false accusations about former Cabinet Minister Tennyson Wells and his wife in a series of voice notes posted on Facebook and Whatsapp. At his arraignment before Judge Darence Rolle-Davis, Bannister pleaded not guilty. The judge denied release on bond based on lack of jurisdiction and referred him to the Bahamas Department of Correctional Services. Subsequently, on Bannister’s appeal, High Court Judge Gregory Hilton ordered his release on bond.<sup>74</sup>

68. This Office of the Special Rapporteur has also documented several cases in recent years in which public servants have responded to criticism by threatening to file criminal complaints alleging defamation. For instance, Water and Sewerage Corporation executive chairman Adrian Gibson announced on April 2 that he would file a criminal defamation action against union leader Dwayne Woods after he claimed that promotions were given to female staff. Gibson attacked these statements, claiming that the union leader’s assertions were unfounded, implausible, and totally false.<sup>75</sup> In another case, Deputy Police Commissioner Paul Rolle threatened to take legal action against John McAfee, after McAfee published several messages on Twitter accusing the deputy police commissioner of corruption. Rolle stated that the messages were harmful to his reputation.<sup>76</sup>

69. The group Rights Bahamas called for an end to “archaic” criminal defamation laws, stating that they are unconstitutional and have no place in a modern democracy.<sup>77</sup>

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

71. Furthermore, this Office has repeatedly maintained that the use of criminal law to punish speech referring to public officials is disproportionate when it concerns protected speech, such as information or speech on matters of public interest, and violates the right to freedom of expression.<sup>78</sup>

<sup>72</sup> Eyewitness News. October 24, 2019. [House speaker attacks media](#); The Tribune. October 31, 2019. [Do It again and Ingraham would fire Speaker](#).

<sup>73</sup> I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

<sup>74</sup> The Tribune. July 9, 2019. [Social media commentator remanded](#); Jamaica Observer. July 12, 2019. [Social media commentator released on bail on charges of misusing internet](#); The Nassau Guardian. July 9, 2019. [Internet publisher bailed on libel charges](#).

<sup>75</sup> Tribune. April 3, 2019. [Water Wars: Gibson threatens to sue and blasts supply saboteurs](#); Eye Witness News. April 4, 2019. [Sabotage – Water service cut to majority of New Providence](#).

<sup>76</sup> The Tribune. June 11, 2019. [Rolle blasts corruption claims](#); CCN Markets. June 12, 2019. [Bitcoin agitator John McAfee runs afoul of Bahamas anti-corruption czar](#).

<sup>77</sup> Eyewitness News. July 11, 2019. [Rights Bahamas: Abolish archaic criminal libel laws](#); The Tribune. July 11, 2019. [Smith Leads calls to end archaic criminal libel laws](#).

<sup>78</sup> IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

### C. Access to information

72. During 2019 several civil society organizations have called on the government to give priority to the full enactment of the Freedom of Information Act (FOIA), passed in 2017 in order to deliver “this fundamental right to the people of The Bahamas.”<sup>79</sup>

73. The Bahamian government said that the full implementation of the law would take until 2020 because of the need for extensive training within government departments and agencies. They would also be looking for a professional to serve in the position of Information Commissioner.<sup>80</sup>

74. On January 30, a resolution was approved in the House of Assembly on the \$30 million loan from the Inter-American Development Bank (IDB) to continue the digitization of government services. According to the resolution, the loan should be used to support the implementation of the Freedom of Information Act by developing a plan for its rollout, “providing technical support for the set-up and operation of the office of the information commissioner and conducting training to information managers to enhance transparency in public sector entities and enhancing inter-institutional co-ordination to effectively implement FOIA provisions.”<sup>81</sup> On April 8, at the signing ceremony for the IDB loan agreement, Bahamian Prime Minister Hubert A. Minnis noted that its objectives include strengthening institutional capacity and improving government transparency and integrity.<sup>82</sup>

75. Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

<sup>79</sup> Eyewitness News. May 14, 2019. [Civil Society calls attention to urgency of FOIA](#); The Nassau Guardian. May 15, 2019. [Civil society groups urge FOIA enactment](#).

<sup>80</sup> The Nassau Guardian. May 7, 2019. [Bethel: Full FOIA by May 2020](#); Eyewitness News. May 14, 2019. [Civil Society calls attention to urgency of FOIA](#); The Nassau Guardian. May 15, 2019. [Civil society groups urge FOIA enactment](#)

<sup>81</sup> <sup>81</sup> The Tribune. January 31, 2019. [Minnis Aiming of a single window for digital services](#); The Bahamas Investor. February 1, 2019. [House approves \\$30m IDB loan for tech upgrades](#); ZNS Network. January 31, 2019. [House of Assembly approve \\$30 million IDB loan for digital government services](#).

<sup>82</sup> The Government of The Bahamas. April 9, 2019. Press Release. [Government secures IDB loans for e-services; and for stabilization in the event of natural disaster](#); The Bahamas Investor. April 9, 2019. [IDB backs Bahamas digital transformation](#); The Nassau Guardian. April 9, 2019. [IDB working on \\$25M credit facility to support Bahamian SMEs](#); Eye Witness News. April 9, 2019. [\\$30 million loan from IDB to digitize the public service](#).

## 4. BARBADOS

76. In the context of the 2018 general elections, the elected Prime Minister Mia Mottley is said to have proposed the introduction of a bill to ensure access to public information, to achieve greater transparency and accountability. During 2019, different officials have stated that the government will focus on making the freedom of information legislation effective, indicating that a complete transformation of the way the country's public administration is managed is needed. They indicated that several measures have already been taken to achieve more openness and transparency, such as press briefings after the Council of Ministers meeting. It is only at the time of the finalization of this Annual Report that this preliminary draft was approved.

### A. Access to information

77. In recent years, Barbados has discussed the possibility of introducing legislation to guarantee access to public information. During the 2018 general election campaign, Prime Minister Mia Mottley had proposed the introduction of such a law in the interest of greater transparency and accountability.<sup>83</sup>

78. On May 3, World Press Freedom Day, the Barbados Association of Journalists and Media Workers (BARJAM) urged the Mottley administration to introduce a law on freedom of information.<sup>84</sup>

79. Attorney General and Minister of Legal Affairs Dale Marshall said on August 11 that the government would focus on the possibility of a freedom of information bill in the country over the next 12 months. However, he clarified that this would first require a complete transformation of the way public administration is currently handled. He noted that, as a first step, the government of Barbados has taken several measures to achieve more openness and transparency, such as holding post-Cabinet press briefings.<sup>85</sup>

80. At the same time, on November 12, Minister of Economic Affairs and Investment Marsha Caddlegave assured that the freedom of information legislation would be enacted, and that the government was in the process of putting in place a number of systems, "building a culture of sharing, integrity and trust."<sup>86</sup> As of the close of this Annual Report, that bill had not been passed.

81. The Office of the Special Rapporteur recalls that Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

<sup>83</sup> IACHR. [Annual Report 2018. 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. 30. March 17, 2019. Para. 98

<sup>84</sup> Barbados Today. May 3, 2019. [BARJAM calls for Freedom of Information legislation](#); Nation News. May 3, 2019. [Bring freedom of information laws](#).

<sup>85</sup> Loop. August 14, 2019. [AG: Freedom of Information Act still on cards](#); Bajan Reporter. August 18, 2019. [Attorney General of Barbados, Dale Marshall speaks to freedom of information](#).

<sup>86</sup> Barbados Today. November 13, 2019. [Country rapped for legislation lag](#).



## 5. BELIZE

### A. Freedom of expression in electoral contexts

82. On May 8, 2019, a referendum was held to decide whether to take Belize's border dispute with Guatemala to the International Court of Justice.<sup>87</sup>To this end, the government invited election observation groups from both the Caribbean Community (CARICOM-CEOM) and the Commonwealth [Commonwealth Observer Group].<sup>88</sup>The latter issued a statement containing an initial assessment of the process, affirming that the referendum was "credible, transparent and inclusive," and that it "reflect[ed] the view of the majority of Belizeans who voted." It also congratulated the organizers, civil society, observers, the media, and the police for their respective roles in ensuring the success of the referendum.<sup>89</sup>The Commonwealth Secretary General also congratulated the people of Belize on the successful referendum, stressing that it was "a historic and watershed national step."<sup>90</sup>In addition, the chair of the Commonwealth Observer Group, Hubert Ingraham, highlighted the high voter turnout and civic engagement of Belizeans.<sup>91</sup>Nevertheless, the Commonwealth Observer Group praised several concerns about the "the adequacy and sufficiency of voter education," and the fact that some potential voters were reportedly denied the franchise as a result of their inability to produce required voter re-registration documents from the Office of Vital Statistics.<sup>92</sup>

83. The Office of the Special Rapporteur recalls that, "Elections are tightly linked to freedom of expression and information as it is essential for citizens to have as much information as possible to make a decision in casting their votes. Accordingly, free circulation of facts, ideas, and opinions is crucial. Unquestionably, the most common way for citizens currently to inform themselves is through the media."<sup>93</sup>

### B. Censorship of journalistic material

84. Prime Minister Dean Barrow warned the media, in a letter from the law firm Barrow & Williams LLP, that if the charges brought by the U.S. Federal Trade Commission (FTC) were re-broadcast or repeated, they could be sued in a civil action. On June 10, the FTC filed charges with the U.S. Bankruptcy Court for the Southern District of Florida against the Prime Minister and several of his Cabinet members for their alleged involvement in the *Sanctuary Bay Belize* fraud.<sup>94</sup>Barrow's letter states that any defamation or libel of him would pose a "special risk" to the media, since, if they are held liable, "a court will be obligated to take account of Barrow's position and reputation," and that any damages awarded against the media could be increased as a result. ["We are to therefore notify you that any re-broadcast, re-publication, or repeating in any form of this information and/or of unjustifiable commentary related to it may subject you to civil action...any defamation or slander of our client poses a special risk to you since if you are proven liable, a court will be obliged to take our client's standing and reputation into account with the result that any award of damages against you may be increased."]<sup>95</sup>

85. The Office of the Special Rapporteur recalls that Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. In addition, Principle 5 of the IACHR's Declaration of Principles on Freedom of Expression establishes that "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

<sup>87</sup>Reuters. May 9, 2019. [Belizeans vote to ask UN court to settle Guatemala border dispute](#); Amandala. May 11, 2019. [Belizeans vote "yes" to the ICJ](#); Antigua News Room. May 9, 2019. [Belize votes "yes" in national referendum to take border dispute to ICJ](#).

<sup>88</sup>Antigua News Room. May 9, 2019. [Belize votes "yes" in national referendum to take border dispute to ICJ](#); Caricom. May 9, 2019. [CARICOM Election Observer Mission in Belize for Referendum](#).

<sup>89</sup>The Commonwealth. May 11, 2019. [Observer group describes Belize vote as credible, transparent and inclusive](#).

<sup>90</sup>The Commonwealth. May 15, 2019. [Secretary-General congratulates Belize on successful referendum](#).

<sup>91</sup>Breaking Belize News. May 10, 2019. [Commonwealth observers praise referendum management and give initial certification](#).

<sup>92</sup>The Commonwealth. May 9, 2019. [Interim Statement of the Commonwealth Observer Group, Belize Referendum](#); Amandala. May 11, 2019. [Belizeans vote "yes" to the ICJ](#).

<sup>93</sup>IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI Freedom of Expression and the Electoral Process: The Case of Opinion Polls and Exit Polls. OEA/Ser.L/V/II.124 Doc. 77 February, 2006. Para. 2.

<sup>94</sup>Amandala. July 13, 2019. [Sanctuary Belize fraud – FTC fingers Barrow-led government in bankruptcy court](#); Reporter. July 13, 2019. [Bombed by the FTC PM Barrow says 'It wasn't me!'](#)

<sup>95</sup>News 5. July 12, 2019. [E.T.C. attacks Belize's justice system](#); Reporter. July 17, 2019. [Arresting our fourth estate](#); Breaking Belize News. July 18, 2019. [Belize – A shrinking democracy?](#); Reporter. July 12, 2019. [Barrow & Williams does legal ballet – After FTC findings](#).

## 6. BOLIVIA

86. During 2019 Bolivia was marked by a political crisis that led to the resignation of former President Evo Morales and then led to the interim presidency of former Senator Jeanine Añez. For more than 20 days the country experienced an escalation of violence that took the lives of 35 people<sup>96</sup> in the so-called massacres of Sacaba (Cochabamba) and Senkata (La Paz), owing to joint tasks between the Armed Forces (FFAA) and the Bolivian Police. Similarly, clashes between protesters and human rights violations<sup>97</sup> by groups of citizens mobilized during a civic strike in different cities of the country were reported<sup>98</sup>. As a result, the Inter-American Commission on Human Rights (IACHR) conducted an observation visit to Bolivia from November 22 to 25<sup>99</sup>. In this context, the Office of the Special Rapporteur has noted the lack of guarantees and security in the work of journalists, popular communicators, and the media. Along these lines, a complaint was made<sup>100</sup> regarding the death and possible murder of the Argentine journalist, Sebastián Moro, occurred in a scenario of generalized crisis after the national elections and the power vacancy that resulted from the resignation of former president Morales. Likewise, this Office has expressed its concern about the persecution and harassment of independent journalists and popular communicators, such as the correspondent of *La Izquierda Diario*, Carlos Cornejo, the artist Leonel Jurado, the collaborator of *La Jornada de México*, Juan Trujillo, the student from the Universidad Mayor de San Simón (UMSA), Alexander Fernández, and the social media managers, Orestes Sotomayor and Alejandra Salinas, through the use of criminal figures such as “terrorism” and “sedition”<sup>101</sup>.

87. In addition, the Office of the Special Rapporteur has called on the interim government authorities<sup>102</sup> given the announcements to change the existing legal framework through laws that are not compatible with the recommendations on freedom of expression of the inter-American human rights system. Among them stands out the draft supreme decree S/N, stipulating, among other things, the reassignment of the radios of the Original Peoples (RPOs) in Bolivia.]<sup>103</sup>.

### A. Freedom of expression in the context of post-electoral social crisis in Bolivia

88. The conflict in Bolivia began prior to the general election on October 21 and increased when the Fast and Secure Record Transmission [*Transmisión Rápida y Segura de Actas*] (TREP) count was interrupted to resume 24 hours later announcing the victory to former President Evo Morales and canceling a possible second round of elections where the ruling party could have faced the opposition leader, Carlos Mesa. The social protest was promoted by the movement called “21 F Bolivia said No” [*21 F Bolivia dijo No*], which called for respect for the constitutional referendum of February 21, 2016, in which the draft constitutional amendment was rejected to allow the president or vice president of the Bolivian State to run to be reelected more than once. To these protests were added sectors of environmental activists that demanded the State coherence in their environmental policies on land, territory, and respect for prior consultation on extractive projects. The demonstrations were enhanced after preliminary statements by auditors of the electoral process in Bolivia of the Organization of American States (OAS), which indicated a possible “intentional fraud” in the national elections. The social protest, formed mostly by mobilized sectors of the urban cone, denounced the lack of transparency in the elections. In this way, in different regions of the country a civic strike “for the defense of democracy” started, led by the Civic Committee of the city of Santa Cruz (Pro Santa Cruz Committee), which

<sup>96</sup> Defensoría del Pueblo. December 2019. *Afectación a derechos en conflictos elecciones 2019*; Chaski Clandestina. November 16, 2019. *Denunciamos el estado de terror*; Chaski Clandestina. *No hemos nacido para morir así*; Chaski Clandestina. November 17, 2019. *Represión en Sacaba: seguimos de luto*; Chaski Clandestina. November 19, 2019. *Senkata: continúa la represión*; Chaski Clandestina. November 20, 2019. *Somos nosotrxs los que cargamos lxs muertxs. Senkata y el luto amplificado*; Chaski Clandestina. November 29, 2019. *Bolivia en estado de 'shock': a una semana de la masacre de Senkata*; BBC Mundo. November 17, 2019. *Crisis en Bolivia: el "uso desproporcionado de la fuerza" contra seguidores de Evo Morales en Bolivia recibe el repudio de organizaciones internacionales*; EFE. November 17, 2019. *La CIDH eleva a 23 los muertos y a 715 los heridos en la crisis de Bolivia*; Página 12. December 1, 2019. *Bolivia duele por sus muertes y sus heridas*; La Razón. November 29, 2019. *Relator de la CIDH plantea investigación externa sobre violencia en Bolivia y habla de dos 'masacres*.

<sup>97</sup> OHCHR, November 16, 2019, *Bachelet says repression as well as unnecessary and disproportionate use of force risk inflaming situation in Bolivia*.

<sup>98</sup> IACHR, Official Twitter account. “IACHR condemns the disproportionate use of police and military forces in Cochabamba #Bolivia that have already resulted in 5 people killed and (sic) multiple injuries. Firearms must be excluded from the devices used to control social protests”. November 15, 2019. 7.15 P.M.; Reuters. November 26, 2019. *Human rights violations in Bolivia merit outside probe: Americas commission head*. CNN. November 28, 2019. “La situación es alarmante”, dijo relator de la CIDH para Bolivia. Página 12. November 30, 2019. *Para la CIDH no hay garantías en Bolivia*.

<sup>99</sup> IACHR, December 10, 2019. *The IACHR presents its preliminary observations following its visit to Bolivia and requests an urgent international investigation take place into the serious human rights violations that have occurred in the country since the October 2019 elections*.

<sup>100</sup> IACHR, Observation visit to Bolivia. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>101</sup> HRW. November 19, 2019, *Bolivia: Interim Government Adopts Abusive Measures*; Los Tiempos. November 17, 2019. *Gobierno creará un "aparato especial de la Fiscalía" para detener a legisladores que hagan subversión*. UNITEL/YouTube November 14, 2019. Published by Jhon and Gaby Villegas. *Murillo Habla Vamos a cazar a Juan Ramón Quintana. Que se cuiden todos los que hacen vandalismo*.

<sup>102</sup> IACHR, Office of the Special Rapporteurs for Freedom of Expression. Ref: Request for information on draft Supreme Decree S/N on “Recovery of freedom of expression in Bolivia” and situation of the Radios of the Original Peoples (RPOs). December 30, 2019. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>103</sup> La Razón. December 17, 2019. *Las 53 radios comunitarias suspenden informativos*.

lasted about 20 days and included the blockade of the main roads, avenues, and the occupation of public institutions<sup>104</sup>.

89. According to public information, these protests escalated in the use of violence<sup>105</sup> after both political fronts asked their supporters to defend their vote, which would have led to clashes that violated the exercise of human rights<sup>106</sup>, among them freedom of movement, freedom of association, and of expression.

90. The IACHR and its Office of the Special Rapporteur in different press releases<sup>107</sup> identified that since the departure of former President Morales on November 10 -during the power vacancy generated by the uprising of the National Police, the request for resignation by the armed forces, and with the self-proclamation of Senator Añez<sup>108</sup> as Interim President of Bolivia, a process backed by the Constitutional Court in the country- there would be a strong repressive response by the security forces against protesters and social movements of long historical tradition, with the use of firearms and chemical agents that would have generated an increase in the number of people killed, injured, and detained<sup>109</sup>. Specifically, it observed the lack of guarantees and permanent aggressions during the coverage of such protests towards journalists, popular communicators, activists, and anyone who tried to document the excessive use of force.

91. During its observation visit to the country, the IACHR<sup>110</sup> received information from civil society organizations and the Ombudsman's Office, the latter issued a statement on October 28<sup>111</sup> demanding that the mobilized social sectors, the State, and the police guarantee the security and physical integrity of journalists in the exercise of their work. Along these lines, this Office has also received complaints from the National Press Association of Bolivia (ANP) and the Cochabamba Press Workers Federation (FSTPC)<sup>112</sup>.

92. The Office of the Special Rapporteur has registered attacks against around 70 journalists and popular communicators from some 25 national and international media outlets. The attacks would have been originated both by some violent protesters who supported the civic strike from the movement called "Pititas", as well as by violent groups of supporters of the former Morales government, and also by the excessive use of force in joint tasks of the National Police and the Armed Forces<sup>113</sup>. Among the main violations of the exercise of freedom of expression and the right to access to public information recorded regarding the death and possible murder of journalist Sebastián Moro, attacks such as insults, and beatings, in addition to the use of dynamite, confiscation of work equipment, stigmatizing statements, censorship, obstruction of coverage and doxing<sup>114</sup> campaigns, deliberate misinformation, and the use of the legal framework under criminal offense such as 'sedition' and

<sup>104</sup> ANF. October 22, 2019. [Contra la falta de transparencia en el TSE y en Defensa de la Democracia](#); Página Siete. October 23, 2019. [No nos maten por una silla](#); El Día. October 21, 2019. [Pary invita a embajadores y organismos internacionales al conteo](#); OAS, October 23, 2019. [Informe Preliminar de la Misión de Observación Electoral en Bolivia](#); Fundación UNIR. October 24, 2019. [Monitoreo de episodios de conflicto post-electorales](#); DW. November 14, 2019. [Prensa en alemán: Morales provocó las condiciones para un golpe en Bolivia](#).

<sup>105</sup> Los Tiempos. November 6, 2019. [Enfrentamientos en Quillacollo dejan a una persona con muerte cerebral y más de 60 heridos; "#ParoEnBolivia'Motoqueros' of the 'Cochala Resistance' that reached #Quillacollo hit a person". Twitter account Los Tiempos. November 6, 2019. 1:28 P.M.; "#LTahora #Cochabamba #ParoEnBolivia Members of the Cochala Youth Resistance citizen group go to the Huayculi Bridge where clashes with groups related to the MAS are reported". November 6, 2019. 1:24 P.M.](#)

<sup>106</sup> Infobae. October 21, 2019. [Carlos Mesa acusó al Tribunal Electoral de ocultar los resultados y convocó a una gran vigilia nacional](#); BBC Mundo. October 23, 2019. [Evo Morales asegura que hay en marcha un golpe de Estado en Bolivia e insta a sus seguidores a "defender la democracia"](#); CNN. November 8, 2019. ["Tenemos que defender el voto del pueblo": Luis Camacho se separa del opositor Carlos Mesa en Bolivia](#); CNN. November 4, 2019. [Luis Fernando Camacho anuncia radicalización del paro cívico nacional indefinido en Bolivia](#); El Comercio. November 4, 2019. [Bolivia denuncia 'golpe de Estado en camino' sin descartar una segunda vuelta](#).

<sup>107</sup> IACHR, October 23, 2019. [IACHR Concerned about Violence during Electoral Process in Bolivia](#); IACHR, November 11, 2019. [IACHR Concerned about Political Crisis and Situation of Human Rights in Bolivia](#); IACHR, November 19, 2019. [IACHR Warns about the Risk of Impunity for Human Rights Violations in Bolivia, Calls for a National Dialogue to Reach a Constitutional Solution to the Crisis](#).

<sup>108</sup> Página 12, November 13, 2019. [Sin quórum, Jeanine Añez se autoproclamó presidenta en La Paz](#). BBC Mundo. November 13, 2019. [Evo Morales: ¿hubo un golpe de Estado en Bolivia? BBC Mundo consultó a 6 expertos](#); The Intercept. November 15, 2019. [The Coup that ousted Bolivia's Evo Morales is another setback for Latin American Socialism](#); The Guardian. December 5, 2019. [The Guardian view on Bolivia: respect the people](#); The New York Times. December 9, 2019. [Restore Bolivian Democracy and Break Its History of Coups](#).

<sup>109</sup> EFE, December 10, 2019. [Al menos 27 personas murieron por armas de fuego en 'conflictos' en Bolivia](#); Los Tiempos. November 17, 2019. [CIDH y Defensoría: En casi un mes de protestas en Bolivia se registraron 23 muertos](#).

<sup>110</sup> EFE, November 19 2019. [La CIDH visitará Bolivia para vigilar el respeto a los derechos humanos](#); IACHR, Official Twitter account. ["IACHR sent a formal communication to Bolivia for an immediate visit." November 20, 2019. 1:10 P.M.; "Our team arrives to #Bolivia for the visit to observe the human rights situation from November 22 to 26". November 21, 2019. 11:07 P.M.](#); El Ciudadano. November 25, 2019. [CIDH: "Bolivianos demandan verdad, justicia y reparación"](#); Infobae. November 25, 2019. [CIDH investiga muertes durante las protestas en Bolivia](#).

<sup>111</sup> Office of the Ombudsman. December 10, 2019. [Defensora del pueblo demanda garantías para el trabajo de periodistas](#).

<sup>112</sup> ANP. November 8, 2019. [Asociación de Periodistas de Cochabamba exige identificar a agresores de reporteros](#); ANP. November 18, 2019. [76 periodistas y 14 medios fueron afectados en 29 días de conflicto](#); Los Tiempos. November 25, 2019. [La Fstpc denuncia ante la CIDH las agresiones a la prensa. Recuerdan las marchas "pacíficas" de las pititas? Medicos gritando "guerra civil"](#).

<sup>113</sup> IACHR, Observation visit to Bolivia. Available at: Archive of the Office of the Special Rapporteurs for Freedom of Expression. IACHR, December 10, 2019. [The IACHR presents its preliminary observations following its visit to Bolivia and requests an urgent international investigation take place into the serious human rights violations that have occurred in the country since the October 2019 elections](#). CPJ. November 11, 2019. [Atacan y amenazan a medios bolivianos en el convulso panorama que sigue a la renuncia del presidente Evo Morales](#). RSF. November 15, 2019. [Bolivia: periodistas locales y extranjerxs sufren amenazas por parte del gobierno de facto](#). November 21, 2019. [Caos en Bolivia: los medios de comunicación, blanco de agresiones y desamparados](#).

<sup>114</sup> It is the practice on the Internet of research and publication of private or identifying information (especially personal information) about an individual or an organization. The methods used to acquire this information include searches in publicly accessible databases and social networks (such as Facebook), hacking, and social engineering methods. It is closely related to Internet surveillance and hacktivism.

'terrorism', used not only to prosecute but to silence journalists and popular communicators who denounced violations to the exercise of their fundamental rights. Different media reported that they stopped covering certain manifestations and topics arguing lack of protection, security, and guarantees for the exercise of their journalistic activity by the State<sup>115</sup>.

## B. Attacks, Threats, Intimidations

93. During the civic strike carried out between October 21 and November 10, this Office received complaints about attacks on reporters of the newspapers *El Deber*, *La Razón*, *Página Siete*, *Los Tiempos*, *Opinión*, *Prensa Rural*, and *Agencia de Noticias Fides* (ANF), the TV channels *ATB*, *UNITEL*, *Gigavisión*, *Red Uno*, *Bolivisión*, *PAT*, *Tele C*, and *Abya Yala*, and the radio stations *Pío XII*, *Erbol*, *Radio Patria Nueva*, *Kawsachun Coca Radio*, *San Simón Radio*, and *Ichilo Radio*, among others<sup>116</sup>.

94. Among the relevant attacks due to the high degree of violence are the attack on photojournalist Miguel Carrasco of *La Razón*<sup>117</sup>, who was hit with a stone in the head when he was covering the confrontations between protesters, which left him with nine stitches. Something similar would have happened to journalist Crisólogo Alemán who accompanied the caravan of protesters from the department of Potosí that were heading towards La Paz to demand the resignation of Morales<sup>118</sup>. Alemán denounced that they were ambushed and attacked by supporters of the former president in the Vila Vila region, where he would have received a blow that caused a wound on his forehead. Popular communicators also denounced attacks by mobilized violent protesters, who would have hindered the free mobility of journalists and popular communicators<sup>119</sup>, among other citizens. Juan Carlos Rocha, former president of the ANP and content director of the *El Deber* Group, denounced he received blows while trying to cover a blockade -within the civic strike- in Santa Cruz<sup>120</sup>. On November 5, aggressions against several journalists in El Alto were reported, when protesters surrounded the airport preventing the departure of the president of the Pro Santa Cruz Civic Committee, Luis Fernando Camacho, who was heading to La Paz to deliver a letter to the then president requesting his resignation<sup>121</sup>.

95. The attacks against women journalists are also relevant. For example, the *Red Uno* reporter, María José Mollinedo, was threatened with being burned and was intimidated through insults based on her gender when she covered some mobilized groups: "Evo's Prostitute", "sell out"<sup>122</sup>, were the insults expressed and documented. Journalist Carla Pabón, also of *Red Uno*, was held, threatened, and beaten by a group of mobilized doctors, and journalist Raiza Cruz, from the same media, and her cameraman, were assaulted by protesters in El Alto, who would have beaten and insulted them. Along the same lines is what happened to *UNITEL* journalist, Helga Velasco, and *Red Uno* television presenter, Ximena Zalzer, who would have been attacked by neighbors who supported civic strike in the Las Palmas neighborhood of Santa Cruz. Also, the journalist of the *Guardiana* site, Miriam Jemio, would have been intimidated and insulted, while she was covering the civic strike in La Paz<sup>123</sup>. On the other hand, according to public knowledge information, the ANP and the Association of Journalists of La Paz

<sup>115</sup> IACHR, Observation visit to Bolivia. Available at: Archive of the Office of the Special Rapporteurs for Freedom of Expression. IACHR, December 10, 2019. [The IACHR presents its preliminary observations following its visit to Bolivia and requests an urgent international investigation take place into the serious human rights violations that have occurred in the country since the October 2019 elections](#). CPI. November 11, 2019. [Atacan y amenazan a medios bolivianos en el convulso panorama que sigue a la renuncia del presidente Evo Morales](#). RSF. November 15, 2019. [Bolivia: periodistas locales y extranjeros sufren amenazas por parte del gobierno de facto](#).

<sup>116</sup> "UNITEL masista the defenders of the vote chanted to one of the media in the country." Twitter account of Radio APLP. [October 30, 2019. 9.11 P.M.](#); El Día. November 3, 2019. [Santa Cruz: Ocho periodistas y un medio sufrieron agresiones durante bloqueos](#); El Deber. November 6, 2019. [Una cruceña fue retenida momentáneamente en El Alto por manifestantes](#).

<sup>117</sup> *La Razón*. October 28, 2019. [Periodista de La Razón es herido al cubrir los conflictos en La Paz](#); *Página Siete*. 28 de Octubre de 2019. [Reportero de La Razón fue agredido en manifestaciones y Defensoría pide garantías](#); El Día. October 28, 2019. [Fotoperiodista de La Razón fue herido en la cabeza](#).

<sup>118</sup> ANP. November 9, 2019. [Atacan a periodistas en La Paz y Oruro](#) *Guardiana*. November 18, 2019. [Más de 70 periodistas agredidos en un mes por opositores y afines a Evo](#).

<sup>119</sup> IACHR, Observation visit to Bolivia. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; IACHR December 10, 2019. Floha de São Paulo. December 25, 2019. [En serie con autores latinos, Maximiliano Barrientos escribe sobre una Bolivia dividida. Cuenta de Twitter de Lia Libertad. Octubre de 2019](#). Noticias Bolivia/Youtube. 2 de noviembre de 2019. [Santa Cruz. CIVICOS OBLIGAN ARRODILARSE A MUJER LA AMENAZAN CON QUEMARLA VIVA](#).

<sup>120</sup> *Opinión*. November 6, 2019. [ANP denuncia agresión a su exvicepresidente Juan Carlos Rocha](#); November 4, 2019. [Santa Cruz: Ocho periodistas y dos medios sufrieron agresiones durante bloqueos](#). El Deber. November 6, 2019. [Agreden a director de contenidos del grupo El Deber](#).

<sup>121</sup> *Página Siete*. November 5, 2019. [Página Siete repliega a sus periodistas de la cobertura en El Alto](#); ANP. November 7, 2019. [Equipos de Bolivisión Tv sufren ataques en La Paz](#). November 9, 2019. [Atacan a periodistas en La Paz y Oruro](#); Los Tiempos. November 6, 2019. [Cercan y amenazan a Camacho en El Alto, pero él dice que hoy volverá](#).

<sup>122</sup> CIDH. Relatoría Especial. 28 de Octubre de 2019. Denuncia. Disponible en: Archivo de la Relatoría para la Libertad de Expresión. EJU.TV. 29 de Octubre de 2019. [Canelas se solidariza con periodistas que sufrieron agresiones en movilizaciones. Primera Linea Info. 28 de Octubre de 2019. Bloqueadores violentos en La Paz amenazan de muerte a periodista](#).

<sup>123</sup> Office of the Special Rapporteur October 2019. Interviews with journalists María José Mollinedo and Helga Velasco; "#LaPaz #APLPRadioinforma"; "UNITEL masista!", the defenders of the vote chanted to one of the country's media". APLP Radio Twitter account. [October 26, 2019. 9.11 P.M.](#); ANP. November 9, 2019. [Atacan a periodistas en La Paz y Oruro](#); Los Tiempos. November 20, 2019. [Mujeres periodistas de Red Uno fueron golpeadas y amenazadas](#); ANP. November 8, 2019. [Vecinos golpean a presentadora de televisión en Santa Cruz](#).

(APLP) demanded, through a joint statement, guarantees for the work of the journalist of *Televisión Universitaria de Canal 13*, Ximena Galarza, reporting that she would have been threatened after an interview<sup>124</sup>.

96. According to public information, on November 6, one of the most violent days of the post-election crisis, members of the Cochala Youth Resistance (RJC) group attacked, on motorcycles and while armed, people of indigenous social movements and rural individuals, who were on vigil in the town of Vinto (on the outskirts of Cochabamba). The mayor of this town, Patricia Arce, was harassed with a series of humiliating treatments; for example, her hair was cut, she was sprayed with paint, she was hit while on the ground, and forced to walk barefoot. Along the same lines, the group hit and humiliated the rural leader and former vice minister of interculturality, Feliciano Vegamonte. In both cases, the aggressors would have been identified as part of various violent groups part of the civic strike in that city, including RJC, who also filmed and spread the attacks on social networks. This Office also received complaints that would indicate that the violent group would be promoted by regional civic authorities, who allegedly with the support of the Police, would intimidate followers, leaders, and authorities of the Morales party, the Movement To Socialism [*Movimiento Al Socialismo*] (MAS)<sup>125</sup>.

97. In this same line, there were attacks on the journalist of *Los Tiempos*, Cristina Cotari, who was forced to stop recording while covering the aforementioned confrontations<sup>126</sup>. A day later, on November 7, the *La Razón* correspondent, Angélica Melgarejo, denounced threats and intimidation when she tried to get an interview with the leaders of the RJC group, one day after the episodes of violence in Vinto. During the days of civic blockade, this group was the only one that would have been allowed by protesters to mobilize on motorcycles during the strike<sup>127</sup>.

98. This Office has taken note of the persistence of threats and intimidation towards journalists and popular communicators by the RJC<sup>128</sup> group in Cochabamba. Journalists have reported that intimidation intensifies during certain coverage, such as when indigenous groups or rural people mobilize.

99. Likewise, according to public information, also on November 6, alleged officials of the Ministry of Health would have shot firecrackers from the roof of the institution against protesters mobilized around the place. In addition, civic leaders in La Paz denounced that mining organizations would continue using dynamite, which would have jeopardized the safety of the civilian population at the government headquarters<sup>129</sup>.

100. On November 8, the photographer of the newspaper *Página Siete*, Gastón Brito, was arrested by the police and taken to the facilities of the Special Force Against Crime [*Fuerza Especial de Lucha Contra el Crimen*] (FELCC) of La Paz, where he remained detained for 30 minutes. According to public information, the Commander in charge would have explained that they never issued an arrest warrant against him and that it would be a misunderstanding. For his part, the journalist argued that it could have been pressures to give information about other foreign journalists doing coverage<sup>130</sup>.

101. This Office has identified a second time frame where human rights violations developed. November 9 marked a break in the demonstrations and protests within the civic strike in Bolivia, due to the aforementioned uprising by the Police, who, together with the armed forces, requested the resignation of then President Morales<sup>131</sup>.

102. As reported in the observation visit to Bolivia of the IACHR, due to the absence of the public force, looting and fires would have been recorded at the headquarters of political parties, private homes of politicians, leaders

<sup>124</sup> ANF. October 26, 2019. [Asociaciones de periodistas piden garantías para el periodismo, en especial para Galarza](#).

<sup>125</sup> CNN. November 6, 2019. [Alcaldesa en Bolivia es agredida, humillada y obligada a caminar descalza](#); *La Razón*. November 6, 2019. [Agreden y humillan a la Alcaldesa de Vinto: jornada de violencia en Cochabamba deja 95 heridos](#); BBC. November 7, 2019. [Bolivia mayor has hair forcibly cut by crowd of protesters](#); DW. November 7, 2019. [Bolivia: alcaldesa vejada en la jornada más violenta hasta hoy](#), "The president of the Women's Civic Committee of #Cochabamba, Claudia Flores, warned about fencing houses of MAS authorities" The Times Twitter account. [November 9, 2019. 7.42 P.M.](#); *Página 12*. February 10, 2020. [¿Qué es la Resistencia Juvenil Cochala?](#)

<sup>126</sup> "Los Tiempos journalist Cristina Cotari was forced to stop recording while reporting what was happening at the point of confrontation in Huayculi, with the arrival of the "Cochala Resistance". The Times Twitter account. [November 6, 2019. 1.33 P.M.](#); "Motoqueros" of the "Cochala Resistance" who came to #Quillacollo hit a person". [November 6, 2019. 1.28. P.M.](#); "How #Bolivia hurts ... A MAS supporter receives an impact on the face in clashes in Huayculi. Shocking images". [November 6, 2019. 1.24 P.M.](#); "An angry mob forces the mayor of Vinto, Patricia Arce, to walk barefoot, after setting fire to the building of that commune #Cochabamba". Twitter account of *La Razón*. [November 6, 2019. 4:27 P.M.](#); "Making humble women and men kneel!!! They deserve jail time!!!" Twitter account of the former Minister of Health, Gabriela Montaña. [November 6, 2019. 1.59. P.M.](#)

<sup>127</sup> IACHR, Observation visit to Bolivia. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; *La Razón*. November 7, 2019. [La Razón denuncia amedrentamiento de parte del grupo Resistencia K'ochala](#).

<sup>128</sup> ChaskiClandestina. December 12, 2019. [La CIDH cita en su informe al grupo paramilitar Resistencia Juvenil Cochala y cataloga de masacre los hechos suscitados en Sacaba y Senkata](#).

<sup>129</sup> Los Tiempos. November 6, 2019. [Lanzan petardos a los manifestantes desde el techo del Ministerio de Salud](#); *La Vanguardia/EFE*. November 1, 2019. [La Defensora del Pueblo denuncia el uso de dinamita en disturbios en La Paz](#).

<sup>130</sup> IACHR, Observation visit to Bolivia. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression. *Página Siete*. November 8, 2019. [Liberan a "Soyelgas", fotoperiodista de Página Siete, tras ser retenido en la Felcc](#).

<sup>131</sup> BBC Mundo. November 9, 2019. [Motín de policías en Bolivia: agentes de varias ciudades se declaran en rebeldía contra el gobierno de Morales, quien denuncia un "golpe de Estado"](#); *El País*. November 11, 2019. [El Ejército obliga a Evo Morales a renunciar como presidente de Bolivia](#); ANF. November 10, 2019. [Las Fuerzas Armadas y la Policía piden la renuncia del presidente Morales](#); "Thus, Javier Triguero, president of the association of non-commissioned officers, sergeants, capes and police officers of the Santa Cruz police garrison, announced the police uprising". [November 8, 2019. 8.28 P.M.](#)

and journalists, as well as attacks against private media antennas such as *TVU*, *Red Uno*, *UNITEL*, as well as attacks and harassment against their officials<sup>132</sup>.

103. Among them were recorded: the burning of the headquarters of the Six Federations of the Tropic of Chapare and the MAS where the facilities of the Kawsachun Coca Community Radio<sup>133</sup> and the installation of facilities of different state media were located<sup>134</sup>.

104. It is of relevance due to the degree of violence, the fire caused in the house of *TVU* journalist, Casimira Lema, located in Chasquipampa, in the southern part of La Paz. According to public information, the communicator was not at home when a violent group arrived to set the building on fire<sup>135</sup>.

105. Along the same lines, on November 9, violent groups also set fire to the house of the governor of the Department of Oruro, Víctor Hugo Vásquez<sup>136</sup>, who resigned publicly, as well as that of the municipal mayor of Oruro, Saúl Aguilar. Likewise, residences and other properties were burned, destroyed, or looted, like that of the then President, Evo Morales, that of his sister, Esther Morales, that of the governor of Chuquisaca, Esteban Urquiza<sup>137</sup>, that of the former president of the Chamber of Deputies Víctor Borda -whose brother was taken as a hostage,- that of the MAS Senator Omar Aguilar, that of the departmental congresswoman of the MAS Sandra Siñani, that of the congress deputy David Ramos, that of the Minister of Mining and Metallurgy César Navarro -as well as his mother's house in the city of Potosí,- that of the Minister of the Presidency, Juan Ramón Quintana<sup>138</sup>, that of the mayor of El Alto, Soledad Chapetón<sup>139</sup>, and that of the indigenous leader Nelson Condori, representative of the Single Trade Union Confederation of Rural Workers of Bolivia (CSTUCB)<sup>140</sup>, in the municipality of Guaqui; also, that of the rector of the Universidad Mayor de San Andrés (UMSA) and leader of the National Committee for the Defense of Democracy (CONADE), Waldo Albarracín<sup>141</sup>, who during previous mobilizations would also have been violently attacked.

106. On November 9, groups of violent mobilized people requesting the resignation of former President Morales took over the premises of the Single Trade Union Confederation of Peasant Workers of Bolivia (CSUTCB), and would have vexed and tied a post to the director of *Radio Comunidad* y from the *Prensa Rural* newspaper, José Aramayo<sup>142</sup>.

107. According to complaints received by the IACHR, the correspondent of the Argentine *Página 12* newspaper, Sebastián Moro, also a contributor to *Prensa Rural*, would have been covering the attacks against Aramayo. A day later, on November 10, and after having sent the last article to the Argentine media about the situation in Bolivia, the journalist was found unconscious at his home and died six days later in a private clinic, according to the medical report due to a ACV, although his family has denounced the possibility that he had been murdered for his journalistic work<sup>143</sup>.

108. The IACHR and its Office of the Special Rapporteur have received information on the unclear circumstances surrounding the death of the journalist, including the medical record that registered the existence of polytrauma in his body and the lack of work equipment at his home, such as his recorder, vest, and notebook.

<sup>132</sup> El Deber/Facebook, November 10, 2019. [Alteños movilizados atacan y destruyen antena de Unitel, causando pánico en Ciudad Satélite](#) "#Breaking The signals of @unitelbolivia, Televisión Universitaria and @RedUnoBolivia were cut off. They denounce that a choque group caused destruction and burned their antennas in the area of the Satellite City of El Alto". ANF Twitter account. [November 9, 2019. 9:39 P.M.](#); "#Urgent University Television Journalists (TVU) denounce that they received threats and that they are forced to close their broadcast". ANF Twitter account. [November 10, 2019. 7:36 P.M.](#)

<sup>133</sup> La Razón, November 8, 2019. [Incendian sede de las Seis Federaciones cocaleras y del MAS en Cochabamba](#). #NationalStrike| They burn and loot the facilities of the #Cochabamba Tropic Federation, where Kawsachun Coca radio also worked. Twitter account of El Día. [November 9, 2019. 11.12. PM.](#)

<sup>134</sup> "#Breaking Report that protesters facilitate evacuation of journalists from Bolivia TV and radio Patria Nueva." ANF Twitter account. [November 9, 2019. 4.45 P.M.](#); La Razón. November 9, 2019. [Bloqueadores cercan Bolivia TV y radio Patria Nueva en La Paz y amenazan para que deje de transmitir](#); La Prensa. November 9, 2019. [Manifestantes ocupan medios estatales y desalojan a empleados en Bolivia](#).

<sup>135</sup> ANF, November 10, 2019. [Una turba quema la casa de la periodista Lema y Página Siete suspende su edición impresa](#).

<sup>136</sup> Opinión, November 9, 2019. [Oruro: Queman la casa del gobernador Víctor Hugo Vásquez](#); "Fire in the house of the governor of #Oruro, Víctor Hugo Vásquez". Twitter account of La Razón. [November 9, 2019. 6.41. P.M.](#); El Deber, No date. [Renuncia Víctor Hugo Vásquez, gobernador de Oruro](#).

<sup>137</sup> El Mundo, November 10, 2019. [Incendian la casa de una hermana de Evo Morales y de dos gobernadores](#); La Razón, November 10, 2019. [Oruro vive una jornada tensa; renuncia su alcalde y queman su casa](#); Aristegui, November 11, 2019. [Saquean y vandalizan la casa de Evo Morales luego de su renuncia | Video](#).

<sup>138</sup> El Potosí, November 10, 2019. [Prenden fuego en la casa de Víctor Borda](#); Urgente, November 10, 2019. [Queman la casa del diputado Borda y la de César Navarro en Potosí](#); ANF. 10 de noviembre de 2019. [Víctor Borda suplica que liberen a su hermano tomado como rehén y renuncia a su curul](#); El País/EFE. November 11, 2019. [Saquearon y dañaron casa de Evo Morales en Cochabamba e incendiaron otras residencias](#); Aristegui. November 10, 2019. [Saquean y vandalizan la casa de Evo Morales luego de su renuncia | Video](#); Correo del Sur, November 10, 2019. [Gobernador de Chuquisaca anuncia su renuncia al cargo](#); Notimerica, 10 de noviembre de 2019. [Bolivia - El presidente de la Cámara de Diputados de Bolivia dimite y denuncia que su hermano ha sido secuestrado](#); W Radio, November 11, 2019. [Quemaron mi casa y trataron de ahorcar a mi sobrino: ministro que renunció con Evo Morales](#).

<sup>139</sup> Red Uno, November 19, 2019. [Vándalos queman la casa de los padres de Soledad Chapetón en El Alto](#).

<sup>140</sup> Los Tiempos, November 14, 2019. [Queman la casa de Nelson Condori, el indígena que reprochó a Morales el fraude electoral](#).

<sup>141</sup> Bolivisión, November 10, 2019. [Saquean y queman casa de Waldo Albarracín](#); La Razón. November 11, 2019. [Albarracín: La instrucción era quemar la casa con las personas dentro](#).

<sup>142</sup> Urgente November 9, 2019. [Toman oficinas de la CSUTCB y amarran a un poste al director de Radio Comunidad](#); TeleSur/YouTube Official Channel, November 9, 2019. [TeleSUR denuncia acoso a periodistas en Bolivia](#).

<sup>143</sup> Tiempo, December 8, 2019. [El periodista argentino muerto en Bolivia: ¿ACV o brutal agresión?](#).

Also, there would have been audios erased from his phone and according to complaints filed by the family, the private clinic would have confiscated the journalist's medical documents, a confiscation that would persist until the closing date of this 2019 Annual Report<sup>144</sup>.

109. The Office of the Special Rapporteur has repeatedly indicated that the murder of journalists constitutes the most extreme form of censorship and that States have a positive obligation to identify and punish the perpetrators of these crimes. For this Office, it is essential that the State investigate, in a complete, effective, and impartial manner, the murders of journalists and clarify their motives and judicially determine the relationship they may have with journalistic activity and freedom of expression. The authorities should not rule out the exercise of journalism as a motive for murder and/or aggression before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions in the development of the processes in stages of indictment or trial. Not having completely exhausted the logical lines of research results in, above all, that intellectual authors cannot be identified.

110. Along these lines, the IACHR received with concern the information on the approval of Supreme Decree No. 4078 on November 14, regarding the actions of the Armed Forces in the country. According to the information received, the Decree intends to exempt from criminal responsibility the personnel of the Armed Forces that participate in the operations for the restoration of internal order and public stability<sup>145</sup>.

111. On November 14, the Minister of Communication, Roxana Lizárraga, appointed by the proclaimed President Jeanine Áñez, threatened national and international journalists with criminal proceedings for sedition, stating that "those journalists or pseudo journalists who are committing sedition, we will proceed according to the law, because what some journalists who are Bolivians or foreigners who are committing sedition in our country do have to respond to Bolivian law" (*sic*). In addition, she indicated that these journalists are already identified and that the Minister of Government "will take the relevant actions"<sup>146</sup> which would have contributed to creating a climate of silencing in the press.

112. On November 12, the newspapers *Página Siete* in La Paz, *Los Tiempos* and *Opinion* of Cochabamba, suspended the circulation of their respective printed editions, given the climate of insecurity and intimidation to journalists and their media. The newspaper *El Día de Santa Cruz* reported that it stopped circulating in print format since October 23 due to the indefinite strike in the region<sup>147</sup>.

113. In this context, the Office of the Special Rapporteur has registered attacks on foreign journalists of *Página 12*, *TN*, *Crónica*, *América*, *Telefé*, *TeleSur*, and *Aljazeera*, among others<sup>148</sup>. On this last medium, *Aljazeera*, it was informed that their reporter Teresa Bo was intentionally gassed by members of the Police while broadcasting live protests. According to the information collected, the majority of foreign correspondents left

<sup>144</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Complaints Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; *Página 12*, November 17, 2019. [Murió el periodista Sebastián Moro](#); *Página 12*, November 13, 2019. [Bandas fascistas contra reporteros](#); *Tiempo*, December 8, 2019. [El periodista argentino muerto en Bolivia: ¿ACV o brutal agresión?](#); Resumen Latinoamericano, December 15, 2019. [Bolivia. Sebastián Moro: El periodista argentino hallado con golpes, pudo haber sido asesinado](#); *Diario Uno*, December 29, 2019. [Reclaman que se investigue la muerte en Bolivia del periodista Sebastián Moro](#).

<sup>145</sup> Ministry of Justice of Bolivia, Decree, [Decreto Supremo 4078](#). Supreme Decree No. 4078. Available for consultation at: <https://www.nodal.am/wp-content/uploads/2019/11/sample1.pdf>; *La Razón*. November 23, 2019. [El Decreto](#); *Página 12*. November 16, 2019. [Carta blanca para la represión y la impunidad en Bolivia](#); IACHR, November 19, 2019. [IACHR Warns about the Risk of Impunity for Human Rights Violations in Bolivia, Calls for a National Dialogue to Reach a Constitutional Solution to the Crisis](#).

<sup>146</sup> *Clarín*. November 14, 2019. [Video: la nueva ministra de Comunicaciones de Bolivia amenazó con aplicar la ley de sedición a periodistas](#); *Infobae*. November 14, 2019. [Bolivia: la nueva ministra de Comunicación amenazó a periodistas locales y extranjeros por cometer presunta "sedición"](#).

<sup>147</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Complaints Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression. "#ANF Cochabambinos newspapers @LosTiemposBol and @Opinion\_Bolivia reported that in the face of insecurity and threats they resolved to withdraw their journalists and therefore their print editions will not circulate on Tuesday." ANF Twitter account. [November 11, 2019. 9.41. P.M.](#); *Página Siete*. November 12, 2019. [Por inseguridad, tres medios suspenden su edición impresa y canales transmiten por cable](#).

<sup>148</sup> *Telefe Noticias*. November 12, 2019. [El testimonio del opositor Luis Fernando Camacho](#); *Infobae*. November 13, 2019. [Violenta agresión al equipo de América Noticias que cubre la crisis en Bolivia](#); "'I hate to be the story because we are here to report on what is happening.' Al Jazeera's correspondent @TeresaBo has tear gas fired at her while reporting on protests in Bolivia". Al Jazeera's Twitter account. [November 17, 2019 11:21 A.M.](#); *El País*. November 15, 2019. [Evacuados varios periodistas argentinos de Bolivia tras ser agredidos y amenazados](#); SIP. November 15, 2019. [La SIP condena agresiones contra periodistas extranjeros en Bolivia](#); *Folha de S. Paulo*. November 17, 2019. [Jornalistas argentinos decidem deixar Bolívia após receberem ameaças](#); *Telam*. November 15, 2019. [Bullrich: "Los periodistas argentinos ya están en el aeropuerto para regresar"](#); *IFEX*. November 14, 2019. [IFEX-ALC condena agresiones a periodistas en Bolivia](#); "#Bolivia Minister of communication, appointed by the current self-proclaimed government, stigmatizes and threatens journalists, jeopardizing the freedom of expression and security of the press workers who are covering the conflict in that country." FIP Regional Twitter account. [November 15, 2019. 5.09 AM](#); *Telesur*. November 15, 2019. [Gobierno de facto de Bolivia amenaza a periodistas](#); *América TV*. November 14, 2019. [Echan al equipo de América Noticias y A24 de Bolivia](#); José Viñuela #Ciberperiodismo/YouTube. November 14, 2019. [Bolivia. Periodistas en peligro. Camarógrafo de Telefe espera ser rescatado](#); "Argentine activists use past videos of protests against Evo to say that it is a current protest in favor of Evo. Let us denounce these accounts that misrepresent the truth and only contribute to generate greater upheaval in our country." Andrés Guzmán Escobar's Twitter account. [November 16, 2019. 10:42 A.M.](#)

the country due to the attacks, the lack of guarantees, the alleged pressure from protesters, and also due to defamation campaigns<sup>149</sup>.

114. Also, on November 29, the correspondent for *La Jornada* and *Desinformemonos* de México, Juan Trujillo, reported having been detained without justification by the Police, who transferred him on a patrol without a license plate to Immigration offices. Trujillo also explained that they refused to call his diplomatic representation, collected his personal data and his fingerprints, and forced him to sign a “ultimatum” in which he promised to regularize his employment situation<sup>150</sup>.

115. On November 23, Pando Department Senator Carmen Gonzales, an alliance candidate between Leopoldo Fernández and Carlos Mesa in the October 2019 elections, made statements against Argentine journalists, who denounced that this would boost harassment<sup>151</sup> for their work in the country.

116. According to information provided to this Office, on December 12 during the conversation conducted by the NGO The Dialogue in Washington D.C. with the civic leader, Luis Fernando Camacho, different groups that supported him, verbally and physically attacked journalists and activists demonstrating against Camacho's presence in the country, denouncing he was one of the facilitators of an alleged coup in Bolivia. The activists were evicted from the scene and would have been exposed to attacks by supporters of Camacho, who threatened to call immigration agents to detain them<sup>152</sup>.

117. During the interim government of Áñez<sup>153</sup>, due to the strong repressive response by the security forces, with the use of firearms, it was of particular concern for the IACHR the fact that there were combined operations of the National Police and of the Armed Forces for the control of public order, without adequate legal support. Likewise, the IACHR and its Office of the Special Rapporteur expressed concern about the participation of the Armed Forces in operations to control public order and, in particular, to promote citizen security in the context of social protests<sup>154</sup>.

118. The Office of the Special Rapporteur urges the State of Bolivia to investigate, in a complete, effective and impartial manner, these crimes that affect the entire society, clarify their motives, and judicially determine the relationship they might have with their activity as communicators. In this sense, it is essential that the authorities investigate these facts without ruling out the hypothesis of the link with journalistic activity and freedom of expression.

119. Additionally, principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” Particularly, in the case of crimes against journalists and social communicators, the IACHR has indicated that impunity contributes to self-censorship of the press.

120. In turn, regarding violence against women journalists, the Office of the Special Rapporteur stressed that “women journalists disproportionately and routinely face gender-based violence in the workplace and on the ground,” and they face differentiated forms of violence by state and non-state actors, as well as lack of protection and obstacles in access to justice also differentiated from their male partners. In this regard, the Office of the Special Rapporteur has highlighted the importance of integrating a gender perspective to ensure that women journalists are adequately protected and can exercise their right to freedom of expression without undue restrictions.

121. Likewise, the Joint Declaration on crimes against freedom of expression of 2012 states that “[w]hen there is evidence that a crime committed may be a crime against freedom of expression, the investigation should

<sup>149</sup> Ciberperiodismo / Youtube. 14 de Noviembre de 2019. Bolivia. Periodistas en peligro. [Camarógrafo de Telefe espera ser rescatado](#). Infobae. 13 de Noviembre de 2019. [Violenta agresión al equipo de América Noticias que cubre la crisis en Bolivia](#). “Activistas argentinos usan videos pasados de protestas contra Evo para decir que es una protesta actual en favor de Evo. Denunciamos estas cuentas que tergiversan la verdad y sólo contribuyen a generar mayor convulsión en nuestro país”. Cuenta de Twitter del comentarista e internacionalista Andrés Gúzman Escobari. [16 de Noviembre de 2019](#).

<sup>150</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Complaints December 17, 2019. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>151</sup> “Two communist and insufferable Argentines put their dirty nose in #Bolivia the ‘journalist’ expelled from @CNNEE @CMonteroOficial and the nosy @jmkarg Both must receive money or gift from the former dictator. They speak without knowing. Pair of dirty and ignorant. #EvoNoEresBienvenidoEnMexico”. Carmen Gonzale’s Twitter account. [November 23, 2019. 8.14 PM](#).

<sup>152</sup> The Dialogue. December 12, 2019. [A Conversation with Luis Fernando Camacho](#); The Grayzone/YouTube. December 17, 2019. [Fascist Bolivian coup leader fails in DC charm offensive](#); Erbol. December 12, 2019. [Camacho es increpado en evento en EEUU en medio de protesta e incidentes](#).

<sup>153</sup> BBC Mundo. November 13, 2019. [Renuncia de Evo Morales: la senadora Jeanine Áñez asume la presidencia de Bolivia y el expresidente la acusa de “autoproclamarse”](#).

<sup>154</sup> ANF. November 10, 2019. [Alto Mando Militar ordena operaciones militares para neutralizar a grupos armados](#); IACHR. November 19, 2019. [IACHR Warns about the Risk of Impunity for Human Rights Violations in Bolivia, Calls for a National Dialogue to Reach a Constitutional Solution to the Crisis](#).



proceed with the assumption that it is a crime of such nature until proven otherwise, and all relevant investigative avenues linked to the acts of expression of the victims should be exhausted”<sup>155</sup>.

122. During its observation visit to Bolivia, the IACHR and its Office of the Special Rapporteur received information on attacks that occurred during the coverage of the repression of the mobilizations at the Huallani bridge in Cochabamba, called the Sacaba massacre. On November 15, journalist and cameraman of the *ATB* television network, Sergio Figueroa, would have been assaulted by protesters, who attacked him based on the alleged silence of the national press. As reported, in that same episode, unknown individuals would have launched a firecracker towards journalists and military officers allegedly causing injuries to four reporters: Fernando Bustamante, César Baldelomar, Ronald Aguilar, and Sergio Figueroa. In addition, protesters would have thrown rocks at six other journalists<sup>156</sup>.

123. The Office of the Special Rapporteur recalls that "the protection of the right to freedom of expression requires that the authorities ensure the necessary conditions for journalists to cover facts of notorious public interest such as those related to social protests." Likewise, the 2013 Joint Declaration on violence against journalists in the framework of social demonstrations indicates that the rights of assembly and freedom of expression "are fundamental and their guarantee is a necessary condition for existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations in order to ensure their peaceful development or disperse those that become violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, dispersing a demonstration must be justified in the duty of protection of people, and the safest and least harmful measures for protesters should be used. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances in accordance with internationally recognized principles"<sup>157</sup>.

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### C. Legal Reforms

125. The IACHR and its Office of the Special Rapporteur received information that during Áñez's interim government, during the so-called conciliation of the country, a "special entity of the Prosecutor's Office" was created to arrest those who, according to their perception, would be encouraging subversion. To do this, the State would have used article 123 of the Criminal Code to criminalize protesters who demanded justice for the deaths that occurred in the massacres of Sacaba and Senkata and also against rural and social movement leaders who complained about Morales's resignation and an alleged coup d'etat<sup>159</sup>. Also, after repealing Supreme Decree No. 4078, the Minister of Government, Arturo Murillo, used the term "hunt" several times to refer to the persecution of alleged subversive groups, describing the protesters as "narco-terrorists." According to public knowledge information, as a result, he announced the creation of an anti-terrorism group<sup>160</sup>.

126. In this regard, human rights defenders, staff of the Ombudsman's Office in La Paz and Cochabamba, and popular communicators have denounced attacks, threats, and intimidation<sup>161</sup> by Police and Youth Resistance Cochala (RJC) groups.

<sup>155</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>156</sup> Opinión. November 25, 2019. [Periodista Figueroa: Me asusté tanto que tuve que pedir perdón](#).

<sup>157</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>158</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>159</sup> Los Tiempos. November 17, 2019. [Gobierno creará un "aparato especial de la Fiscalía" para detener a legisladores que hagan subversión](#); HRW. November 19, 2019. [Bolivia: Gobierno interino adopta medidas abusivas](#); Telesur. December 18, 2019. [Bolivia: detenciones arbitrarias contra opositores a gobierno de facto](#).

<sup>160</sup> HRW. November 19, 2019. [Bolivia: Gobierno interino adopta medidas abusivas](#); Telesur. December 18, 2019. [Bolivia: detenciones arbitrarias contra opositores a gobierno de facto](#); "And whoever has any doubt about his performance with impunity take a look at this". Alex Anfruns' Twitter Account. Video Telesur. [November 24, 2019. 5:53 A.M.](#); América Economía. December 3, 2019. [Gobierno de Bolivia crea unidad especial para combatir actividades narcoterroristas](#).

<sup>161</sup> Los Tiempos. November 29, 2019. [Cox presenta una denuncia penal contra personas que bloquean la Defensoría del Pueblo](#); "We ask the @MindeGovernment @MinPresidencia to provide guarantees so that the @DPBoliviaOf continues with its activities and does not harm its work that mainly benefits vulnerable populations. A group of people prevents the entry of staff". Ombudsman's Office Twitter account. [November 7, 2019. 11:50 A.M.](#); La Razón. December 3, 2019. [Murillo anuncia que los narcoterroristas 'están escapando del país'](#).

127. It's important to note the detention of university students on November 21, within the framework of the funeral procession of the victims of the so-called Senkata massacre in La Paz, where the police made excessive use of force with the indiscriminate use of chemical agents and blows, to suppress the demonstration that carried the coffins of the victims. Among the several detainees was Alexandro Fernández, a student of the UMSA University Film and Audiovisual Production career. The incident happened while he was recording the march and was reprimanded by television reporters who handed him over to the Police<sup>162</sup>. The students would have been insulted, psychologically intimidated, and physically assaulted in detention, as well as threatened with being charged for sedition and terrorism.

128. This Office has received information about death threats and harassment against popular communicators, independent journalists, and activists who were documenting and covering the police repression situation in the country since November 15<sup>163</sup>.

129. On December 16, the correspondent of *La Izquierda Diario* of Argentina and Brazil, Carlos Cornejo, the plastic artist, Leonel Jurado, and the activist, Andrea Mamani were arrested when they placed posters for a Kermesse for the benefit of the wounded in Senkata. The arrest would have been carried out without due process and they would have been harassed by the Police. Mamani was released a few hours later and Cornejo and Jurado were detained for more than 24 hours on charges of alleged sedition and instigation to commit crimes<sup>164</sup>.

130. On December 19, journalists from *Los Tiempos* and *Opinión* denounced attacks by the Cochala Youth Resistance (RJC) group, who would have threatened with firearms anyone who filmed their attacks against social activists and movements while on vigil in the Cochabamba Departmental Assembly (ADC) that was preparing to elect its members. The RJC group would have surrounded those who participated in the vigil and threw eggs and water at them, expressing, among other qualifications, "go bathe, smelly", and would have psychologically assaulted those present. Journalists denounced physical aggressions and threats of a sexual nature, such as: "That ass is mine", "we are going to rape you", "the motel is already paid", "we are going to put a stick in you", "we know where you live", "we are going to kill you"<sup>165</sup>.

131. According to public information, on December 31, social network managers part of the Agency for Electronic Government and Information and Communication Technologies [*Agencia de Gobierno Electrónico y Tecnologías de Información y Comunicación*] (AGETIC) and hosts of the radio program "La Resistencia Radio", Orestes Sotomayor and Alejandra Salinas, were arrested and charged on charges of "improper use of influences" and "sedition." At that time the Bolivian Police announced that it was carrying out a "cyberpatrol"<sup>166</sup>.

132. This Office has received complaints about the investigative decision proposed by Senator Oscar Ortiz regarding the the *ATB* and *PAT* television channels, the morning show *La Razón*, and the Gravetal and ProVida companies, by which he asked the State Attorney General's Office the configuration of a commission of prosecutors, claiming that these companies would be linked to former President Morales and former Vice President Álvaro García Linera<sup>167</sup>.

133. On the other hand, on December 10, the interim Minister of Communication, Roxana Lizárraga, presented a bill with ambiguous and unclear articles on freedom of expression. This Office has noted that one of its articles establishes that the Ministry of Communication "will assume the necessary measures for the assignment and/or reallocation for "assigning or reallocating the radios of the original peoples - RPO's, within the framework of social inclusion to extend the right of access to information"<sup>168</sup>. Along these lines, the leader of the rural movement in the country, Roberto Rodolfo Machaca, informed that the 53 radios managed by native peoples and social organizations, would have suspended their newscasts until the interim government decided

<sup>162</sup> ANF. November 21, 2019. [Arrestan a estudiante de Cine de la UMSA que registraba la marcha de vecinos de Senkata](#); Red Uno. November 22, 2019. [Joven arrestado por documentar la marcha de vecinos de Senkata](#); La Razón. November 21, 2019. [Periodistas entregan a la Policía a un estudiante de Cine](#).

<sup>163</sup> Los Tiempos. December 2, 2019. [Una persona porta un arma presuntamente de fuego durante la salida de Pumari de la UMSA](#); Opinión. December 20, 2019. [Intimidación con arma a periodista durante vigilia por vocalías al TED](#); Chaski Clandestina. December 20, 2019. [De vigiliyas, agresiones y amenazas: Las calles de Cochabamba durante la elección de vocales departamentales](#).

<sup>164</sup> La Izquierda Diario. December 17, 2019. [Bolivia: corresponsal de La Izquierda Diario y artista de El Alto son acusados de sedición sin pruebas](#); Página Siete. December 16, 2019. [Jóvenes que colocaban afiches recordando hechos de Senkata, fueron aprehendidos](#).

<sup>165</sup> Los Tiempos. December 19, 2019. [Varios periodistas son víctimas de agresiones](#); Opinión. December 19, 2019. [Intimidación con arma a periodista durante vigilia por vocalías al TED](#); Chaski Clandestina. December 20, 2019. [De vigiliyas, agresiones y amenazas: Las calles de Cochabamba durante la elección de vocales departamentales](#).

<sup>166</sup> La Izquierda Diario. January 1, 2020. [Detienen a integrantes del programa de radio y la red de prensa digital "La Resistencia Bolivia"](#); El Deber. January 1, 2020. [Envían a la cárcel a 'guerrero digital' y Agetic encara auditorías internas](#); Los Tiempos. January 3, 2020. [Detención de funcionarios de Agetic abre auditorías a contratos en redes](#).

<sup>167</sup> Opinión. December 15, 2019. [Ortiz abre investigación sobre tres medios de comunicación](#); La Razón. December 14, 2019. [Denuncian conglomerado de empresas vinculadas a Morales: afirman que hay orden de apremio contra ejecutivo de ATB](#).

<sup>168</sup> ANF. December 10, 2019. [Gobierno presenta proyecto de ley para "recuperar" la libertad de expresión en Bolivia](#); Prensa Latina. December 14, 2019. [Cuestionan proyectos para cerrar radios comunitarias en Bolivia](#); Jubileo. December 18, 2019. [FCINA: Denunciamos intento de régimen golpista de acallar a radios comunitarias indígenas en Bolivia](#). La Razón. December 17, 2019. [Las 53 radios comunitarias suspenden informativos](#).

their future. The executive of the Central Obrera Boliviana (COB), Juan Carlos Huarachi, expressed his concern in this regard and stressed that these radios inform sectoral and regional issues<sup>169</sup>.

134. Principle 13 of the Declaration of Principles states that “the exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression”.

135. The Office of the Special Rapporteur has indicated that “the use of criminal law for the conduct of participants in a demonstration constitutes a serious restriction and with serious consequences for freedom of expression, and the rights of assembly, association, and political participation that [...] can only be used in a very exceptional way and is subject to a higher level of scrutiny”<sup>170</sup>.

136. It has also indicated that “the criminalization of persons who participate in public demonstrations, or who lead them, not only has an impact on the right to freedom of expression and assembly, but also serious and systemic effects on the exercise of the rights of freedom of association and political participation. In particular, criminalization generates a series of impacts on the free functioning and articulation of organizations, political parties, unions, networks, movements, or other groups to which the accused persons belong”<sup>171</sup>.

#### **D. Prior censorship, direct or indirect**

137. This Office has received complaints about pressures that newspaper staff in Bolivia would have received to condition certain coverage in favor of regional civic groups claiming that their editorial line is in “defense of democracy and a peaceful transition.” The communicators asked to keep their names in reserve to protect their sources, which would be threatened<sup>172</sup>.

138. According to publicly available information, the Vice Minister of Communication of former President Evo Morales, Leyla Medinacelli, would have communicated via telephone call with an editor of the newspaper *El Deber* to “ask for a headline.” The call came after the TSE announced the results of the 95% quick count, which would have suggested that there would be no second round in Bolivia. As reported by the same newspaper, among the allegations made by the former minister to change the headline, she would have indicated: “that the headline that spoke of a ‘second round’, had caused people to mobilize in the streets, thus she was ‘asking’ for ‘a headline that ‘demobilizes’ sectors”<sup>173</sup>.

139. On November 14, journalist and political analyst Carlos Valverde denounced intimidation by members of the Civic Committee of Santa Cruz, who allegedly would defend the interests of their President, Luis Fernando Camacho. Valverde said they would seek to intimidate him because of his criticism of the transitional government and his complaints against Camacho<sup>174</sup>.

140. On November 21, the *Telesur* television network denounced the blocking of its signal and on November 27, the same would happen with the Russian channel, *Actualidad RT*. These restrictions were made by private companies, such as Cotas, and also by the state company Entel. The above, presumably without any justification<sup>175</sup>.

141. On December 3, it was informed that the cartoonist of the newspaper *La Razón*, Alejandro Salazar, informed the directive of the media that given the harassment and intimidation of which he was being a victim, he had decided to stop publishing his cartoons, arguing that he did not have the conditions to continue doing his job<sup>176</sup>.

142. The Office of the Special Rapporteur reminds that Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. Additionally, principle 5 of the Declaration of Principles on Freedom of Expression enshrines that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to

<sup>169</sup> Proyecto Decreto Supremo S//N. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression. *La Razón*. 17 de Diciembre de 2019. [Las 53 radios comunitarias suspenden informativos](#).

<sup>170</sup> IACHR. [Protest and Human Rights](#). OEA/Ser.L/V/II. CIDH/RELE/INF.22/19. September 2019. Para. 185.

<sup>171</sup> IACHR. [Protest and Human Rights](#). OEA/Ser.L/V/II. CIDH/RELE/INF.22/19. September 2019. Para. 193.

<sup>172</sup> IACHR, Observation visit to Bolivia. Available in: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>173</sup> *El Deber*. October 25, 2019. [Viceministra pide un titular de portada en EL DEBER](#).

<sup>174</sup> Carlos Valverde en la Red/YouTube. November 14, 2019. [Carlos Valverde en la red/14 de noviembre de 2019](#).

<sup>175</sup> Telesur. November 21, 2019. [Cablera estatal Entel de Bolivia saca del aire a teleSUR](#); RT. November 27, 2019. [El operador Cotas anuncia el cese de la emisión de RT en Español en Bolivia](#); “From La Paz, Honor Court of the Federation of press workers, denounces silencing the @teleSURtv signal. Read the statement, we appreciate”. Patricia Villegas’s Twitter account. [November 22, 2019. 7:28 P.M.](#); Prensa Latina. November 30, 2019. [Bolivia: después del golpe, el cerco mediático](#).

<sup>176</sup> *La Razón*. December 3, 2019. [Al-Azar](#); Los Tiempos. December 3, 2019. [Al-Azar deja de publicar caricaturas en La Razón tras sufrir asedio](#).

the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression”.

### **E. Deliberated misinformation campaigns**

143. On the other hand, according to information provided to the IACHR, during the post-electoral political crisis in Bolivia, different violations of freedom of expression would have been identified through the dissemination of deliberate misinformation both during the national elections and after. Among them, the Bolivian Information Agency (ABI) would have disseminated photographs of armed groups and "paramilitaries" of Venezuela, to show the conflict and clashes in Bolivia<sup>177</sup>.

144. According to information received by this Office, fake Twitter accounts would have been used to position different political agendas, as well as on the statement of a Spanish researcher who published a report on the use of bots in support of the civic leader Luis Fernando Camacho and to the interim government of Añez. According to what he denounced, in different media, there would be around 68 thousand accounts created, which would have shared 14 hashtags such as: #BoliviaLibreyDemocratica, #NoHayGolpeEnBolivia, #EvoEsFraude, #BoliviaUnida, among others<sup>178</sup>.

145. The Office of the Special Rapporteur recalls that Article 13.2 of the American Convention provides for the possibility of establishing restrictions on freedom of thought and expression through the application of subsequent liabilities for the abusive exercise of this right. In this sense, although whoever spreads the false information knowing that it is false and causes damage may be subject to reprimand, it should preferably be through the exercise of the right of rectification or response or, in the event that the damage was serious, through civil liability remedies provided. Likewise, the Inter-American Court has indicated that Criminal Law is the most restrictive and severe means of establishing responsibilities regarding an unlawful conduct.

### **F. Internet and freedom of expression**

146. The Office of the Special Rapporteur has received complaints about violations of freedom of expression through the use of technologies during the post-electoral political crisis in Bolivia. According to the Bolivia Internet Foundation, 19 incidents of temporary restriction and blocking of media pages on Facebook and Twitter would have been identified. In addition, cases of Internet and calls outages by the state company Entel were reported after the Senkata massacres, among others<sup>179</sup>.

### **G. Acces to information**

147. Finally, journalists, relatives of victims, and wounded individuals have denounced the lack of access to public information during the transition of governments. In this regard, it was informed that the relatives of those injured in the Sacaba massacre would have been denied information at the Viedma Hospital in Cochabamba. In this line, it should be noted that the Official Gazette has stopped uploading the draft bills and decrees since November 14, making access to information on issues of public interest difficult<sup>180</sup>.

148. Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that “access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies”. Taking into account the principle of maximum disclosure, the law should guarantee the most effective and widest possible access to public information, and exceptions should not become the general rule in practice. In addition, the exceptions regime must be interpreted restrictively, and any doubt must be resolved by transparency and access.

### **H. Progress**

149. The Office of the Special Rapporteur has welcomed the enactment, on July 8, by former President Morales, of Law No. 1197, which would abolish the obligation of the media to disseminate, free of charge, the content of laws, as well as electoral propaganda in the country. In addition, it established that the free dissemination of informational, educational, preventive, and social content that is defined by the State should be a voluntary activity by the media, without any obligation. In this way, the norm would adhere to the

<sup>177</sup> ANF. November 6, 2019. [Patria Nueva y ABI publican fotos de Venezuela como si fueran del conflicto en Bolivia](#).

<sup>178</sup> Investigation by Julián Macías Tovar. November 22, 2019. [Golpe de Estado en RRSS](#). El Diario. November 21, 2019. [Una campaña coordinada con miles de nuevas cuentas de Twitter y bulos contra Morales lava la imagen internacional del golpe en Bolivia](#). El Desconcierto. November 21, 2019. [Uso de bots en redes sociales une las campañas comunicacionales de la derecha en Bolivia y Brasil](#).

<sup>179</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Reports. Available in: Archives of the Office of the Special Rapporteur for Freedom of Expression. Fundación Internet Bolivia. November, 2019. [Documento de denuncias de abusos y violaciones de Derechos Humanos a través del uso de tecnologías durante la crisis política en Bolivia, octubre-noviembre 2019](#).

<sup>180</sup> Chaskiclandestina. November 21, 2019. [Niegan información a familiares de heridos](#). IACHR, Office of the Special Rapporteur for Freedom of Expression. Reports. Available in: Archives of the Office of the Special Rapporteur for Freedom of Expression.

international standards on freedom of expression recommended to the State of Bolivia by the Office of the Special Rapporteur of the IACHR<sup>181</sup>, on several occasions.

## I. Attacks

150. From January to October 2019, in Bolivia the tendency of the last years was maintained, which showed that the majority of attacks on the press came from the State. On May 20, the journalist of *El Deber*, Guider Arancibia denounced intimidation by the Minister of Government, Carlos Romero, in the framework of the investigation of the case involving the former police chief, Gonzalo Medina and other former senior police officers with the alleged drug trafficker Pedro Montenegro Paz. After the reporting this government intimidation, the Ministry of Government attacked *El Deber* and asked the Prosecutor's Office to investigate the journalists of that newspaper for alleged links with Montenegro Paz<sup>182</sup>.

151. A report prepared for the Universal Periodic Review (UPR) by civil society organizations, released in May, documented 92 cases of attacks on freedom of expression in the country during 2018, and noted that 66% of such attacks would be "endorsed" by the State<sup>183</sup>.

152. According to publicly available information, the journalist of the *ATB* channel, Johana Tapia, was attacked on April 30 when she made a journalistic coverage of conflicts in the population of Tiquipaya between two neighborhood factions. A neighbor would have attacked Tapia with a stone and the alleged aggressor was arrested and brought before the Special Crime Fight Force (FELCC) of Tiquipaya, where he made his declaration and was later released<sup>184</sup>.

153. On May 12, the Technical Director of the Oriente Petrolero football club, Mauricio Soria, verbally assaulted a *Sport Tv Rights* television team and disconnected the cable from one of the cameras authorized to broadcast live the game in a tournament of the first division of Bolivian football, which his team lost<sup>185</sup>.

154. On May 18, the editor of the *Extra* newspaper, Yolanda Limpas, denounced an unjustified aggression and retention on the orders of the prosecutor José Fernando Riojas, during the coverage of the judicial process against police chiefs accused of being accomplices of Pedro Montenegro Paz, prosecuted for laundering of illicit profits and drug trafficking. On May 21, representatives of the Departmental Prosecutor's Office of Santa Cruz met with journalists covering the topic and members of the Cruceña Press Federation to discuss the incident and apologize to the journalist<sup>186</sup>.

155. On June 20, *Radio San Miguel* denounced that due to its journalistic and defense work in the less favored sectors of the Amazon region of Bolivia, it would be threatened by government authorities, especially after reporting irregular events in the voter registration in the municipalities of Beni and Pando<sup>187</sup>.

156. On June 28, the director of the private television network ATB-Cochabamba, Angélica Lazarte, requested protection to carry out journalistic work and denounced threats and intimidation from the national head of the Special Force for the Fight against Drug Trafficking (FELCN), Maximiliano Dávila, against the *ATB Network* for an alleged interest in distorting investigations against a businessman in Cochabamba<sup>188</sup>.

157. On July 15, the journalist of the newspaper *La Razón*, Guadalupe Tapia was attacked by public transportation drivers in La Paz while she was covering a protest. Tapia made the video recording of the aggressions that municipal guards endured after immobilizing protesters' vehicles due to the use of unauthorized spaces<sup>189</sup>.

158. On September 4, the Vice Minister of Internal Affairs, José Luis Quiroga, anticipated that the policeman who filmed the governor of Oruro, Víctor Hugo Vásquez, while intoxicated, would be subjected to a disciplinary process, for violating the internal regulations of the institution. Vásquez was filmed by a police officer on August

<sup>181</sup> Asamblea Legislativa. [Ley N° 1197](#). July 8, 2019; Página Siete. July 8, 2019. [Evo promulga la ley 1197 y pide a dueños de los medios ser más responsables con la verdad](#); Opinión. June 12, 2019. [Senado sanciona ley para suprimir difusión gratuita de normas y propaganda electoral](#); Correo del Sur. June 7, 2019. [Aprueban ley que suprime publicidad gratuita en leyes](#); Los Tiempos. June 9, 2019. [Evo promulga ley que elimina la propaganda gratuita para medios](#).

<sup>182</sup> Los Tiempos. 20 de Mayo de 2019. [Periodista denuncia amedrentamiento de Romero por investigar caso "narcopolicías"](#); ANF. 20 de Mayo de 2019. [Gobierno arremete contra periodistas de El Deber, pide investigación por nexos con Montenegro](#); *El Deber*. 20 de Mayo de 2019. [Denuncian amedrentamiento y exigen respeto a la prensa](#).

<sup>183</sup> Página Siete. May 22, 2019. [Informe: 66% de agresiones a la prensa provienen del Estado](#); *El Día*. May 20, 2019. [ANP registra 631 agresiones a la prensa](#).

<sup>184</sup> Opinión. May 2, 2019. [Periodista de ATB está grave y agresor es liberado](#); ATB Digital/YouTube. May 1, 2019. [La periodista de ATB, Joana Tapia, pide justicia por la agresión que sufrió en Tiquipaya](#).

<sup>185</sup> *El Deber*. May 14, 2019. [Mauricio Soria se desquitó con un camarógrafo tras la derrota de Oriente](#); Los Tiempos. May 13, 2019. [Mauricio Soria se molesta con un camarógrafo tras la derrota de Oriente](#).

<sup>186</sup> *El Diario*. May 22, 2019. [Fiscal Riojas agrede y retiene a periodista](#); *La Razón*. May 22, 2019. [Fiscalía pide disculpas y considera resuelto el 'impasse' con periodista de Extra](#).

<sup>187</sup> El Potosí. June 21, 2019. [ANP y APLP rechazan las amenazas en contra de Radio San Miguel](#); Brújula Digital. June 20, 2019. [Radio San Miguel de Riberalta denuncia amenaza del Gobierno a su "labor periodística"](#).

<sup>188</sup> ANP. June 28, 2019. [Canal de Tv pide garantías para el trabajo periodístico](#); Los Tiempos. June 28, 2019. [Canal de televisión pide garantías para el trabajo periodístico](#).

<sup>189</sup> *La Razón*. July 15, 2019. [Choferes agreden a guardias municipales y a una periodista de La Razón](#); Urgente. July 15, 2019. [La intolerancia marca la media jornada de protesta de los choferes](#).

24 in the city of Tarija, from the images the governor seemed to be in a drunken state, in an official vehicle that was driven by a chauffeur<sup>190</sup>.

159. On August 1, the journalist of the newspaper *El Deber*, Marco Chuquimia, reported having been threatened with a beating and intimidated by coca leaf growers related to the MAS official party, while carrying out journalistic coverage on a vigil started by the farmers<sup>191</sup>.

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

#### J. Stigmatizing statements

161. According to information received by this Office, on January 3, at the inauguration of the judicial year, the president of the Supreme Court of Justice (TSJ), justice Antonio Revilla, accused journalists and media of misrepresenting and manipulating the information to do activism on certain projects. Civil society organizations denounced the fact, but the highest justice maintained his position and indicated that he would not apologize to journalists for exercising his right to freedom of expression<sup>192</sup>.

162. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that with their statements they are not damaging the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, the media, and human rights organizations, and must pay attention to the context in which they express themselves to ensure that their expressions do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who intend to contribute to public deliberation through the expression and diffusion of their thought".<sup>193</sup>

#### K. Subsequent Liabilities

163. On January 3, Empresa Nacional de Telecomunicaciones SA (Entel) announced that it would initiate a criminal proceeding against the director of *Brújula Digital*, journalist Raúl Peñaranda, for the publication of a note on the hiring of security companies by the telephone company. On December 21, 2018, the media reported that Entel is bidding to make purchases and installation of equipment with security companies without requiring them to be legally recognized or have an operating license, as established by the law. Through a statement, the state company said the complaints would arise from the alleged lies and damage to the image of the company, not to mention the falsehood incurred in by the journalist. In response, civil society organizations rejected said statement and noted to the directors of the company, that the Printing Law is in full force in Bolivia, which establishes that alleged crimes committed by journalists are to be prosecuted by a special court, and not through the ordinary criminal instance<sup>194</sup>.

164. On April 17, the mayor of Bermejo, Delfor Burgos (MAS), publicly threatened to initiate a criminal proceeding against the journalist of *Radio Bermejo*, Gonzalo Rodríguez, for having revealed to the population a case of corruption for which he was formally charged and prosecuted. Mayor Burgos warned the journalist "to be careful"<sup>195</sup>.

165. According to public information, the head of news at *Radio San Miguel* in the town of Riberalta (Beni), Carmen Ruelas, was sued by the senator of the ruling party, Argene Simoni, for the alleged crime of "political harassment" after the dissemination of complaints on the allocation of municipal advertising to officials of an audiovisual media that transmits from the house of said legislator<sup>196</sup>.

166. On June 6, organizations of local and national press workers denounced that journalists Humberto Vacaflor and Douglas Romay would have been harassed and intimidated by public officials of the MAS party, who threatened them with criminal trials without taking into account the Printing Law in force in the country. Likewise, the National Press Association (ANP) of Bolivia questioned that judge Rubén Alavia started criminal

<sup>190</sup> ANF. September 6, 2019. [Viceministro afirma que amerita sanción disciplinaria al policía que filmó a Vásquez](#); Los Tiempos. September 6, 2019. [Viceministro considera que amerita sanción disciplinaria para policía que filmó al gobernador de Oruro en estado de ebriedad](#).

<sup>191</sup> ANP. August 1, 2019. [Cultivadores de hoja de coca amenazan a periodista](#); *El Deber*. No date. [Periodista de EL DEBER es agredido por cocaleros en el hospital de Adepoca](#).

<sup>192</sup> ANP. January 3, 2019. [Presidente del Tribunal Supremo de Justicia acusa a la prensa de manipular y tergiversar](#); Urgente. January 3, 2019. [El Presidente de la Suprema dice que no se disculpará y que criticó a la mala prensa](#).

<sup>193</sup> I/A Court H. R. *Case Ríos et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

<sup>194</sup> *Brújula Digital*. January 5, 2019. [ENTEL anuncia proceso penal contra periodista Raúl Peñaranda, director de Brújula Digital](#); ANP. January 15, 2019. [Exigen cese de juicio penal a periodista](#); Los Tiempos. January 3, 2019. [Entel anuncia proceso contra el periodista Raúl Peñaranda por nota de prensa](#).

<sup>195</sup> *El País*. April 18, 2019. [Delfor Burgos amenaza procesar a periodista que reveló su acusación penal](#); ANP. April 20, 2019. [ANP rechaza amenazas contra periodista](#).

<sup>196</sup> ANP. June 27, 2019 [Senadora oficialista demanda a jefa de noticias](#); Los Tiempos. June 22, 2019. [Senadora que acusa a radio tiene el patrimonio más alto](#).

proceedings against Romay for the alleged crimes of insult and slander against a Facebook user, when the Printing Law establishes that these facts are not to be prosecuted through the ordinary criminal instance, rather by a special court<sup>197</sup>.

167. The Inter-American Court has established, as regards the possible civil liability, that civil sentences regarding freedom of expression must be strictly proportioned so as not to cause a chilling effect on this freedom, since “the fear of a civil sanction, given the demand [...] of an extremely high civil reparation, can clearly be as or more intimidating and inhibiting for the exercise of freedom of expression as a criminal sanction, as long as it has the potential to compromise the personal and family life of who denounces a public official, with the obvious and disvaluable result of self-censorship, both for the affected individual and for other potential critics of the performance of a public servant”<sup>198</sup>.

#### **L. Source Confidentiality**

168. According to public information, the former general commander of the Police in Bolivia, Rómulo Delgado, demanded that the newspaper *Los Tiempos* disclose the source that delivered a recording that, after being disseminated in the media, resulted in the opening of an investigation to senior police officers for their alleged link to drug trafficking. Delgado's request would violate article 8 of the country's Printing Law, which states that “secrecy regarding printing is inviolable”<sup>199</sup>.

169. The Office of the Special Rapporteur recalls that principle 8 of the Declaration of Principles establishes that “every social communicator has the right to keep his/her source of information, notes, personal, and professional archives confidential.” Likewise, remember that Article 13.3 of the American Convention establishes that “the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” Principle 5 of the Declaration of Principles on Freedom of Expression of the IACHR states that “prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

#### **M. Censorship of journalistic material / Prior or indirect censorship**

170. On May 1, journalist Juan Pablo Guzmán left *Bolivisión's* “Hora 23” night program, after hosting it for a year and a half, denouncing government pressures in the journalistic exercise. Guzmán with 16 years in national journalism published a letter arguing that the informative agenda of some media in the country would be conditioned to give preference to the declarations of official authorities and not to journalistic equity, or the relevance of the information<sup>200</sup>.

171. The Office of the Special Rapporteur recalls that Article 13.2 of the American Convention states that the exercise of freedom of expression cannot be subject to prior censorship. In the same sense, Principle 5 of the Declaration of Principles provides that, “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

#### **N. Diversity and pluralism / Media concentration / Community broadcasting**

172. On May 1, journalist Erwin Valda announced the suspension of his program “Pares opuestos” which was broadcasted by *Imperial Radio Tv*, and attributed the decision to the pressures of the Municipal Government of Potosí, who he accused of conditioning advertising allocation to the media in exchange for an editorial line without criticism<sup>201</sup>.

<sup>197</sup> Hoy Bolivia. June 6, 2019. [Periodistas denuncian amedrentamiento](#); Página Siete. June 5, 2019. [ANPB rechaza decisión de un juez de iniciar juicio penal a periodista](#).

<sup>198</sup> I/A Court H. R. *Case of Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 27, 2009. Serie C No. 193, Para.129

<sup>199</sup> Los Tiempos. May 3, 2019. [Delgado exige que Los Tiempos revele fuente del audio](#); ANP. May 3, 2019. [ANP rechaza exigencia de vulnerar el secreto de imprenta](#); El Deber. May 3, 2019. [Excomandante Delgado exige a Los Tiempos revelar su fuente que filtró audio](#).

<sup>200</sup> Página Siete. 1 de mayo de 2019. [Juan Pablo Guzmán deja Bolivisión y denuncia que al oficialismo hay que “dejar hablar”](#). ANF. 2 de Mayo de 2019. [El periodista Guzmán deja Bolivisión y denuncia presiones del Gobierno](#).

<sup>201</sup> “@Erwin Valda is a journalist leaving Imperial radio station in Potosí due to government pressure. He denounced that due to his critical position to the administration of Mayor William Cervantes, the media does not receive political publicity. Read Valda's statement”. [ANF's Facebook account. May 2, 2019](#). Infobae. May 3, 2019. [La guerra de Evo Morales contra la prensa: periodistas dejan su trabajo por presiones del Gobierno](#).

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

#### **O. Freedom of Expression in Electoral Context**

174. In electoral processes, freedom of expression acquires a particular relevance, since in order for citizens to make a free and rational decision to choose between the different proposals of government, political parties, and candidates, it is essential they have as much information as possible, as well as with the freest circulation of ideas and opinions possible.

175. This Office has identified that, during the electoral process in Bolivia, there was not an existence of systematic episodes of direct prior censorship, notwithstanding the worrying the ban on the dissemination of the UMSA-Jubilee survey<sup>202</sup>. There was plurality of media both in the written press and in audiovisual services with diverse editorial and information lines. There was also legal recognition in the field of audiovisual communication services of the different sectors and methods of communication, existing in this sense state media, private commercial media, social community media, and rural indigenous peoples' media. The EOM/OAS Mission indicated that it would have confirmed the existence of independent or opposition media to government policies. In the same way, the circulation of ideas and information was generally free, highlighting that, in the mainstream media, whether in the written press or on radio or television, there is room for dissenting and oppositional voices to the government, informing without limits on the performance of acts of protest and opinions contrary to the management of the authorities. Also, it should be noted as positive measures to promote freedom of information in the electoral process and equal opportunities in media access, the norm that regulates the “Public Strengthening for Political Parties and Alliances” and free advertising.

176. Likewise, different media outlets reported problems in obtaining press permits and safe conduct to pass freely during election day<sup>203</sup>.

177. However, the EOM/OAS has observed certain problematic issues in the exercise of freedom of expression that are not new in the country but could have influenced the electoral process because they are potentially restrictive of the free movement of ideas, opinions, and information.

178. Among them are repeated threats and pressures on journalists and the media by government authorities, as well as stigmatizing statements. The repression of peaceful demonstrations and acts of protest. The absence of a clear legal framework that establishes objective criteria and equal opportunities in the distribution of government advertising. The abusive use by public authorities of advertising on government works, thereby conditioning the editorial and informative independence of the media. Difficulties in accessing public information caused by the lack of a legal norm that guarantees this right.

179. From the analysis on the state of the situation of freedom of expression and information in Bolivia carried out in the days prior to the electoral act, as well as the reception of opinions from actors linked to the government as well as to the opposition, as well as others that were independent from especially from the media and social organizations, the EOM / OAS concluded that these factors have influenced the electoral process by promoting a climate of disruption that inhibits the free movement of ideas and opinions as well as the right to seek, receive, and provide information. Factors that have the risk of altering the free decision of each citizen<sup>204</sup>.

<sup>202</sup> OAS. Report by the EOM. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>203</sup> ANF. 19 de Octubre de 2019. [ANP reporta problemas que tuvieron 3 medios en obtener permisos de circulación en elecciones.](#)

<sup>204</sup> OAS. Report by the EOM. [Preliminary Report of the Electoral Observation Mission in Bolivia.](#)



## 7. BRAZIL

180. The Office of the Special Rapporteur has documented during 2019 a context of hostility toward the exercise of journalism and the free functioning of the media in Brazil. Repeat statements by high authorities aimed at smearing journalists and the media undermine the role of the press. In a context of polarization of the media scene and the narrative in social networks, a stigmatizing discourse is reproduced towards media outlets and communicators who have disseminated information on his administration, accusing them of taking an oppositional role or of political bias. The statements and attacks against the press are particularly serious because they can heighten the risk of threats and violence against these professionals and impact the population's trust in journalism as an institution of democracy.

181. The Office of the Special Rapporteur also observes a variety of situations of threats against journalists in response to their work, and some of these episodes have involved the participation of individuals who say they are aligned with the government. Likewise, two murders and acts of violence against journalists for reasons presumably linked to their work have been documented. Also, the excessive use of force by the police in the context of demonstrations and protests persists in Brazil. The Office of the Special Rapporteur has taken note of acts of censorship, especially regarding artistic expression and productions on sexual identity, orientation, and diversity.

### A. Progress

182. In December 2018, the Cartilla Aristeu Guida da Silva International Standards for the Protection of the Human Rights of Journalists and Other Communicators were presented during the Third National Meeting of Technical Teams of the Program to Protect Human Rights Defenders, Communicators, and Environmentalists, in compliance with one of the IACHR's recommendations in the framework of the case of the May 1995 murder of journalist Aristeu Guida da Silva in the city of São Fidélis, Rio de Janeiro. The document was published by the Ministry of Human Rights in place at the time. Despite this important step forward, the Office of the Special Repertory takes note that according to the Inter-American Press Association (IAPA), this document has not been adequately disseminated among journalists and communicators subsequent to its publication.<sup>205</sup>

183. On May 8, the 12th Criminal Court of Justice of the State of São Paulo [*Tribunal de Justiça de São Paulo*] (TJSP) rejected an appeal seeking review of the acquittal of journalists Tatiana Merlino, Debora Prado, and Pedro Pomar in a process brought against them by the former secretary of health of São Paulo, Giovanni Guido Cerri, for the crime of defamation. According to the information available, the former secretary had brought the action over an article published in the magazine *Associação dos Docentes da USP* (Adusp), where Pedro Pomar is the editor, in May 2013. The article was bylined by Merlino and Prado. According to reports, the article described a situation in which the former secretary was involved that constituted a conflict of interest. The journalists have also been sued civilly by the former secretary, but that suit was rejected by the lower court and on appeal.<sup>206</sup>

184. On June 20, in response to a special appeal filed by the defense of photographer Alexandre Wagner—whose left eye was injured by the military police while he was covering a demonstration in 2000 in São Paulo—Supreme Federal Court Magistrate Marco Aurelio Mello recognized the general repercussion of the case, meaning that the decision in this trial will serve as a precedent for the cases currently pending on journalists injured during demonstrations and social protests. The Magistrate stated that "this is an issue that requires a ruling by the Supreme Court. It must be determined whether a case seeking redress of damages violates the right to exercise the profession of reporter in which the victim was found guilty solely [...] for covering a clash between the police and demonstrators [and] was struck by a rubber bullet fired by soldiers, resulting in permanent loss of sight."<sup>207</sup>

185. On July 25, Decree 9,937 was issued establishing the Program for the Protection of Human Rights Defenders, Social Communicators, and Environmentalists and revoking Decree 8,724 of April 27, 2016, establishing the program for the Protection of Human Rights Defenders and Its Deliberative Council<sup>208</sup>. Additionally, the new decree established the program's Deliberative Council within the Ministry of Women, Family, and Human Rights. The program's change had been announced previously, in September 2018, and individuals seeking protection under it no longer had to prove their activities had a human rights impact.<sup>209</sup> On

<sup>205</sup> Inter American Press Association (IAPA). [Impunity Brazil. 75th General Assembly. October 4 - 7](#). October 7, 2019; Inter American Press Association (IAPA). December 21, 2018. [IAPA pleased at document in Brazil on international standards for protection of journalists](#); Ministério dos Direitos Humanos. Cartilha Aristeu Guida da Silva - Padrões Internacionais de Proteção de Direitos Humanos de Jornalistas e de Outros Comunicadores e Comunicadoras. 2018. Available at: <https://media.sipiapa.org/adjuntos/185/documentos/001/825/0001825035.pdf>

<sup>206</sup> Artigo 19. May 9, 2019. [TJSP nega recurso e mantém absolvição de jornalistas em ação criminal](#).

<sup>207</sup> Supremo Tribunal Federal (STF). Plenário. [Repercussão Geral no Recurso Extraordinário 1.209.429 São Paulo](#). June 20, 2019; Artigo 19. 11 de julho. [Comunicadores feridos em manifestações: direitos e violações em jogo nas decisões dos casos de Sérgio Silva e Alex Silveira](#).

<sup>208</sup> Presidência da República. Secretaria General. [Decreto Nº 9.937](#). July, 24 2019.

<sup>209</sup> Portal Comuniquese. August 5, 2019. [Comunicadores e ambientalistas entram para programa de proteção do governo](#); Gazeta do Povo. July 25, 2019. [Bolsonaro cria programa de proteção a defensores de direitos humanos](#); Diário Oficial da União. [Decreto No. 9.937](#). July 24, 2019.

this point, this Office of the Special Rapporteur praises the Brazilian State for having included social communicators as a group protected specifically under the Protection Program and reminds the State that this mechanism must meet the needs of journalists and be broadly disseminated among media workers in order to provide those facing risk over their journalism activities with effective guarantees.

186. According to publicly available information, one of the individuals involved in the murder of radio host Jefferson Pureza on January 17, 2018, in the city of Edeia, Goiás, was convicted on October 4. According to reports, Leandro Cintra da Silva was sentenced to 14 years in prison for the crimes of corrupting minors and murder. Cintra da Silva was the owner of the space where the radio host's murder was allegedly negotiated. Also, one of the perpetrators used his cell phone to coordinate the murder with other individuals. Regarding the trials of the mastermind, a city council member, and the individual who introduced the perpetrators to the council member, they have not yet been scheduled but could take place in December 2019.<sup>210</sup>

## B. Murders

187. This year, the Office of the Special Rapporteur documented the murder of two journalists in Brazil. According to publicly-available information, journalist Romário Barros was murdered on June 18, shot three times as he was driving his car in the city of Maricá, Rio de Janeiro. Barros was the owner of a news portal called "Lei Seca Maricá." In a public statement, the Office of the Mayor of Maricá repudiated the journalist's murder and stated that the crime "[w]as an attack on freedom of expression." He stated that "an immediate investigation to identify and punish those responsible is urgently needed by the population of Maricá," reinforcing his commitment to freedom of the press and expression.<sup>211</sup> According to available information, this is the second murder of a journalist in the city. Earlier, on May 25, journalist Robson Giorno was murdered when he was gunned down in the doorway of his home, in the Boqueirão neighborhood, also in Maricá. The journalist was the founder and owner of the newspaper *O Maricá*, which focused on covering local political news. He had also expressed his intention to run for mayor of the municipality in the 2020 elections. According to reports, the police are investigating his murder and believe it was premeditated. They are working on two lines of investigation, one being political retaliation, and the other alleged retaliation for reports he published in his newspaper.<sup>212</sup>

188. Additionally, in April, the National Council of the Public Prosecution Service [*Conselho Nacional do Ministério Público*] (CNMP) published the report "*Violência contra comunicadores no Brasil: um retrato da apuração nos últimos 20 anos*," drafted for the *Estratégia Nacional de Justiça e Segurança Pública* (ENASP). It included data on violence against communicators in Brazil. The report documented 64 cases of journalists murdered between 1995 and 2018 for reasons allegedly related to their journalism work. According to the ENASP, "by providing analytical data, the document makes it possible to identify errors and omissions in the criminal prosecution of these crimes. Exposing the errors also enables the office of the prosecutor and other institutions—along with organized civil society—to correct them".<sup>213</sup>

189. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." Particularly in the case of crimes against journalists and social communicators, the IACHR has indicated that impunity contributes to self-censorship of the press.

## C. Attacks, arrests, threats, harassment, and stigmatizing statements perpetrated against journalists and media outlets.

190. In 2019, this Office of the Special Rapporteur was informed of the tendency of President Jair Bolsonaro and other public officials to issue statements stigmatizing of certain media outlets and journalists in order to discredit them. According to the *Federação Nacional dos Jornalistas* (FENAJ), 111 attacks on the media by

<sup>210</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 5, 2019. [Júri condena a 14 anos um dos envolvidos na morte de radialista no interior de Goiás](#); Associação Nacional de Jornais (ANJ). October 7, 2019. [Júri condena um dos envolvidos na morte do radialista Jefferson Pureza, no interior de Goiás](#); IACHR. Special Rapporteurship for Freedom of Expression. January 26, 2018. [Press Release R10/18 Office of the Special Rapporteur Condemns Murder of Two Journalists in Brazil and Urges the State to Investigate Connection to Journalistic Activity](#).

<sup>211</sup> G1. June 19, 2019. [Jornalista é morto a tiros em Maricá, no RJ](#); Associação Brasileira de Jornalismo Investigativo (Abraji). June 19, 2019. [Maricá: dois assassinatos de comunicadores em menos de 1 mês](#).

<sup>212</sup> G1. May 26, 2019. [Jornalista é morto na porta de casa em Maricá, RJ](#); Artigo 19. May 31, 2019. [#Alerta: Jornalista Robson Giorno é assassinado em Maricá \(RJ\)](#); UNESCO. June 4, 2019. [Director-General condemns murder of online journalist Robson Giorno in Brazil](#); Extra. May 27, 2019. [Dono de jornal em Maricá foi morto em emboscada, afirma delegada](#).

<sup>213</sup> Conselho Nacional do Ministério Público (CNMP). April 29, 2019. [CNMP lança relatório com o retrato da violência contra comunicadores no Brasil](#); Conselho Nacional do Ministério Público (CNMP) and Estratégia Nacional de Justiça e Segurança Pública (Enasp). [Violência contra comunicadores no Brasil: um retrato da apuração nos últimos 20 anos](#). April 2019.

President Bolsonaro were documented between January 1 and November 30. According to this federation, the attacks are a way for the president to "incite his followers to not trust the journalism work of the majority of outlets and professionals, mainly when they disseminate news that is critical of the government or that involves the Bolsonaro family."<sup>214</sup> The following are some of the cases reported to this Office of the Special Rapporteur during this year.

191. It was reported by media that journalistic work has faced restrictions during the presidential inauguration on January 1. On this specific point, Mônica Bergamo, a journalist with *Folha de São Paulo*, stated that "[c]onfined in the Congress for almost 6 hours, the journalists even had apples confiscated on suspicion they might throw them at Bolsonaro's head."<sup>215</sup> Additionally, on February 2, Luciano Ramos, a communicator with radio station *Caaporã FM*, in the state of Paraíba, was beaten as he was on his way to file a complaint at the police station for social media attacks on him. According to the information provided, the incident was the result of the communicator's criticism of and allegations against the administration of the city of Caaporã. Previously, in November 2018, Édouard França, also a communicator with this radio station, was subject to a similar attack.<sup>216</sup> It was also reported that journalist Leonardo Sakamoto of *UOL/Reporter Brazil*, reporter Natália Portinari of *Época*, and Isabela Palhares of *Estado de São Paulo* have also been subject to attacks on social media. According to the *Associação Brasileira de Jornalismo Investigativo* (ABRAJI), a number of journalists were accused of "producing and disseminating fake news, insults, threats of physical violence, invitations to exile, and even expressing wishes of death [...]. The catalysts could be the publication of a piece of reporting bylined by the professional, a question in a press conference, or contact with a source."<sup>217</sup>

192. On March 11, a journalist with *O Estado de São Paulo*, Constança Rezende, was accused by President Jair Bolsonaro of seeking his impeachment and of wanting to "ruin" the life of his son, Flávio Bolsonaro. On his Twitter account, the President alleged that the journalist "says she wants to ruin the life of Flávio Bolsonaro and seek the impeachment of President Jair Bolsonaro. She is the daughter of Chico Otavio, a professional with 'O Globo.' They want to take down the Administration with blackmail, disinformation, and leaks."<sup>218</sup> The message was accompanied by the audio of a conversation between the journalist and an unidentified individual. According to the information provided, the audio had truncated sentences and pauses, only select portions of it were published, and it contained no mention by the journalist of an "intent" to ruin the administration or the president.<sup>219</sup> The original publication for which the journalist was accused was posted in a blog produced by readers of French website Mediapart and was published on Brazilian website *Terça Livre*,<sup>220</sup> which, according to publicly available information, is run by activists close to the Bolsonaro family.<sup>221</sup> On March 11, Mediapart stated on its Twitter account that the news published in the "Mediapart club" that was the basis for the president's tweet was false.<sup>222</sup>

193. On March 16, the newspaper *O Estado de São Paulo* reported that there was a "defamation machine" operating in the country on social media, run "by *bolsonarista* and *olavista* groups on the most radical and dogmatic side of the so-called 'new right.'" The newspaper stated that as a result of these virtual attacks, a number of victims had locked their profiles or fallen silent regarding the issue originating the attacks against them. For example, it cited the case of journalist Constança Rezende, who had experienced virtual attacks on March 10, as well as the case of the newspaper itself, which had been the target of these "virtual militias" after publishing a report on the Rezende case showing that the statements had been doctored. *O Estado de São Paulo*

<sup>214</sup>Revista Forum. December 2, 2019. [Bolsonaro acumula 111 ataques à imprensa em seu primeiro ano de governo](#); Federação Nacional dos Jornalistas (FENAJ). December 2, 2019. [Ataques de Bolsonaro à imprensa já somam 111 ocorrências](#).

<sup>215</sup> "[c]onfined in Congress for almost six hours, even apples are confiscated from journalists suspected of potentially throwing them at Bolsonaro's head." Twitter account of Monica Bergamo. @monicabergamo. [January 1, 2019](#); Exame. January 1, 2019. [Sem banheiro ou água, jornalistas relatam restrições em posse de Bolsonaro](#); *Folha de São Paulo*. [January 1, 2019](#). [Um dia de cão](#); Associação Brasileira de Jornalismo Investigativo (Abraji). [January 1, 2019](#). [Abraji protesta contra limitações ao trabalho de jornalistas na cobertura da posse presidencial](#)

<sup>216</sup> Artigo 19. February 25, 2019. [Comunicadores da rádio Caaporã FM são alvo de ameaças, intimidações e violências na Paraíba](#).

<sup>217</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 9, 2019. [Ao tentar desqualificar repórter, ministro da Educação abre portas para ataques à profissional](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 7, 2019. [Jornalistas relatam agressões em redes sociais após publicar trabalhos](#).

<sup>218</sup> Estadão. March 10, 2019. [Site bolsonarista distorce 'entrevista' de repórter do Estadão e promove desinformação](#); *Folha de São Paulo*. March 10, 2018. [Bolsonaro divulga relato deturpado de conversa de jornalista](#); Lupa. March 10, 2019. [#Verificamos: É falso que repórter do Estadão tenha dito que pretende 'arruinar Flávio Bolsonaro e o governo'](#); The Guardian. March 11, 2019. [Bolsonaro under fire for smearing reporter who covered scandal involving his son](#).

<sup>219</sup> Estadão. March 10, 2019. [Site bolsonarista distorce 'entrevista' de repórter do Estadão e promove desinformação](#); *Folha de São Paulo*. March 10, 2018. [Bolsonaro divulga relato deturpado de conversa de jornalista](#); Lupa. March 10, 2019. [#Verificamos: É falso que repórter do Estadão tenha dito que pretende 'arruinar Flávio Bolsonaro e o governo'](#); The Guardian. March 11, 2019. [Bolsonaro under fire for smearing reporter who covered scandal involving his son](#).

<sup>220</sup>Terça Livre. No Date. [Jornalista do Estadão: a intenção é arruinar Flávio Bolsonaro e o governo](#).

<sup>221</sup>Lupa. March 10, 2019. [#Verificamos: É falso que repórter do Estadão tenha dito que pretende 'arruinar Flávio Bolsonaro e o governo'](#); Estadão. March 10, 2019. [Bolsonaro usa declaração falsa para atacar imprensa](#).

<sup>222</sup>Estadão. March 11, 2019. [Site francês diz que informações são falsas](#); The Intercept Brasil. March 11, 2019. [Jornal francês desmente Jair Bolsonaro e artigo de leitor que ataca jornalista do Estadão](#); "Mediapart sympathizes with journalist @constancarezend, a victim of threats. The information published in the 'Club de Mediapart', which served as the basis for the tweet of @jairbolsonaro, is false. The article is the author's responsibility and the blog is independent from the newspaper". Twitter account of Mediapart @Mediapart. [March 11, 2019](#).

said these "virtual militias" had tried to smear the newspaper with the hashtag #EstadoMentiu on Twitter. It also indicated that according to social media experts, the digital attacks were supported by robots.<sup>223</sup>

194. According to the information available, on April 22, the head of Brazilian website *Terça Livre*, Allan dos Santos, reported having received death threats. Fernanda Salles, who works for the website, was threatened with rape. According to the information available, journalists with *The Intercept Brazil* had also received offensive comments and threats from the same email that sent the threats to *Terça Livre*<sup>224</sup>. Other journalists who were allegedly threatened over their journalism work included: Adécio Piran, reporter and owner of *Folha do Progresso*, in the state of Pará, who was threatened and sent offensive comments following the publication on August 5 of a report entitled "Day of fire: Producers set the date for burning the region"<sup>225</sup>; radio host Ilton Santos de Morrinhos, in the state of Ceará, who has since 2017 has been subject to intimidation and threats in connection with his work on "É de Lascar," a program on community radio station *Freedom FM*, which aired complaints from the population and discussed issues related to public administration<sup>226</sup>; Carlos de Lannoy of *TV Globo*, who was threatened on social media after airing a report on an incident in which the Rio de Janeiro security forces fired more than 80 times into a family car, causing the death of one individual;<sup>227</sup> Juliana Dal Piva, reporter with magazine *Época*, who received a death threat following publication of her report on a movie supporting the dictatorship established in 1964 in Brazil.<sup>228</sup>

195. Also, on June 9, *The Intercept Brasil* began publishing a series of leaks exposing alleged irregularities in the *Lava Jato* anticorruption oppression. Immediately following the publication, journalist Glenn Greenwald began to receive insults, defamatory comments, and death threats. Also, with the hashtag #DeportaGreenwald, a viral campaign of harassment was conducted against the journalist, as well as against the media outlet he funds and edits, against his husband—federal congressman David Miranda—and against their children. Public authorities highlighted the allegedly illegal nature of the leaked material received by *The Intercept Brasil* from an anonymous source with the aim of disparaging or restricting freedom of the press.<sup>229</sup>

196. In the framework of the acts of harassment against journalist Glenn Greenwald, on June 9, Carlos Bolsonaro (councilmember for Rio de Janeiro) wrote on his Twitter account: "is it just me or is it only in Brazil that the media uses an illegal incursion into something private, ignoring the judicial invalidity and illegality, and doesn't mind sharing it with the only goal of burning down the Bolsonaro administration and benefiting the system? I think I've seen this one before."<sup>230</sup> The next day, his brother Eduardo Bolsonaro (Federal Deputy – São Paulo) stated: "Glenn Greenwald, formerly of CNN, was the spokesperson for Snowden for leaking everything he knew about confidential US data in the case known as WikiLeaks. Glenn also sold the idea abroad that the Dilma impeachment was a coup."<sup>231</sup>

197. Later, on June 13, deputy Carlos Jordy, of the governing party (PSL), said on his Twitter account that it would be ideal to call Glenn Greenwald to testify before Congress, but that it would only be possible through a CPI (Parliamentary Investigation Committee). "Independent of whether he comes before Congress, his case is already being investigated by the justice system. Mr. @gggreenwald, do not think you are an immortal beyond good and evil. You did activist journalism through a criminal act, making you an accomplice," he wrote. "Respect the country that hosts you, you cannot vilify our institutions and authorities by committing crimes against national security and think you won't be held criminally liable and DEPORTED," he added. On the same day, Jordy, who is also a federal deputy (PSL – Minas Gerais) posted a photo of Greenwald on Facebook titled "Enemy of Brazil" and accused him of "destroying *Lavajato*." He also included David Miranda and said both "are old acquaintances of the justice system."<sup>232</sup>

198. On June 25, Glenn Greenwald took part in a hearing of the Human Rights and Minorities Committee of the Chamber of Deputies in Brasília on the invitation of two of the committee's deputies. There, he stated that

<sup>223</sup> Estadão. [March 16, 2019. Rede bolsonarista 'jacobina' promove linchamento virtual até de aliados.](#)

<sup>224</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). April 22, 2019. [Ameaças contra Terça Livre são graves e devem ser investigadas;](#)

<sup>225</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). August 30, 2019. [Jornalista é alvo de ofensas e ameaças após publicar reportagem sobre Dia do Fogo;](#) O Globo. September 1, 2019. [ABI pede proteção a jornalista alvo de ameaças após reportar 'Dia do Fogo' no Pará.](#)

<sup>226</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). May 9, 2019. [Radialista do Ceará volta a receber ameaças de morte.](#)

<sup>227</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). April 8, 2019. [Jornalistas são ameaçados após veiculação de reportagens;](#) O Estado de São Paulo. April 8, 2019. [Repórter da Globo recebe ameaça após reportagem: 'sua família vai pagar'.](#)

<sup>228</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). April 8, 2019. [Jornalistas são ameaçados após veiculação de reportagens.](#)

<sup>229</sup> IACHR. July 1, 2019. [Press Release R164/19 Experts on freedom of expression of the IUN and the IACHR express their concern over death threats against journalist Glenn Greenwald, director of The Intercept Brasil, and his family;](#) Artigo 19. June 25, 2019. [ARTIGO 19 repudia ataques contra comunicadores do The Intercept Brasil;](#) Associação Brasileira de Jornalismo Investigativo (Abraji). June 19, 2019. [Abraji repudia ataques a Glenn Greenwald e equipe do Intercept.](#)

<sup>230</sup> "Is it my impression, or is it only in Brazil, that the press uses an illegal invasion of something private, ignoring judicial invalidity and illegality, but it does not mind to disclose, with the sole intention of burning the Bolsonaro government and favoring the system? I think I've seen this before!". Twitter account of Carlos Bolsonaro @CarlosBolsonaro. [June 9, 2019.](#)

<sup>231</sup> Glenn Greenwald, former CNN, was Snowden's spokesman to leak everything he knew about sensitive US data in the case known as Wiki Leaks. In addition, Glenn sold abroad the thesis that Dilma's impeachment was a coup". Twitter account of Eduardo Bolsonaro @BolsonaroSP. [June 10, 2019.](#)

<sup>232</sup> Pragmatismo Político. June 17, 2019. [Vice-líder de Bolsonaro pede deportação de Greenwald e fechamento do Intercept;](#) Twitter account of Carlos Jordy @carlosjordy. [June 13, 2019;](#) Brasil 247. June 13, 2019. [Deputado do PSL ameaça Glenn Greenwald: não pense que você é imortal.](#)

Minister Sergio Moro tried to intimidate and criminally pursue *The Intercept Brasil*.<sup>233</sup> During the hearing, Congresswoman Katia Sastre said "the one who should be tried, convicted, and imprisoned is the journalist."<sup>234</sup> Likewise, on July 11, Greenwald said during a public hearing in the Senate on the reporting on the conversations between a former judge and Minister Moro that the later creates a climate of fear among the media.<sup>235</sup> Additionally, on November 7, Greenwald was physically attacked by an extreme-right critic and sympathizer with President Jair Bolsonaro in a radio and television studio in São Paulo while on the air, presumably over personal disagreements.<sup>236</sup>

199. According to the information provided, on July 19, when questioned by foreign journalists about the protests against the participation of journalist Miriam Leitão of *Globo* in a book fair in the south of Brazil, President Jair Bolsonaro allegedly accused her of wanting to impose a dictatorship in Brazil through armed fight, indicating that she had been detained while joining the Araguaia Guerrillas, and that her stories on the abuse and torture she was subjected to during the military dictatorship were "lying drama." In a note, *TV Globo* expressed its support for the journalist and condemned the attacks on her. According to the information provided, the participation of Miriam and her husband, sociologist Sergio Abranches, in the fair was cancelled due to—among other things—a lack of security guarantees following the mobilization of protests against their participation by supporters of the president.<sup>237</sup> Additionally, according to the information provided, on July 20, when journalist Isadora Peron asked President Bolsonaro "[i]f the conflict with the northeast could stop the Social Security vote," he answered "For the love of God. If I called you ugly now, the world would come to an end. All the women would turn against me."<sup>238</sup>

200. Additionally, the Office of the Rapporteur was informed of an attack against communicator Elvis Xavier, who was tortured and shot three times in the city of Guarujá, São Paulo. According to the information, on September 16, the communicator had gone to the town of Vila Baiana, where he was beaten and shot three times. His father found him in agony after receiving a phone call telling him that Xavier had been murdered there. According to the information available, the communicator ran social media accounts through which he reported on irregularities in the municipality, and the attack could be related with the reports he was issuing.<sup>239</sup>

201. According to the information, on October 29, President Jair Bolsonaro threatened not to renew *TV Globo's* public concession, which expires in 2022. He did this after the station broadcast a report linking the president to the investigation of the murder of Marielle Franco, a councilmember assassinated in Rio de Janeiro in 2018. The president later said he had made no threats.<sup>240</sup> According to the information available, President Bolsonaro also threatened the advertisers of newspaper *Folha de São Paulo* and announced the federal government would cancel its subscriptions to that newspaper, saying it was "poisoning his government."<sup>241</sup> Also in October, Federal Deputy Daniel Silveira attacked journalist Guga Noblat in the Chamber of Deputies. According to the information provided, Silveira had thrown the journalist's cell phone to the ground, breaking it, and also threatened him after being asked by the journalist about certain of his actions<sup>242</sup>.

202. This Office recalls that, according to principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as

<sup>233</sup> Knight Center for Journalism in the Americas. June 26, 2019. [Journalist Glenn Greenwald tells congress that Minister Sergio Moro tries to intimidate and criminalize The Intercept Brasil](#); Câmara dos Deputados/YouTube. June 25, 2019. [Comissão de Direitos Humanos e Minorias - Audiência Pública - Convidado: - Sr. GLENN GREENWALD, jornalista fundador do jornal The Intercept. Requerimento nº 81/2019, de iniciativa dos Deputados Camilo Capiberibe, Carlos Veras, Márcio Jerry e Túlio Gadelha](#)

<sup>234</sup><sup>234</sup>The Washington Post. July 12, 2019. [Glenn Greenwald becomes focus of Brazil press freedom debate](#); Diário de Goiás. June 25, 2019. [Deputada pede prisão de Glenn Greenwald que rebate: "Falta evidências no seu discurso"](#); Telemundo Delmarva. July 12, 2019. [Libertad de prensa bajo la lupa en Brasil](#).

<sup>235</sup>*Folha de São Paulo*. July 11, 2019. [Glenn Greenwald diz no Senado que Moro cria clima de ameaça à imprensa](#); La Red 21. July 12, 2019. [Periodista de The Intercept reafirma su acusación a Sergio Moro en el Senado brasileño](#); Senado Noticias. July 11, 2019. [Moro está criando um clima de ameaça à imprensa, diz Glenn Greenwald](#).

<sup>236</sup> New York Times. November 25, 2019. [Glenn Greenwald: I Was Assaulted Live On Air. This Is Bolsonaro's Brazil](#); TheGuardian. November 7, 2019. [Rightwing columnist smacks journalist Glenn Greenwald on Brazil radio show](#).

<sup>237</sup> New York Times. November 25, 2019. [Glenn Greenwald: I Was Assaulted Live On Air. This Is Bolsonaro's Brazil](#); Associação Brasileira de Jornalismo Investigativo (Abraji). July 19, 2019. [Presidente usa desinformação para atacar jornalista](#); *Folha de São Paulo*. July 16, 2019. [Após protestos, feira do livro em SC cancela presença de Miriam Leitão](#); Artigo 19. July 23, 2019. [ARTIGO 19 repudia ataques às jornalistas Miriam Leitão e Isadora Peron](#); *O Globo*. July 19, 2019. [Bolsonaro usa informações falsas para atacar a jornalista Miriam Leitão](#).

<sup>238</sup> "I asked President Jair Bolsonaro if the controversy with the Northeast could not hinder the Social Security vote, since the Northeast caucus is strong. I heard this: "For God's sake, sure. If I call you ugly now, the world is over. All women will be against me". Twitter account of Isadora Peron @Isaperon. [July 20, 2019](#).

<sup>239</sup> G1. September 18, 2019. [Comunicador famoso por denúncias na web é torturado e baleado em SP; estado é gravíssimo](#); A Tribuna. September 17, 2019. [Pai socorre filho baleado após ligação anônima em morro de Guarujá](#); Metrôpoles. September 18, 2019. [Comunicador famoso por denúncias na internet é torturado e baleado](#).

<sup>240</sup> BCC News. November 1, 2019. [4 ataques \(e recuos\) da família Bolsonaro a instituições democráticas](#); UOL. October 31, 2019. [Bolsonaro diz que pode não renovar concessão da Globo, mas não é bem assim](#).

<sup>241</sup> *O Globo*. October 31, 2019. [Bolsonaro manda governo cancelar assinaturas do jornal 'Folha de S. Paulo'](#); BBC Brasil. November 1, 2019. [4 ataques \(e recuos\) da família Bolsonaro a instituições democráticas](#); *Folha de São Paulo*. October 31, 2019. [Leia a nota da Folha sobre o cancelamento de assinaturas anunciado por Bolsonaro](#).

<sup>242</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 17, 2019. [Deputado federal ataca jornalista na Câmara dos Deputados](#); Portal dos Jornalistas. No date. [Deputado Daniel Silveira \(PSL-RJ\) quebra celular de Guga Noblat](#).

well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

203. The IACHR recalls that public officials have a duty to ensure that their decisions are not damaging the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, the media, and organizations that defend human rights, and should address the context in which they are expressed to ensure that their expressions do not constitute, in the words of the Court, "forms of direct or indirect interference or injurious pressure on the rights of those who intend to contribute to public deliberation through the expression and dissemination of their thoughts"<sup>243</sup>.

#### D. Social protest

204. The Office of the Special Rapporteur observed that there continued to be alleged cases of the use of force by police during social protests in the country. The following are some of the cases reported to this Office of the Special Rapporteur during this year.

205. According to reports, on January 10, 16, and 22, protests organized by the *Movimento Passe Livre* where held against the increase in transportation fares in the state of São Paulo. In the protest on January 11, the use of surveillance tools by the Military Police—such as drones—was documented. Likewise, the Military Police who accompanied the demonstrators during the march launch teargas canisters at them.<sup>244</sup> Also, the organizations indicated that during the January 16 protest, in addition to the surveillance, the use of rubber bullets and teargas canisters to disperse the demonstrators was documented.<sup>245</sup> At least 14 people were detained, and the photojournalist Daniel Arroyo of *Ponte Jornalismo* was injured by a rubber bullet.<sup>246</sup> According to the information provided, the authorities did not provide medical assistance.<sup>247</sup> With regard to the protest held on January 22, at least two people were detained, one of them for using a mask during the protest.<sup>248</sup>

206. The Office of the Special Rapporteur was also informed that on January 19, the government of the state of São Paulo published Decree 64,074/2019<sup>249</sup> regulating Law 15,556, adopted in 2014, which, according to civil society organizations, included a series of unconstitutional provisions that were not compatible with the democratic process. These provisions include a requirement to give five days prior notice and the criminalization of the use of masks.<sup>250</sup> On the requirement to give five days prior notice, civil society organizations indicated that the Brazilian Constitution establishes that the right of assembly does not require authorization, requiring only that a competent authority be notified. In addition, regarding the criminalization of the use of masks, they argued that "using a mask is constitutional, as prohibiting anonymity should not be applied to the use of masks and protests, as doing so does not prevent identification of someone who has engaged in an illegal act. According to the decree, even individuals using gas masks and scarves to protect themselves from teargas could be arrested for the crime of disorderly conduct."<sup>251</sup> Civil society organizations also noted that "[t]he decree also equates legal objects with arms, banning the possession of objects such as sharp objects, sticks, and stones, equating them with firearms and bladed weapons." On March 25, this Office joined the United Nations Special Rapporteurs on the rights to freedom of peaceful assembly and of association;

<sup>243</sup> I/A Court H. R. *Case of Perozo et al Vs. Venezuela. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 195. Para. 151. See I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No.194. Para. 139.

<sup>244</sup> Communication on alleged acts of violence stemming from social protests held in January 2019 in São Paulo. Document dated on January 23, 2019, sent by Artigo 19 Brasil, Núcleo Especializado de Situação Carcerária da Defensoria Pública do Estado de São Paulo, Instituto Terra, Trabalho e Cidadania, Conectas Direitos Humanos, Instituto Brasileiro de Ciências Criminais, Conselho Estadual de Direitos da Pessoa Humana, Movimento Passe Livre. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Ponte Jornalismo. January 20, 2019. [Contra os 30 centavos de aumento da tarifa do transporte de SP, milhares vão as ruas](#); G1. January 10, 2018. [Grupo protesta contra aumento da tarifa dos transportes em SP](#).

<sup>245</sup>Ibid. Footnote 19.

<sup>246</sup>G1. January 16, 2019. [Protesto contra aumento da tarifa dos transportes em SP tem violência e detidos](#); Ponte Jornalismo. January 17, 2019. [Após PM balear repórter da Ponte, Doria diz que apoia liberdade de imprensa](#).

<sup>247</sup> Ponte Jornalismo. January 17, 2019. [Após PM balear repórter da Ponte, Doria diz que apoia liberdade de imprensa](#).

<sup>248</sup>Ponte Jornalismo. January 23, 2019. [Em protesto contra aumento da tarifa em SP, PM segue à risca o que chefe decretou](#).

<sup>249</sup> Assembleia Legislativa do Estado de São Paulo. [Decreto No. 64.074](#). January 18, 2019. Published in the Official Gazette of the State of São Paulo [on January 19, 2019](#).

<sup>250</sup> Article 2 and 5: Assembléia Legislativa do Estado de São Paulo. [Decreto No. 64.074](#). January 18, 2019. Published in the Official Gazette of the State of São Paulo [on January 19, 2019](#). Artigo 19. January 24, 2018. [Organizações denunciam decreto de São Paulo sobre protestos e atuação violenta das forças de segurança em organismos internacionais](#) Artigo 19 y otras organizaciones. [Carta dirigida a Mr. Clement Voule, IJM Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association](#). 23 de enero de 2019.

<sup>251</sup> Comunicación sobre presuntos hechos de violencia en el marco de las protestas sociales realizadas en enero de 2019 en São Paulo. Documento de fecha 23 de enero de 2019, enviado por Artigo 19 Brasil, Núcleo Especializado de Situação Carcerária da Defensoria Pública do Estado de São Paulo, Instituto Terra, Trabalho e Cidadania, Conectas Direitos Humanos, Instituto Brasileiro de Ciências Criminais, Conselho Estadual de Direitos da Pessoa Humana, Movimento Passe Livre. Disponible para consulta en: Archivos de la Relatoría Especial para la Libertad de Expresión.

and the situation of human rights defenders in sending a communication to the Brazilian State expressing his concerns over this decree.<sup>252</sup>

207. Additionally, in February, Congressman Célio Studart submitted a bill seeking to expand the concept of terrorist acts and amend the 2016 Antiterrorist Act. According to the information available, the proposed text would define the following as an act of terrorism: “orchestrating or organizing, from within the penitentiary system, or participating in, an attack, sabotage, attack on physical infrastructure and the functioning of means of communication or transportation, ports, airports, bus stations, hospitals, schools, etc.” According to the information available, the proposal was in response to the attacks on the state of Ceará toward the beginning of this year, organized by members of criminal gangs.<sup>253</sup>

208. Also, in May, in the framework of pro-government demonstrations, at least 12 press workers were attacked and harassed, according to information from the ABRAJI. The incidents took place in the cities of Curitiba, Belo Horizonte, Porto Alegre, Fortaleza, and São Paulo.<sup>254</sup> Meanwhile, during the demonstrations called for the general strike held on June 14 in São Paulo, indiscriminate use of less-lethal weapons was documented, along with the detention of at least 14 individuals.<sup>255</sup> More recently, on December 1, photographer Daniel Arroyo, of *Ponte*, was intimidated by military police officers, who tried to seize the photographs he had taken of a demonstration in São Paulo.<sup>256</sup>

209. Additionally, on June 12, the Supreme Court of Justice [*Superior Tribunal de Justiça*] (STJ) denied a motion filed by the defense of Sérgio Silva, finding that the basic requirements for the Court to consider the case were not met. Silva is a photographer and was shot in the left eye with a rubber bullet, causing him to lose his eye. According to available information, the rubber bullet was fired by the São Paulo Military Police during a demonstration held in June 2013. In response to this decision, in November, his defense filed for remedy before the Supreme Federal Court (STF).<sup>257</sup>

210. On July 18, during a demonstration of the Landless Rural Workers Movement (MST) in the city of Valinhos, São Paulo, several demonstrators were hit by a car traveling at high speed. One of those injured, an older adult named Luiz Ferreira da Costa, died of his injuries. Journalist Carlos Filipe, of *Radio Noroeste* and the *Coletivo Socializando Saberes*, was among the injured.<sup>258</sup>

211. According to publicly available information, in October, in response to the protests in Chile, President Jair Bolsonaro activated the Ministry of Defense to monitor for possible protests in Brazil similar to the ones happening in Chile. According to the information provided, he stated that should it be necessary, the Brazilian government would call on the country’s Armed Forces. In response, 30 civil society organizations asked for an explanation from President Bolsonaro through a letter sent to the Office of the Citizens Rights Ombudsperson [*Procuradoria dos Direitos do Cidadão*].<sup>259</sup> Elsewhere, his son, Deputy Eduardo Bolsonaro, answered a question related to the protests taking place in Chile during interview by saying that a “new AI-5” could be a possibility in the event of the “radicalization of the left” in Brazil. According to the information provided, President Jair Bolsonaro and a series of civil society organizations rejected that statement. Eduardo Bolsonaro then allegedly apologized for his statement and said there would not be a return of the AI-5.<sup>260</sup> In 1968, the AI-5 was used by the military dictatorship in Brazil to suspend constitutional guarantees, expand censorship of the arts and journalism, discredit the dictatorship’s opposition, and oppress society.<sup>261</sup>

212. The IACHR has reiterated that social protest is a fundamental tool for the work of defending human rights and is essential for critical political and social expression regarding the activities of the authorities. The

<sup>252</sup> United Nations. [Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of Association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights](#). March 25, 2019.

<sup>253</sup> Câmara dos Deputados. February 15, 2019. [Deputado propõe mudança na atual Lei Antiterrorismo para ampliar conceito de atos terroristas](#).

<sup>254</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). May 27, 2019. [Jornalistas são hostilizados e agredidos em manifestações pró-governo](#).

<sup>255</sup> Artigo 19. June 19, 2019. [ARTIGO 19 repudia violações ao direito de protesto e criminalização de manifestantes em greve geral](#); Brasil de Fato. June 14, 2019. [Greve Geral termina com mobilizações em 380 cidades contra a reforma da Previdência](#); Brasil de Fato. June 14, 2019. [Em São Paulo, 15 manifestantes são presos em ato pró-Greve Geral](#); El País. June 15, 2019. [Greve geral: acompanhe ao vivo as paralisações](#); UOL. June 15, 2019. [Polícia detém defensor público e mais 19 em ato contra a reforma em SP](#).

<sup>256</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). December 2, 2019. [PM paulista intimida fotógrafo e tenta apreender imagens; Ponte Jornalismo. December 2, 2019. Policiais tentam apreender imagens de fotógrafo da Ponte](#).

<sup>257</sup> Artigo 19. July 11, 2019. [Comunicadores feridos em manifestações: direitos e violações em jogo nas decisões dos casos de Sérgio Silva e Alex Silveira](#); Jota. December 10, 2019. [STF possui a última chance de reparação a Sergio Silva, fotógrafo atingido pela PM em 2013](#).

<sup>258</sup> Artigo 19. July 18, 2019. [#ALERTA: Atropelamento e morte de integrantes do MST em Valinhos é grave e demanda resposta urgente](#); Movimento dos Trabalhadores Rurais Sem Terra (MST). July 18, 2019. [Homem atropela e mata Sem Terra em Valinhos \(SP\)](#).

<sup>259</sup> Estadão. October 23, 2019. [Bolsonaro pede monitoramento para evitar protestos semelhantes aos do Chile](#); BCC News. October 28, 2019. [‘Devemos sempre nos preparar para o pior’, diz Bolsonaro sobre reflexos dos protestos do Chile no Brasil](#); Intervozes. October 29, 2019. [Organizações solicitam explicações de Bolsonaro sobre monitoramento de protestos](#).

<sup>260</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 31, 2019. [Abraji repudia defesa de “novo AI-5” por Eduardo Bolsonaro](#); BBC Brasil. October 31, 2019. [Eduardo Bolsonaro pode ser cassado por fala sobre AI-5? Entenda o que acontece agora](#); Veja. October 31, 2019. [Eduardo Bolsonaro pede desculpas por declaração sobre volta do AI-5](#).

<sup>261</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 31, 2019. [Abraji repudia defesa de “novo AI-5” por Eduardo Bolsonaro](#).

Commission has stated that “in principle, criminalization *per se* of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>262</sup> and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”<sup>263</sup> Likewise, the Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights of freedom of assembly and expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>264</sup>

### E. Direct and indirect censorship

213. This year, the Office of the Special Rapporteur was informed of alleged measures of censorship carried out in Brazil, especially with regard to diversity. Reports indicate that measures were taken with regard to public information, teaching materials in schools, books, and cultural activities like those carried out by the *Agência Nacional do Cinema* (ANCINE), which was established in 2001 and is responsible for supervising, promoting, and regulating the audiovisual and cinematographic market in Brazil. The following are some of the cases reported to this Office.

214. According to publicly available information, on January 29, 2019, journalist Ancelmo Gois, with the newspaper *O Globo*, published a column on the alleged censorship of a series of videos posted in the online channel of the National Institute of Education for the Deaf (INES). The complaint was filed by a student representative on the INES Board of Directors<sup>265</sup>. According to the information provided, the episodes do with issues considered “left-wing” or “progressive.”<sup>266</sup> In response, on January 30, Brazil’s Ministry of Education published a communiqué informing that the INES “[o]pened an investigation to collect all information on the unauthorized removal of some videos from its webpage and identify those responsible”. The INES director also made the decision to repost the videos that had been taken down on the website.<sup>267</sup>

215. It likewise stated that a preliminary investigation had found that the videos were removed from the website in April and November 2018, “Demonstrating that the column published by Anselmo Gois in the newspaper *O Globo* on January 29, 2019, is both false and malicious in attributing responsibility to Minister of Education Ricardo Vélez Rodríguez, who became the minister in January of this year.”<sup>268</sup> The communiqué also suggested that the journalist had been a KGB agent.<sup>269</sup> In response to the MEC communiqué, on January 30, the journalist published data demonstrating that the videos remained up until at least January 2, 2019. To prove it, he checked the Google cache, which shows previous versions of a page. It showed that, for example, as of January 2, the video on Marx was still up, and as of January 1, the video on Nietzsche was still up.<sup>270</sup>

216. The Office of the Special Rapporteur was informed that journalists and radio hosts with the *Empresa Brasileira de Comunicação* (EBC), a public federal entity, had protested on March 20, 2019, against the stance of *Agência Brasil* managers seeking to reduce coverage of the murder of Marielle Franco, a Rio de Janeiro Council

<sup>262</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>263</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. 139.

<sup>264</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>265</sup> *O Globo*. January 29, 2019. [Sob a aba de Vélez Rodríguez, Ines tira do ar vídeos sobre Marx, Engels e Nietzsche](#); Brasil 247. January 29, 2019. [Instituto para surdos vinculado ao MEC 'some' com vídeos ligados a esquerda](#).

<sup>266</sup> Ponte Jornalismo. 30 de enero de 2019. [Alunos denunciam censura no Instituto Nacional de Educação de Surdos](#)

<sup>267</sup> “The Instituto Nacional de Educação de Surdos (INES) has launched an investigation to obtain all information related to the unauthorized removal of some videos from its website and to assign the necessary responsibilities. The INES board also made the decision to re-insert the videos that were deleted on the website”. Twitter account of Ministry of Education @MEC.Comunicacao. [January 30, 2019](#); Agência Brasil. January 31, 2019. [Instituto de Educação de Surdos apura retirada de vídeos de site](#); Folha de S. Paulo. January 30, 2019. [TV pública para surdos exclui vídeos sobre esquerda e filósofos](#).

<sup>268</sup> “[w] hich shows that the note published in the column by Ancelmo Gois, in the newspaper *O Globo* on January 29, 2019, is both false and malicious, when it attributes responsibility to the Minister of Education, professor Ricardo Vélez Rodríguez, who only took over the Ministry. in January of this year”. Twitter account of Ministry of Education @MEC.Comunicacao. [January 30, 2019](#);

<sup>269</sup> Twitter account of Ministry of Education @MEC.Comunicacao. [January 30, 2019](#); Revista Forum. January 30, 2018. [Em nota oficial, Ministério da Educação chama jornalista d’O Globo de agente da KGB](#)

<sup>270</sup> *O Globo*. January 30, 2019. [MEC confirma censura e erra ao dizer que vídeos saíram do ar na gestão passada](#); Revista Forum. January 31, 2019. [Classificado como agente da KGB, Ancelmo Gois mostra dados que confirmam censura no MEC de Bolsonaro](#).



member assassinated in March 2018.<sup>271</sup> According to the information provided, the EBC said this stance “runs contrary to the editorial command of the enterprise to always take the path of journalistic best practices. Its professionals must cover all issues on the national agenda, including the Marielle case, reporting the facts of the news day by day.”<sup>272</sup> Likewise, in March, in an open letter, the entities comprising the National Human Rights Council rejected the alleged decision by EBC leadership to prohibit the use of the words “dictatorship” and “coup” to describe the military coup of 1964 and the civilian-military dictatorship that followed. According to the letter, it was affecting the news items written by the media outlet’s journalists, whose writing was being censored by their bosses.<sup>273</sup>

217. This Office was also informed that on April 25, the president of financial institution Banco do Brasil (BB) fired its marketing director and pulled an advertisement that showed racial and sexual diversity, allegedly at the request of President Jair Bolsonaro.<sup>274</sup> According to the information available, the bank’s media advisor said that “after evaluating the video, the president of Banco do Brasil concluded that it was missing other profiles of young people that the Bank seeks to reach with its advertisements.”<sup>275</sup> Regarding this, President Bolsonaro said “Who selects and appoints the president of the BB, isn’t it me? I don’t need to say anything else then. The approach has changed, the masses want respect for family, nobody’s going after any minority. And we don’t want public money to be used this way. It isn’t my approach. You all know it isn’t my approach.”<sup>276</sup> In response, on May 9, the Federal Public Prosecutor of Rio Grande do Sul brought a civil action seeking for the advertisement to be put back on the air.<sup>277</sup>

218. In addition, according to publicly available information, in June, the anthropologist, teacher, and university researcher Debora Diniz was blocked on Twitter by Education Minister Abraham Weintraub following three tweets she issued about the minister. According to the information provided, as a result, Diniz filed suit in July before the Superior Court of Justice [Superior Tribunal de Justiça], asking to be unblocked. The request was dismissed on September 18 by the presiding magistrate, who found that a public authority blocking someone on Twitter is not an “act of authority.” According to the available information, she appealed this ruling.<sup>278</sup> Previously, in February, it was reported that a number of environmentalist NGOs—including the profile of the head of Greenpeace and the profile of the NGO Observatório do Clima—had been blocked on Twitter by the Minister of the Environment, Ricardo Salles.<sup>279</sup>

219. Also, regarding ANCINE, on July 19, President Bolsonaro declared that ANCINE “will have a filter. Because it is a federal agency, if it cannot have a filter, we will shut it down. We will privatize it, transfer it, or shut it down.” According to the report, when asked what “filter” he wanted to put in place, he answered “cultural.”<sup>280</sup> This was criticized by professionals in this area, who said such a “filter” could amount to censorship.<sup>281</sup> Additionally, on August 20, the program for providing public financing for series addressing gender and sexual diversity on public television channels was suspended with Decree 1,576<sup>282</sup>. According to the order, the measure was the result of a need to change the members of the Sectoral Fund Management Committee

<sup>271</sup>Knight Center for Journalism in the Americas. March 21, 2018. [Journalists from Brazilian public media protest against restriction of coverage of Marielle Franco’s murder](#); O Globo. March 20, 2019. [Jornalistas da EBC são orientados para reduzir cobertura da morte de Marielle](#); Sindicato dos Jornalistas do Distrito Federal. March 20, 2019. [Nota: o jornalismo sequestrado na EBC](#).

<sup>272</sup>Portal Comuniquê-se. March 20, 2019. [Censura? Sindicatos denunciam veto da EBC na cobertura do caso Marielle Franco](#); O Globo. March 20, 2019. [Jornalistas da EBC são orientados para reduzir cobertura da morte de Marielle](#).

<sup>273</sup>Instituto Vladimir Herzog. March 29, 2019. [Nota pública: Contra a censura na EBC: por memória, verdade e justiça](#); Intervezes. March 29, 2019. [Na tentativa de reescrever a história, EBC censura “ditadura” e “golpe” em reportagens](#); Sindicato dos Jornalistas do DF. September 26, 2019. [Sindicato divulga minimanual para combater a censura na EBC](#); Actualidad. October 7, 2019. [Así operan la censura y los recortes de Bolsonaro contra la producción audiovisual en Brasil](#).

<sup>274</sup>El Espectador. April 26, 2019. [Discriminação: retiram anúncio que mostrava diversidade racial e sexual por ordem de Jair Bolsonaro](#); Folha de São Paulo. April 25, 2019. [Presidente do BB atende Bolsonaro, demite diretor e tira do ar comercial com jovens ‘descolados’](#); G1. April 25, 2019. [BB tira do ar propaganda com jovem negra careca, homens de cabelo rosa e no salão de beleza](#); El Observador. May 6, 2019. [Bolsonaro censurou comercial que mostrava diversidade racial e sexual](#).

<sup>275</sup>G1. April 25, 2019. [BB tira do ar propaganda com jovem negra careca, homens de cabelo rosa e no salão de beleza](#); BBC News. April 27, 2019. [Esquerda tentou empoderar minorias e caracterizar cidadão ‘normal’ como exceção, diz presidente do BB](#).

<sup>276</sup>BBC News. April 27, 2019. [Esquerda tentou empoderar minorias e caracterizar cidadão ‘normal’ como exceção, diz presidente do BB](#); Folha de São Paulo. April 27, 2019. [Bolsonaro diz que não permitirá propaganda de estatal que não siga sua linha](#).

<sup>277</sup>G1. May 9, 2019. [MPF do RS ajuíza ação para que comercial do BB seja novamente veiculado](#); Consultor Jurídico (Conjur). May 9, 2019. [MPF ajuíza ação para que comercial censurado do BB seja novamente veiculado](#).

<sup>278</sup>“Education Minister Abraham Weint censored my voice. Censorship does not go well with education: either he would report me to Twitter for bad manners (not the case), or he would face a debate. His chickening out is proof of his discomfort. I promise that as of today I will comment on each of the minister’s ridiculous posts”. Twitter account of Debora Diniz @Debora\_D\_Diniz. [June 28, 2019](#); Época. June 28, 2019. [Opinião | Weintraub mostra em Twitter que desconhece liturgia do cargo](#); El País. July 6, 2019. [Caluna - Por que contestar um bloqueio de Twitter na Justiça?](#); Artigo 19. October 18, 2019. [Debora Diniz recorre na justiça contra Weintraub para suspender bloqueio no Twitter](#); Época. July 4, 2019. [Advogadas vão à Justiça para que Weintraub desbloqueie professora no Twitter](#).

<sup>279</sup>O Sul. February 4, 2019. [O ministro do Meio Ambiente bloqueou ONGs do setor em sua conta oficial no Twitter](#); Terra. February 4, 2019. [Ministro do Meio Ambiente bloqueia ONGs ambientais nas redes](#).

<sup>280</sup>El País. July 25, 2019. [Bolsonaro propone un filtro moral para el cine brasileño](#); G1. July 19, 2019. [‘Se não puder ter filtro, nós extinguiremos a Ancine’, diz Bolsonaro](#).

<sup>281</sup>G1. July 19, 2019. [‘Se não puder ter filtro, nós extinguiremos a Ancine’, diz Bolsonaro](#); Folha de São Paulo. August 29, 2019. [Existe censura as producoes culturais no Brasil?](#); O Povo online. July 21, 2019. [Cinema brasileiro em risco?](#).

<sup>282</sup>Diário Oficial Da União. [Portaria nº 1.576](#). August 20, 2019.

(CGFSA). It also indicated that after doing so, the criteria and guidelines for application of these resources would be revised.<sup>283</sup> The works affected included “Afronte”, “Transversais,” “Religare queer,” and “Reverse Sex,” which are on the preliminary list of public beneficiaries published on March 19 and were criticized by President Bolsonaro on August 15.<sup>284</sup> At that time, President Bolsonaro said “Look at the names of some of these, there are dozens of them. A movie called *Traverse*. Look what it’s about: dreams and realizations of five transgender persons living in (the state of) Ceará. We were able to abort this mission.” He likewise stated that this was not censorship, and “if anyone else wants to pay for it, if the private sector would like to make the movie *Bruna Surfistinha* [2011 movie telling the real story of a middle-class teen girl who decided to become a prostitute], feel free. We will not interfere.”<sup>285</sup>

220. According to the information available, Culture Secretary José Henrique Pires quit after the call for submissions was suspended and said “[i]t was clear that I part ways with the administration on freedom of expression. I don’t agree that culture can be filtered. Therefore, because of this clash, I prefer to step down.”<sup>286</sup> The measure was also rejected by the directors of audiovisual works who saw the suspension as an act of censorship by the government.<sup>287</sup> Also, the Ministry of the Citizenry—which the Secretary of Culture was under after the administration’s decision to eliminate the Ministry of Culture—issued a communiqué stating that Pires had never held opinions conflicting with the administration’s directives.<sup>288</sup> This Office takes note that in October, in response to a civil public action filed by the Federal Public Prosecutor in Rio de Janeiro, the Federal System of Justice granted an injunction [*liminar*] ordering the ANCINE to relaunch the call for submissions [*edital*] of the financing program. This decision was later upheld by the Regional Federal Tribunal of the Second Region.<sup>289</sup>

221. In September, during the *Bienal do Livro* held in Rio de Janeiro, its mayor tried to remove the comic “Vengadores: La cruzada de los niños,” in which two male superheroes are lovers and kiss. According to the information provided, the mayor concluded that the content was “inappropriate,” and therefore, ordered it removed, and also ordered a group of municipal inspectors to seek out and report back on other titles addressing LGBTI and sexual issues. According to the information provided, as of September 6, the book had sold out. That same day, municipal inspectors went to the Bienal, but said they could not find any book that was inappropriate or violated the law. According to the information provided, following the filing of judicial remedies by both sides—the Bienal and the Office of the Mayor—the Supreme Federal Tribunal (SFT) put an end to the dispute with a decision on September 8 in which its president, José Dias Toffoli, granted the request of the Ombudsperson General of the Republic and struck down the injunction of the President of the Court of Justice of Rio de Janeiro allowing the measures carried out by the Office of the Mayor of Rio de Janeiro.<sup>290</sup>

222. Also during September, in Porto Alegre, an exhibit with 36 cartoons critical of President Jair Bolsonaro and Justice Minister Sérgio Moro was removed from the Municipal Chamber. The removal took place the day after the exhibit was installed and was justified on the grounds that it was “offensive.” According to the information provided, the council member who had proposed the exhibit viewed this as a measure of censorship. On September 16, the exhibit was reopened following an injunction [*liminar*] granted by courts on September 12 ordering the comics be replaced at the same location for the 12 days the exhibit was to have lasted. In his

<sup>283</sup> El Diario. October 10, 2019. [Los Tribunales bloquean el intento de censura de Bolsonaro a la cultura LGTBI](#); CNN Chile. August 21, 2019. [Gobierno de Bolsonaro suspendió apoyo financiero estatal a contenidos LGTBIQ+ en la TV pública](#); Twitter account of Jair M. Bolsonaro @jairbolsonaro. August 21, 2019.

<sup>284</sup> Actualidad. October 7, 2019. [Así operan la censura y los recortes de Bolsonaro contra la producción audiovisual en Brasil](#); Infobae. August 21, 2019. [Jair Bolsonaro suspendió el financiamiento público para series de TV con temática LGBT](#); El Confidencial. August 22, 2019. [Bolsonaro suspende los fondos públicos estatales destinados a películas LGTBI](#); Correio Braziliense. August 21, 2019. [Diretores criticam a suspensão de edital da Ancine: "Censura"](#); G1. August 21, 2019. [Governo Bolsonaro suspende edital com séries de temas LGBT, após críticas do presidente](#); El Diario. October 10, 2019. [Los Tribunales bloquean el intento de censura de Bolsonaro a la cultura LGTBI](#); Empresa Brasil de Comunicação (EBC). Resultado Preliminar da Fase dos classificados para fase de decisão de investimento. March 19, 2019. Available at: <http://www.brde.com.br/wp-content/uploads/2019/03/Resultado-Preliminar-dos-Classificados-para-Decis%C3%A3o-de-Investimento-versao-atual-EBC.pdf>

<sup>285</sup> Folha de São Paulo. August 16, 2019. [Bolsonaro diz que 'garimpou' e vetou filmes com temática LGBT](#); Huffpost Brasil. August 20, 2019 (updated on September 4, 2019). [Estas são as séries com temática LGBT que Bolsonaro 'garimpou' de edital da Ancine](#).

<sup>286</sup> Infobae. August 21, 2019. [Jair Bolsonaro suspendió el financiamiento público para series de TV con temática LGBT](#); Folha de São Paulo. August 21, 2019. [Secretário especial da Cultura deixa cargo e diz que governo tenta impor censura](#); Clarín. August 21, 2019. [Brasil: renunció el Secretario de Cultura y criticó duramente las "políticas de censura" de Jair Bolsonaro](#).

<sup>287</sup> Huffpost Brasil. August 20, 2019. [Estas são as séries com temática LGBT que Bolsonaro 'garimpou' de edital da Ancine](#); Actualidad. October 7, 2019. [Así operan la censura y los recortes de Bolsonaro contra la producción audiovisual en Brasil](#).

<sup>288</sup> Fórum Permanente. No date. [Nota à Imprensa do Ministério da Cidadania sobre a demissão de Henrique Pires, ex-Secretário de Cultura](#); G1. August 21, 2019. [Secretário de Cultura deixa cargo após governo suspender edital com séries sobre temas LGBT](#).

<sup>289</sup> BBC. November 2, 2019. [Como o cancelamento de peças, filmes e mostras deve opor artistas e governo na Justiça](#); G1. October 7, 2019. [Justiça Federal no RJ suspende portaria do governo Bolsonaro que impedia conclusão de edital da Ancine para produções LGBT](#); Consultor Jurídico (Conjur) October 11, 2019. [TRF-2 nega recurso da União e mantém edital da Ancine com projetos LGBT](#); Tribunal Regional Federal da 2ª Região. Agravo de Instrumento No. 5009199-02.2019.4.02.0000/RJ. October 11, 2019. Available at: <https://www.conjur.com.br/dl/trf-nega-recurso-uniao-mantem-edital.pdf>

<sup>290</sup> France 24. October 7, 2019. [La cultura en Brasil resiste a la censura de la era Bolsonaro](#); G1. September 5, 2019. [Crivella pede para recolher livro dos Vingadores vendido na Bienal](#); El País. September 9, 2019. [STF proíbe censura de livros no Rio e dá recado contra discriminação](#); BBC News. September 10, 2019. [Deveria contratar prefeito do Rio para promover meu próximo livro, diz ilustrador de HQ censurada por Crivella](#).

decision, the judge stated that "in the specific case of the comics, although they are of course humorous in nature, their political and ideological subject matters are essential and can never be regulated by a legal or ethical provision, as interpretation thereof will always be biased, political, or ideological, and therefore subjective."<sup>291</sup>

223. Additionally, on October 5, President Jair Bolsonaro rejected the idea that he was promoting a type of cultural "censorship." According to the information provided, he stated that "we won't go after anyone, but Brazil has changed. We will no longer see public money supporting certain types of works. This is not censorship. It is the preservation of Christian values, treating our youth with respect, recognizing the family as a unit that must be healthy for the good of all. This is our stance."<sup>292</sup> On October 4, newspaper *Folha de São Paulo* published that financial institution Caixa Econômica Federal, which includes the Caixa Cultural, had established a system of "prior restraint" of cultural projects. Regarding this, it was reported that internal reports were required to describe the conduct of the producer and the artist on social media, possible points of conflict with the Caixa's image, etc. These reports were to be analyzed by the Secretary of Communication and the Bank Superintendency in Brasília. The newspaper indicated that it was in this context that at least three stage plays, a lecture series, and a movie screening had been suspended. Regarding these allegations, *Folha de São Paulo* reported that the financial institution said, among other things, that the system for selecting projects "considered technical aspects such as the quality of the project and the counterparty funding offered in sponsorship, without restrictions as to subject."<sup>293</sup>

224. [Through its \*Proyecto Ctrl+X\*, which monitors legal attempts to remove online content](#), ABRAJI documented in November three attempts at prior restraint through judicial decisions. For example, it reported that a judge of the Second Criminal Court of Varginha (MG) ordered communicator Juliano Rodriguez to remove videos from his social media accounts mentioning a judge from that city. Accord to the information received, in his decision granting the injunction [*liminar*], dated November 5, the judge prohibited the communicator from "committing new crimes hidden (...) from public authorities and individuals through any medium, either written or on video."<sup>294</sup> Previously, in July, civil society organizations reported that journalist Ricardo Antunes, who was writing about a family conflict involving Restaurante Leite, known as the oldest in Brazil, was prohibited in May by the Court of Justice of Pernambuco [*Tribunal de Justiça*] (TJPE) from mentioning the future of the case on the grounds that the publications would affect "the honor, good name, and reputation [of the family members involved in the conflict] before society and would offend the right to preservation of family image." The decision also awarded the journalist to take down the posts on the case he had published on social media and on his blog. The injunction [*liminar*] was granted in the framework of a lawsuit brought against the journalist by the family members who currently own a restaurant and are involved in the conflict that was the subject of the posts.<sup>295</sup>

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

## F. Subsequent liability

226. The Office of the Special Rapporteur was informed that Brazilian comedian Danilo Gentili was convicted of the crime of defamation against federal deputy Maria do Rosário for having offended her and sentenced to six months and 28 days in a minimum security prison. Appeal of this decision is pending.<sup>296</sup> Regarding this case, President Jair Bolsonaro stated on his Twitter account: "I stand in solidarity with host and comedian @DaniloGentil and his exercise of his right to freedom of expression and his profession of which I myself am sometimes the target, but I understand that he tells jokes and this is part of the game, something that

<sup>291</sup> *Folha de São Paulo*. September 4, 2019. [Câmara dos Vereadores censura exposição de charges críticas a Bolsonaro em Porto Alegre](#); Sul 21. September 16, 2019. [Após sofrer censura, exposição com cartuns sobre Bolsonaro é reinaugurada na Câmara](#); Jornal do Comércio. September 12, 2019. [Justiça determina volta de exposição de charges na Câmara de Vereadores](#); Tribunal de Justiça do Estado do Rio Grande do Sul. 3ª Vara da Fazenda Pública – Porto Alegre. Processo No. 9065657-04.2019.8.21.0001. September 12, 2019. Available at: <https://migalhas.com.br/arquivos/2019/9/art20190913-05.pdf>

<sup>292</sup> *Folha de São Paulo*. October 5, 2019. [Bolsonaro nega praticar censura, mas defende valores cristãos na cultura](#); France 24. October 7, 2019. [La cultura en Brasil resiste a la censura de la era Bolsonaro](#).

<sup>293</sup> *Folha de São Paulo*. October 4, 2019. [Caixa Econômica cria sistema de censura prévia a projetos de seus centros culturais](#).

<sup>294</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). December 2, 2019. [Censura prévia aparece em pelo menos três decisões judiciais só em novembro](#).

<sup>295</sup> Artigo 19. July 16, 2019. [Organizações repudiam decisão do TJPE que determinou remoção de conteúdo de blog e proibiu publicações futuras](#); Portal de Prefeitura. May 28, 2019. [Associação de Imprensa de Pernambuco divulga nota contra censura ao Blog do Ricardo Antunes](#) y [nota oficial](#).

<sup>296</sup> *Folha de São Paulo*. April 10, 2019. [Danilo Gentil é condenado por injúria contra deputada Maria do Rosário](#); Ponte. April 10, 2019. [Danilo Gentili é condenado por injúria machista à deputada Maria do Rosário](#); The Guardian. April 11, 2019. [Brazilian comedian gets jail sentence for video attacking leftwing politician](#); Justiça Federal. 1a Subseção Judiciária de São Paulo. Ação Penal Privada No. 0008725-44.2017.403.6181. April 10, 2019. Available at: <https://www.conjur.com.br/dl/danilo-gentili-condenado-prisao-injuria.pdf>

unfortunately is true for some but not others.”<sup>297</sup> The day after his conviction, the comedian was also ordered to pay compensation of 20,000 reais (about US\$5,000) to federal deputy Marcelo Freixo for offense, defamation, and nonpecuniary damages.<sup>298</sup>

### G. Access to public information

227. Since Jair Bolsonaro became president of the Republic of Brazil on January 1, 2019, the country’s civil society has reported setbacks on the right to access to public information. The following are some of the cases reported to this Office of the Special Rapporteur.

228. According to the information provided, on January 1, President Bolsonaro signed decree 9,663, approving the Statute of the Council of Financial Activities Oversight (COAF) and replacing the previous regulation. Subparagraph III of article 7 of the new decree states that the president of the COAF, the councilmembers, and the official in charge of execution for this body are prohibited from “expressing opinions on processes being deliberated in the Plenary through any means of communication.” Additionally, subparagraph IV of the same article establishes that these individuals are also prohibited from “revealing or leaking information that is confidential or was obtained in the exercise of their duties, including to their original agencies.” The measure is related to the fact that in December 2018, *O Estado de São Paulo* publish that a COAF report found that the former advisor to Flávio Bolsonaro (the son of President Bolsonaro) in the Legislative Assembly of Rio de Janeiro had suspicious banking transactions of R\$1.2 million.<sup>299</sup> According to the information received, the report was part of an investigation that detained 10 councilmembers of Rio de Janeiro in November 2018, and also included information on public servants of the Legislative Assembly with suspicious financial transactions. Also, based on this report, the Public Prosecutor of the state of Rio de Janeiro opened 22 criminal investigations<sup>300</sup>.

229. Additionally, on January 24, 2019, Decree 9,690/2019 was published, changing the rules for applying the Access to Information in the Federal Executive Act, as set forth in Decree 7,724/2012. The decree, signed by Vice President Hamilton Mourão, added to the group of public agents authorized to classify public information at the highest level of secrecy. Civil society organizations indicated that these changes put “the spirit of the LAI by making secrecy exceptional” at grave risk. They also stated that “there was no dialogue with civil society or even with the other branches of government, including with the legislative houses that passed the LAI.”<sup>301</sup> In a letter published on January 24, the Office of the Comptroller General of the Union (CGU) stated that “the aim of the proposed changes is to simplify and streamline the actions of the State,” and that “the changes are the result of intense discussion since 2018 between the CGU and different actors, including the Institutional Security Cabinet, evidence of the integrated action of the federal government in the efforts to perfect the mechanisms of public transparency.” The IACHR was informed that on February 19, the Plenary of the Chamber of Deputies approved Draft Legislative Decree 3/19, suspending the effects of Decree 9,690/2019, pending a vote by the Federal Senate.<sup>302</sup> According to reports, in response to this move by the Chamber, President Jair Bolsonaro signed a decree on February 26 revoking the January 2019 decree changing the rules for applying the LAI.<sup>303</sup>

230. It was also reported that during the first three months of the year, the government allegedly prohibited access to some journalists and media outlets to press pools, attacked the credibility of the *Instituto Brasileiro de Geografia e Estatística* (IBGE), and removed information from the Internet, such as the public data from the *Mais Médicos* programs.<sup>304</sup>

231. Additionally, in April 2019, it was reported that Brazil’s Economy Ministry declared the studies and technical guidelines on which the *Proposta de Emenda à Constituição* (PEC) for reforming the pension system was based to be classified. According to the information available, this decision was expressed in the response

<sup>297</sup> “I sympathize with host and comedian @DaniloGentili when exercising his right to free expression and his profession, of which, sometimes, I am the target, but I understand that they are jokes and part of the game, something that unfortunately holds for some and not for others”. Twitter account of Jair M. Bolsonaro @jairbolsonaro. April 11, 2019.

<sup>298</sup> Folha de São Paulo. April 12, 2019. *Danilo Gentili é condenado a indenizar Marcelo Freixo em R\$ 20 mil*; Migalhas. April 12, 2019. *Danilo Gentili indenizará deputado Marcelo Freixo por ofensas no Twitter*; Consultor Jurídico (Conjur). April 12, 2019. *Danilo Gentili pagará R\$ 20 mil a Marcelo Freixo por chamá-lo de “merda”*; Poder Judiciário do Estado do Rio de Janeiro. Apelação No. 0130354-18.2017.8.19.0001. April 11, 2019. Available at: <https://www.conjur.com.br/dl/decisao-danilo-gentili.pdf>

<sup>299</sup> Revista Forum. January 3, 2019. *Bolsonaro impõe censura ao Coaf e proíbe servidores e até presidente do órgão de comentar processos*; Presidência da República do Brasil. *Decreto No. 9.663*. January 1, 2019; Brasil 247. January 3, 2019. *Moro e Bolsonaro impõem censura ao Coaf*; Conversa Afíada. January 3, 2019. *Censura: Bolsonaro decreta cala-boca no COAF!*.

<sup>300</sup> Notícias R7. December 18, 2018. *Ministério Público abre 22 apurações com base no Coaf*; O tempo. December 18, 2018. *Ministério Público abre 22 investigações com base em relatório do Coaf*.

<sup>301</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). January 24, 2019. *Abraji assina nota conjunta contra retrocesso na aplicação da LAI no governo federal*.

<sup>302</sup> Carta Capital. February 19, 2019. *Câmara barra decreto contra Lei de Acesso à Informação*; Gazetaonline. February 19, 2019. *Câmara dos Deputados derruba decreto que altera a Lei de Acesso*.

<sup>303</sup> Consultor Jurídico (Conjur). February 26, 2019. *Bolsonaro revoga decreto que alterou Lei de Acesso a Informação*; Migalhas. February 27, 2019. *Bolsonaro revoga alteração na lei de acesso à informação sobre sigilo de documentos*; Veja. February 27, 2019. *Após derrota na Câmara, governo revoga decreto sobre sigilo de documentos*.

<sup>304</sup> Época. April 8, 2019. *Três alertas: Bolsonaro vem dificultando acesso à informação pública*;

to a request for public information submitted by *Folha de São Paulo* after the PEC was sent to Congress. According to this newspaper, the Special Secretariat for Pensions and Labor responded “it had prepared ‘in the scope of its regulatory competencies’ technical standards for the proposal being processed. However, it states that all these files are classified restricted because they are preparatory documents.” It likewise states that this measure of restriction follows the understanding of the Procurator General of the National Treasury. The newspaper underscores that because of this, only authorized authorities and public servants have access to this information.<sup>305</sup> On April 22, the Special Secretary for Pensions and Labor denied that the government had classified this information on which the pension system reform was based. He stated that the database would be public. He also said the data would be broken down and cleaned up for presentation to the Special Committee where the merits of the new pension system or to be discussed.<sup>306</sup> According to the information available, on April 25, the government presented detailed information on the new pension system proposal.<sup>307</sup>

232. According to ABRAJI, over the last 10 years, responses to requests for information have increased. Despite this, the Association says the quality of the responses has not been satisfactory. The study also assessed the transparency of nine bodies of the judicial branch: the Supreme Electoral Tribunal, the High Military Court, the Superior Labor Court, the Regional Federal Courts, and the Federal and Territorial District Court. According to ABRAJI, the majority of the responses were considered unsatisfactory.<sup>308</sup>

233. On July 9, the *Projeto de Lei de Conversão 7/2019* was published in the Official Newspaper, creating the National Data Protection Authority, amending the General Data Protection Act. According to reports, President Bolsonaro issued nine vetoes. According to civil society, these vetoes ignored the debate between members of Congress and civil society over the last two years that produced the final text of Provisional Measure 869/2018, approved in May 2019. The provisions vetoed by the Presidency of the Republic include the prohibition on sharing with government institutions or private legal entities the personal information of people seeking public information through the Access to Public Information Act.<sup>309</sup>

234. Also, on August 5, civil society organizations published a communication indicating that they are “following with concern the current trend of the government of challenging, without any scientific basis, the data produced by well-reputed government agencies and research institutions.” Among other things, they indicated that on August 2, it was reported that the director of the National Spatial Research Institute [*Instituto Nacional de Pesquisas Espaciais*] (INPE), Ricardo Galvão, was exonerated after he released data on the deforestation of the Amazon. Regarding this, the organization stated that “[t]he INPE data that has been question was actively made public on the Terra Brasilis platform that the Institute launched in 2018 to bring together data from two important systems for monitoring native vegetation: PRODES and DETER. The publication of these data indicated increasing deforestation in the country, which made government officials uncomfortable.” In this regard, they stated that “access to public data is fundamental for civil society to observe the reality, conduct independent analysis of government actions, and exercise social oversight to defend public interests.”<sup>310</sup>

235. The Commission notes that Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Taking into account the principle of maximum disclosure, the law must guarantee access to public information that is effective and as broad as possible, and the exceptions must not, in practice, become the rule. Additionally, the exceptions regime must be interpreted restrictively, and any questions must be resolved with transparency and access.

## H. Disinformation

236. According to publicly available information, on April 12, the Supreme Federal Court (STF) Judge Alexandre de Moraes concluded that the *O Antagonista* and *Crusóé* websites must remove the articles and

<sup>305</sup>Folha de São Paulo. April 21, 2019. [Governo decreta sigilo sobre estudos que embasam reforma da Previdência.](#)

<sup>306</sup>Poder 360. April 22, 2019. [Marinho nega que governo tenha decretado sigilo sobre estudos da Previdência](#); Seu dinheiro. April 22, 2019. [Secretário da Previdência diz a Rádio que “não há decretação de sigilo, dados são públicos”.](#)

<sup>307</sup>Ministério da Economia. April 26, 2019. [Apresentação de dados detalhados aumenta a transparência da proposta da Nova Previdência](#); Ministério da Economia. Efeitos da Nova Previdência. No date. Available at: [https://download.uol.com.br/files/2019/04/2426805946\\_25.04.2019-apresentacao-do-governo-sobre-dados-que-embasam-reforma-da-previdencia.pdf](https://download.uol.com.br/files/2019/04/2426805946_25.04.2019-apresentacao-do-governo-sobre-dados-que-embasam-reforma-da-previdencia.pdf)

<sup>308</sup>Associação Brasileira de Jornalismo Investigativo (Abraji). December 4, 2019. [Em 10 anos, respostas a pedidos de informação aumentam, mas qualidade deixa a desejar](#); Associação Brasileira de Jornalismo Investigativo (Abraji). [Mapa de Acesso a Informações Públicas 2019: Acesso a dados de remunerações 10 anos depois](#). No date.

<sup>309</sup>Artigo 19. July 10, 2019. [Entre vetos preocupantes, Presidência tenta derrubar proteção de dados pessoais de requerentes de informação pública](#); Medium. July 9, 2019. [Coalizão Direitos na Rede repudia os 9 vetos de Bolsonaro à lei que cria a Autoridade Nacional de Proteção de Dados](#); Coalizão Direitos na Rede. [NOTA AO PARLAMENTO sobre os vetos presidenciais à LGDP e à criação da Autoridade Nacional de Proteção de Dados](#). August 6, 2019.

<sup>310</sup>Correio do Povo. August 7, 2019. [Exoneração de Ricardo Galvão do Inpe é publicada](#); Artigo 19. August 5, 2019. [‘Apagão’ de dados é risco para toda a sociedade: queremos mais transparência e respeito à ciência](#); R7. August 2, 2019. [Diretor do INPE, Ricardo Galvão será exonerado do cargo](#).

reports they published in April on an email sent by businessman Marcelo Odebrecht in 2007 that mentioned STF Judge and President Dias Toffoli.<sup>311</sup> According to reports, the report in *Crusoe* was based on a document released in the framework of Operation *Lava Jato*. The judge also established a daily fine of 100,000 reais (about US\$25,650) in the event of failure to comply, and ordered those in charge of the website and magazine to present statements within 72 hours. According to the information available, the decision was made in the framework of an investigation opened by this court in March at the request of Judge Toffoli to look into the dissemination of “fake news,” offenses, and threats against the STF and its judges. Judge Alexandre de Moraes is the presiding magistrate.

237. Reports also indicate that on April 16, the Federal Police, operating with the authorization of Judge de Moraes, executed search and arrest warrants issued against individuals who had promoted attacks on the STF.<sup>312</sup> The judge also requested that the social media accounts of seven people suspected of issuing messages gravely offensive to the court be blocked.<sup>313</sup> According to reports, the STF applied the National Security Act to those being investigated, who are also suspected of the crimes of defamation and slander.<sup>314</sup> Additionally, reports also indicate that on April 16, the Procurator General of the Republic sent an official letter to the STF informing it that the investigation launched in March by the STF should be closed because it is illegal. It indicated that the adversarial criminal justice system “does not allow the body that judges to be the same one that investigates and charges.”<sup>315</sup> Nevertheless, on that same date, Judge de Moraes kept the investigation open, arguing that the PGR’s declaration was legally groundless.<sup>316</sup> The president of the STF also decided to postpone the investigation for 90 days.<sup>317</sup> Likewise, on April 18, Judge de Moraes suspended his decision regarding two media outlets, finding that new information had demonstrated that the document described by the media outlets existed.<sup>318</sup> On April 22, in a meeting with the PGR, the president of the STF stated that once the investigations were concluded, they would be sent to the Public Prosecutor, and that the STF would not take up functions that legally fall to the Public Prosecutor—for example, filing charges against the accused.<sup>319</sup>

238. According to the information received, on August 28, the Brazilian Congress overrode President Jair Bolsonaro’s veto of §3 of article 326-A of Law 13,834/2019, establishing harsher penalties for those who disseminate false news. According to reports, article 326-A defines the criminal offense of slanderous denunciation with electoral purposes and establishes a penalty of a prison term of two to eight years and a fine. Specifically, its §3 establishes that “the same sections of this article will apply to those who, having knowledge of the innocence of the accused and with electoral purposes, divulge or propagate, through any medium or form, the act or incident falsely attributed to the accused.” On vetoing the paragraph, President Bolsonaro highlighted that the criminal offense defined under §3 of article 326-A establishes a prison term that is much longer than the punishment for similar conduct described in §1 of article 324 of the Electoral Code, which establishes a prison term of six months to two years and a fine for those who commit or disseminate electoral slander. Thus, he argued that §3 violates the principle of proportionality of the criminal offense described and the punishment imposed.<sup>320</sup> This Office of the Special Rapporteur observes that the article joins the others already in place in Brazilian Electoral Law codifying the crimes of slander and defamation. Regarding this, in the final report on its 2018 mission to Brazil, the OAS Electoral Mission expressed serious concern that several of the provisions on the subject prohibited or criminalized criticizing or offending State institutions and authorities, including the President of the Republic and the national Armed Forces.<sup>321</sup>

239. The Office of the Special Rapporteur recalls that Article 13(2) of the American Convention provides for the possibility of placing restrictions on freedom of thought and expression through the application of

<sup>311</sup>Associação Brasileira de Jornalismo Investigativo (Abraji). April 15, 2019. [Inquérito do STF contra fake news vitima liberdade de imprensa](#); UOL. April 15, 2019. [Alexandre de Moraes censura site e manda retirar do ar reportagem contra Toffoli](#).

<sup>312</sup>G1. April 16, 2019. [PF faz buscas em dois estados e no DF em inquérito que investiga ofensas a ministros do STF](#); O Globo. April 16, 2019. [Ação da PF cumpre mandados em inquérito que investiga ofensas a ministros do STF e mira general da reserva](#); UOL. April 16, 2019. [General do Exército é um dos alvos de busca em inquérito que apura ataques ao STF](#).

<sup>313</sup>Olhar Digital. April 16, 2019. [Alexandre de Moraes manda bloquear redes sociais de 7 suspeitos de atacar o STF](#); Artigo 19. April 23, 2019. [Revisão de determinação que tirava reportagem do ar pelo STF é fundamental para defesa da liberdade de expressão e de imprensa](#).

<sup>314</sup>O Globo. April 16, 2019. [STF usa lei da ditadura para enquadrar investigados sobre ofensas contra a Corte](#).

<sup>315</sup>UOL. April 16, 2019. [Raquel Dodge arquiva inquérito aberto por Toffoli para apurar ofensas ao STF](#); Ministério Público Federal. No. 509/2019 – LJ/PGR. Único No. 107339/2019. Inquérito No. 4.781. April 16, 2019.

<sup>316</sup>Consultor Jurídico (Conjur). April 16, 2019. [Alexandre rejeita arquivamento de inquérito sobre ameaças ao Supremo](#); G1. April 16, 2019. [Alexandre de Moraes rejeita arquivar inquérito sobre ofensas ao STF; investigação é prorrogada](#)

<sup>317</sup>Estadão. April 16, 2019. [Toffoli ignora PGR e prorroga por 90 dias inquérito da censura](#); Brasil 247. April 16, 2019. [Toffoli ignora PGR e prorroga inquérito dos ataques ao STF](#); Veja. April 16, 2019. [Toffoli ignora PGR e prorroga por 90 dias inquérito sobre ofensas ao STF](#).

<sup>318</sup>O Globo. April 18, 2019. [Alexandre de Moraes recua de decisão anterior e suspende censura de reportagem que cita Toffoli](#); Artigo 19. April 23, 2019. [Revisão de determinação que tirava reportagem do ar pelo STF é fundamental para defesa da liberdade de expressão e de imprensa](#).

<sup>319</sup>UOL. April 22, 2019. [Após reunião com Dodge, Toffoli diz que inquérito do STF irá ao MP](#); G1/Jornal Nacional. April 22, 2019. [Toffoli diz que vai enviar ao MP resultado do inquérito que apura ofensas ao STF](#).

<sup>320</sup>Globo. August 28, 2019. [Congresso derruba veto de Bolsonaro a projeto que torna crime denúncia caluniosa com fim eleitoral](#); Veja. November 11, 2019. [Lei contra fake news eleitoral é promulgada após Congresso derrubar veto](#); Consultor Jurídico (Conjur). August 28, 2019. [Congresso derruba veto e retoma punição para divulgação de fake news eleitoral](#).

<sup>321</sup>OAS. [Final Report of the Electoral Mission to Brazil in 2018](#). 2019.

subsequent liability for the abusive exercise of this right. In this regard, although those knowingly disseminating false information that causes harm should be repudiated, this should preferably be done through the exercise of the right to rectification or reply, or, if the harm caused is serious, through proportional civil responsibility.

240. Likewise, the Inter-American Court has indicated that criminal law is the most restrictive and severe means of establishing responsibility for illegal conduct.

241. Likewise, the 2017 Joint Declaration on Freedom of Expression and "Fake News," Disinformation, and Propaganda indicates that "Criminal defamation laws are unduly restrictive and should be abolished. Civil law rules on liability for false and defamatory statements are legitimate only if defendants are given a full opportunity and fail to prove the truth of those statements and also benefit from other defences, such as fair comment."

### I. Other relevant situations

242. In March, it was reported that the National Social Security Institute [*Instituto Nacional de Seguro Social*] (INSS) issued a circular indicating that its officials are not authorized to give statements to the media on the pension reform. Requests for interviews or information on the matter must be directed to the Communications Office. In the circular, the INSS said, among other things, that the objective of this measure was to "standardize communication on the subject."<sup>322</sup>

243. According to reports, on April 9, through the *Portaria 2016*, the *Empresa Brasil de Comunicação* (EBC), merged the country's main public television channel, *TV Brasil*, with government broadcaster NBR (*TV Nacional do Brasil*). According to publicly available information, the initiative was rejected by, among others, journalists and civil society organizations, who argued that "by merging to broadcasters and mixing programming with different names into a single broadcaster, the government buries a citizen focused communication project governed by the principles of plurality, diversity, and independence of content."<sup>323</sup> Additionally, it was reported that on November 19, the government included the EBC on a list of 18 enterprises open to private-sector concessions or possible privatization. Specifically with regard to EBC, it was included for "study" of a total or partial sale. That is, its status is to be studied by the Partnership Investments Program [*Programa de Parcerias de Investimentos*] (PPI), and a recommendation will be made to President Jair Bolsonaro on what decision to take. This was rejected by a joint communication signed by the journalists union of the DF, Rio de Janeiro, and São Paulo, the *Federação Nacional dos Jornalistas* (FENAJ), the radio broadcasters union of the DF, Rio de Janeiro, and São Paulo, and by a committee of EBC workers, who argued that it "[w]as a violation of the Constitution, an attack on Brazilian society's right to information, and a reduction in transparency of the Executive," because, among other things, the Constitution of Brazil establishes an article 223 the existence of public, private, and state systems, and the EBC had been created to fulfill this mandate.<sup>324</sup>

<sup>322</sup> Folha de São Paulo. April 21, 2019. *Governo decreta sigilo sobre estudos que embasam reforma da Previdência*; Instituto Nacional do Seguro Social. Ofício-Circular No. 4/PRES/INSS. March 8, 2019. Available at: [https://twitter.com/mariadorosario/status/1104579135685439489/photo/1?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cwtterm%5E1104579135685439489&ref\\_url=https%3A%2F%2Fwww.diariodocentrodomundo.com.br%2Fessencial%2Fservidores-do-inss-sao-proibidos-de-falar-da-reforma-da-previdencia%2F](https://twitter.com/mariadorosario/status/1104579135685439489/photo/1?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cwtterm%5E1104579135685439489&ref_url=https%3A%2F%2Fwww.diariodocentrodomundo.com.br%2Fessencial%2Fservidores-do-inss-sao-proibidos-de-falar-da-reforma-da-previdencia%2F)

<sup>323</sup> Observacom. April 12, 2019. *Fin de la independencia de la TV pública: gobierno unifica TV Brasil con una televisora gubernamental*; Rede Brasil Atual. April 10, 2019. *EBC unifica canais público e estatal e viola Constituição*; Câmara dos Deputados. April 23, 2019. *Entidades consideram ilegal fusão da TV Brasil com a NBR*.

<sup>324</sup> Gazeta do Povo. November 19, 2019. *Governo inclui leilão do 5G e "TV do Lula" em nova lista de concessões e privatização*; Metrôpoles. November 20, 2019. *Bolsonaro inclui EBC em programa de privatização do governo*; Federação Nacional dos Jornalistas. November 20, 2019. *Nota de repúdio à inclusão da EBC no programa de privatização pelo governo federal*.

## 8. CANADA

244. The Special Rapporteur has highlighted Canada's role in promoting and guaranteeing freedom of expression and the right of access to information. The Office has also taken note of the decision of the Supreme Court of Canada to overturn the decision of the Superior Court of Quebec to oblige Radio Canada journalist Marie-Maude Denis to reveal her source of information concerning investigative work of public interest. The Special Rapporteur received information about the adoption of the Digital Charter by the Government of Canada, which states that "digital platforms shall not promote or disseminate hatred, violent extremism or criminal content" and that sanctions will be applied to those who fail to comply with the established principles. This is a matter of concern to the Special Rapporteur's Office, since it transfers to private platforms the possibility of censoring content considered to be hate speech.

### A. Progress

245. The Office of the Special Rapporteur indicated in its 2018 annual report that, in March, the Superior Court of Québec would have ordered the journalist of *Radio Canada*, Marie-Maude Denis, to reveal her source of information regarding a 2012 investigation addressing alleged acts of collusion in the award of public contracts in which a former vice minister would have been involved; and that motivated his arrest and subsequent prosecution.

246. This case was submitted to the Supreme Court of Canada, which, in a historic decision, *Denis v. Côté*, decided to revoke the decision of the Quebec Superior Court that force the journalist to reveal her source of information. The Office of the Special Rapporteur notes that *Denis v. Côté* constitutes the first judicial decision in which the Journalistic Sources Protection Act (JSPA) of 2017 is interpreted and highlights the essential role played by the press in democracy. The decision indicates that "there is no doubt that the role of the media in our country is unique. By investigating, questioning, criticizing, and publishing important information, the media contribute to the existence and maintenance of a free and democratic society "[...] Freedom of the press encompasses the ability of the media to gather information, maintain confidential relations with journalistic sources, and produce and publish news without fear of obstacles to their activities. [...] It is easy to understand why mobilizing a journalist against their source is incompatible with freedom of the press. Without whistleblowers and other anonymous sources, it would be very difficult for journalists to carry out their important mission. As this Court has correctly pointed out, many important controversies have been unearthed only with the help of sources that would not agree to speak except with the condition of confidentiality"<sup>325</sup>.

247. The case was returned to the Quebec Court for reconsideration, however, the decision confirms that, in accordance with the new rule, there is a strong presumption in favor of preserving confidentiality and the burden of proof is reversed, since it is the interested party in the disclosure of the source which must demonstrate that the disclosure is necessary and that the public interest in the administration of justice favors the disclosure. This criterion means a change in relation to the previous approach to the law of protection of journalistic sources, which established that journalists bore the burden of demonstrating that the public interest required maintaining the confidentiality of the source.

248. On the other hand, on November 13, 2019, Bylaw P-6 was repealed, a regulation issued 50 years ago in Montreal, which established that protesters in a social protest should keep their faces uncovered, without masks, and had to inform the police beforehand about the itinerary and the route that the march would follow. While the requirement to previously provide an itinerary was declared "arbitrary" and "unreasonable" and the prohibition of the use of masks was previously declared unconstitutional by the Quebec Court of Appeals, in November the mayor of Montreal informed that the rule would be repealed in its entirety<sup>326</sup>. In this regard, the Office of the Special Rapporteur has established that "the use of bandanas, masks, hoods, caps, backpacks, and other types of clothing and accessories in public demonstrations is very common. These elements cannot be considered as sufficient signs of threat of use of violence, nor can they be used as grounds for dispersion, detention, or repression of protesters. The IACHR has stressed that, in a democracy, states must act on the basis of the legality of public protests or demonstrations and under the assumption that they do not constitute a threat to public order. This implies an approach focused on strengthening political participation and building higher levels of citizen participation"<sup>327</sup>.

<sup>325</sup>Supreme Court of Canada. *Denis v. Côté*, 2019 SCC 44. September 27, 2019, para. 45 - 47. CBC News. September 27, 2019. [Journalist applauds 'historic' Supreme Court ruling that shields her confidential source](#). Reporters Without Borders (RSF). October 3, 2019. [Supreme Court decision upholds shield law protecting journalists' confidential sources](#).

<sup>326</sup>Montreal Gazette. November 13, 2019. [Montrealers will be allowed to protest wearing masks, as bylaw to be scrapped](#). CBC. November 18, 2019. [At long last, Montreal does away with its controversial protest bylaw](#).

<sup>327</sup>IACHR. Report of the Office of the Special Rapporteur for Freedom of Expression. [Protest and Human Rights](#). OEA/Ser.L/V/II. CIDH/RELE/INF.22/19. September 2019. Para. 88.



## B. Attacks, threats and intimidation against journalists and the media

249. While Canada is one of the safest states to practice journalism, the Office of the Special Rapporteur notes that according to a survey conducted by the Committee for the Protection of Journalists (CPJ), it was shown that female journalists in the United States and Canada are exposed to various risks for the exercise of their profession, which even follow them home, since online harassment was highlighted by the interviewees as one of the greatest threats. A large percentage of the journalists interviewed highlighted that they have experienced security problems, threats, verbal harassment, unsolicited sexual proposals, or threatening voice messages, with the implications that dealing with such attacks means for their mental health, particularly when they perform coverage and research alone<sup>328</sup>.

250. The Office of the Special Rapporteur also learned that on October 28, 2019, a truck crashed into the editorial offices of the *Turtle Island News* indigenous newspaper, in the Six Nations Territory in southern Ontario, and unidentified people sprayed the vehicle and the building with gasoline before setting it on fire. While no injuries were reported, the fire caused a substantial economic loss to the newspaper, as well as the loss of cameras, computers, documents, and photo files. According to the fire chief, the attack would have been deliberate. Although the motives for the attack are still unknown, the newspaper would have received threats for its coverage of rich local individuals and official misconduct. A police investigation was initiated on the events<sup>329</sup>.

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

252. In turn, regarding violence against women journalists, the Office of the Special Rapporteur stressed that “women journalists disproportionately and routinely face gender-based violence in the workplace and on the field,” and are faced with differentiated forms of violence by state and non-state actors, as well as to the lack of protection and obstacles in access to justice also differentiated from their male partners. In this regard, the Office of the Special Rapporteur has highlighted the importance of integrating a gender perspective to ensure that women journalists are adequately protected and can exercise their right to freedom of expression without undue restrictions.

253. In addition, the 2012 Joint Declaration on crimes against freedom of expression states that “[w]hen there is evidence that a crime carried out may be a crime against freedom of expression, the investigation should proceed with the assumption that it is an offense of such nature until proven otherwise, and all relevant investigative channels linked to the victims’ acts of expression should be exhausted”<sup>330</sup>.

## C. Social protest and restrictions on journalistic coverage

254. On January 7, 2019, Canadian police arrested 14 people in an indigenous protest camp in northern British Columbia, as part of the intensification of tensions due to a construction project to build a 670km (416 miles) liquefied natural gas pipeline, Coastal GasLink, which would cross the territory of Wet’suwet’en, First Nations territory. The arrests would have been made while the police were enforcing a court order to remove barriers that were built along the road, as ordered by a provincial court, since the barriers would be impeding the access of TransCanada company workers to the zone<sup>331</sup>.

255. Also, on January 8, 2019, Canadian police prevented access to journalists who wanted to cover the protest over the construction of a natural gas pipeline in British Columbia, when the police tried to dismantle the camps established by indigenous activists. Police prevented journalists from the *Aboriginal Peoples Television Network* (APTN) and the *Canadian Broadcast Corporation* from passing a blockade, however, news teams that were already behind the police barrier were allowed to remain in place. According to APTN, the police continued to deny access to their journalists and would have told them that they were at risk of being arrested if they tried to get close enough to see the police action. CPJ reported that, according to the police, a “temporary exclusion zone” would have been created to ensure public safety<sup>332</sup>.

<sup>328</sup>Committee to Protect Journalists (CPJ). September 4, 2019. [‘The threats follow us home’: Survey details risks for female journalists in U.S., Canada, and Why going solo is a risk for female reporters in the US and Canada.](#)

<sup>329</sup>Indian Country Today. November 4, 2019. [The Canadian Association of Journalists condemns attack on Turtle Island News.](#) Indian Time. November 7, 2019. [The Canadian Association of Journalists condemns attack on Turtle Island News.](#)

<sup>330</sup>IACHR. Office of the Special Rapporteur for Freedom of Expression. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression.](#)

<sup>331</sup>CBC. January 7, 2019. [14 arrested as RCMP break gate at Gidimt’en camp checkpoint set up to stop pipeline company access.](#) The Guardian. January 8, 2019. [Canada: 14 arrested at indigenous anti-pipeline protest camp as tensions rise.](#)

<sup>332</sup>APTN News. January 8, 2019. [RCMP denial of journalists’ access to protest site frightening, says press freedom advocate.](#) Committee to Protect Journalists (CPJ). January 8, 2019. [In Canada, police block media from covering break up of indigenous pipeline protest.](#)

256. According to the Canadian Journalists for Free Expression, CJFE organization, in October of this year, the Penitentiary Director of the Department of Justice would have prevented independent journalist Thomas Rohner from accessing prisoners in any of the Nunavut correctional facilities. Said journalist would have visited the prison for more than three years in order to publish critical articles regarding the prison conditions of the Baffin Correctional Center. The refusal would have been based on the journalist not having complied with the established protocols, but as indicated, he was never informed of the specific protocols established under which he should conduct his visits, until the journalist himself required them. The aforementioned organization sent a request to the Minister of Justice to take the necessary measures, considering that the ban of the director to the journalist to meet with persons deprived of liberty, within the framework of investigations of high public interest, are disproportionate, being that the journalist expressed his total disposition to act according to the corresponding protocols<sup>333</sup>.

257. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical political and social expression of the activities of the authorities. The Commission has pointed out that "it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly"<sup>334</sup> and that "the exercise of the right of assembly to through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its materialization"<sup>335</sup>.

258. Regarding journalistic coverage, the Office of the Special Rapporteur has indicated that "administrative measures [imposed] should not be used to restrict the mobility of journalists, including the entry of foreign journalists into a country, or the coverage of demonstrations, or other events of public interest by the media, unless strictly justifiable by the demands of the situation, in line with the tripartite test [legality, necessity, and proportionality]"<sup>336</sup>.

#### **D. Censorship of journalistic material and accreditations of journalists**

259. The Office of the Special Rapporteur learned that Canadian Global Affairs officials denied accreditations to all state media outlets in Russia and Venezuela (*ITAR-TASS, Sputnik, Ruptly TV, and RIA Novosti* of Russia, and *TeleSUR* of Venezuela) who requested to obtain the corresponding authorization to cover the Lima Group international conference held in Ottawa in February 2019. The letters of denial of accreditation would not have explained the reasons for the refusal. However, as reported by the Ministry of Foreign Affairs, would have noted that "Global Affairs Canada has a broad accreditation policy to ensure that the media can report on events organized in Canada. We take this responsibility seriously. Our goal is to provide access to the media that does not deliberately distort the facts or disseminate propaganda and misinformation. [...] We are always evaluating this accreditation process to ensure that it meets the needs of the Canadian and international media"<sup>337</sup>.

260. In addition, the Office of the Special Rapporteur learned of the dismissal of journalist Frédéric Marcoux, a reporter for the weekly *L'Express* on October 2, 2019. The dismissal was allegedly motivated by his investigation into William Morales, the new local candidate appointed by the Liberal Party for the federal parliament, and his links to people allegedly associated with Colombian organized crime<sup>338</sup>. Similarly, the freelancer and Canadian cartoonist Michael De Adder's contract with Brunswick News Inc. would have been terminated the day after he posted a drawing of President Trump playing golf on the bodies of two dead migrants, drowned while trying to cross the border to Texas. Michael de Adder said that, in his opinion, the termination of his contract was not due to the drawing itself, but in general to his online posture, critic of President Trump. Brunswick News said in a statement that it was "completely wrong" to suggest that he canceled the artist's contract due to the image. They added that they had made the decision to cancel his contract weeks ago, and noted that at that time they had entered into negotiations to work with a different cartoonist they described as a 'fan favorite'. "The statement added that "the opinion pages of BNI remains a balanced debate place, with a focus on local issues affecting New Brunswickers. We make selections every day based on quality, impact, and relevance for our local audience"<sup>339</sup>.

261. Principle 5 of the Declaration of Principles on Freedom of Expression of the IACHR states that "prior censorship, direct or indirect interference in, or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited

<sup>333</sup>Canadian Journalists for Free Expression (CJFE). February 17, 2019. [CJFE expresses concern at ban on journalist Thomas Rohner visiting Nunavut correctional facilities](#).

<sup>334</sup>IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197..

<sup>335</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. 139.

<sup>336</sup>Office of the Special Rapporteur for Freedom of Expression. May 4, 2015. [Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#).

<sup>337</sup>Global News. May 14, 2019. [Russia threatened retaliation against Canadian media after Sputnik and others barred at Lima Group](#). CBC. May 14, 2019. [Ottawa braced for Russian retaliation after harring state media from Lima Group talks](#).

<sup>338</sup>Reporters Without Borders (RSF). October 7, 2019. [Reporter fired over story about politician's apparent links to organized crime](#).

<sup>339</sup>Fox News. June 30, 2019. [Canadian newspaper publisher cuts ties with artist behind controversial Trump cartoon](#). The London Free Press. July 3, 2019. [Canadian cartoonist behind anti-Trump image feels online presence played role in contract ending](#).

by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

262. The Special Rapporteurs of the IACHR, the UN, and the OSCE representative have established in a Joint Declaration in 2003 that “accreditation schemes for journalists are only appropriate if they are necessary to provide them with privileged access to some places and/or events; such schemes must be supervised by independent bodies and decisions on accreditation must be taken following a fair and transparent process, based on clear and non-discriminatory criteria, published previously. Accreditation should never be subject to suspension solely based on the content of a journalist's information”<sup>340</sup>.

263. The Office of the Special Rapporteur also emphasizes the need to ensure informative pluralism, regardless of editorial lines or positions of the media. As indicated by the Inter-American Court, given “the importance of freedom of expression in a democratic society and the responsibility that it entails for the social media and for those who exercise these tasks professionally, the State must minimize the restrictions on information and balance, to the greatest extent possible, the participation of the different lines in the public debate, promoting informative pluralism. In these terms, the protection of the human rights of those who face the power of the media, which must exercise with responsibility the social function that they develop, and the effort to ensure structural conditions that allow the equitable expression of ideas”<sup>341</sup>.

### **E. Source Confidentiality**

264. The Office of the Special Rapporteur referred in its 2018 annual report to the adoption of the Supreme Court of Canada ruling that ruled that the journalist Ben Makuch, of Vice Media, had to deliver the communications maintained between the journalist and an alleged ISIS fighter, to the Royal Canadian Mounted Police. This decision did not apply the criteria of the law on the protection of journalistic sources, because in this case the requirements of the standard were not met (the identity of the source was known). After the adoption of the Supreme Court ruling, Vice Media and Makuch requested the cancellation of the delivery requirement because the United States military reported on the death of the source, Mr. Farah Shirdon, in Iraq. The Ontario Superior Court judge rejected that reasoning on July 4 because the Canadian police could not independently confirm the American army's statement. After the last attempt to modify the Supreme Court decision, the chat logs were delivered on July 4, 2019. On the afternoon of July 4, Vice lawyers said they would deliver the chat logs, according to reports. Makuch confirmed to CPJ on July 10 that the records had been handed over to the authorities<sup>342</sup>.

265. The Office of the Special Rapporteur recalls that any measure that seeks to confiscate journalistic material, which requires relieving sources or citing journalists as witnesses, has a restrictive effect on freedom of expression. According to Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR, “every social communicator has the right to keep his/her source of information, notes, personal, and professional archives confidential.”

### **F. Access to public information**

266. The Office of the Special Rapporteur learned that the draft bill C-58 presented with the objective of amending the law on access to public information, received royal consent on June 21, 2019, so it is currently a valid law. The modifications would have the purpose of “improving the accountability and transparency of federal institutions in order to promote an open and democratic society and allow public debate on the behavior of those institutions”. It also provides clearer powers to the Information Commissioner, as well as the Privacy Commissioner, and seeks to clarify the powers of both commissioners, as well as to establish a new proactive publication scheme and expand on the obligated subjects<sup>343</sup>.

267. Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[a]ccess to information held by the State is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Taking into account the principle of maximum disclosure, the law should guarantee the most effective and widest possible access to public information, and exceptions should not become the general rule in practice. In addition, the exceptions regime must be interpreted restrictively, and any doubt must be resolved in favor of transparency and access.

<sup>340</sup> Office of the Special Rapporteur for Freedom of Expression. December 18, 2003. [Joint Declaration on Regulation of the Media, Restrictions on Journalists, and Investigating Corruption](#).

<sup>341</sup> I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 106.

<sup>342</sup> Global News. July 4, 2019. [Vice agrees to give RCMP accused terrorist's chat logs after judge refuses stay](#). The Hill Times. December 20, 2019. [‘A complete travesty’: court's decision against Vice Media sets ‘chill’ for journalists, say media groups](#).

<sup>343</sup> Office of the Information Commissioner of Canada. June 21, 2019. [Information Commissioner's statement on the passage of Bill C-58](#).

## G. Internet, freedom of speech, and hate speech

268. The debate on the measures to be taken to combat hate speech online and on social networks increased in Canada after the terrorist attacks against two mosques in Christchurch, New Zealand. The foregoing resulted in the Prime Minister signing a commitment to combat violent and extremist online content (New Zealand Prime Minister's pledge to tackle violent, extremist online content)<sup>344</sup> and that the government express its consideration regarding forcing social networks to remove extremist content<sup>345</sup>. In this context, Canadian Prime Minister Justin Trudeau noted that "the time for hate speech online without consequences has officially ended, [as well as] the shameless spreading of fake news," while announcing the new Digital Charter, which would seek to protect online users of social media platforms and news pages. According to the Prime Minister, the Charter focuses specifically on hate speech and fake news, and social media account holders and website administrators will be questioned about the presence of any of them in their online domains. Similarly, Prime Minister Trudeau would have said that if social media platforms did not combat hate speech and/or fake news, they would find that there would be significant financial consequences<sup>346</sup>.

269. The Digital Charter is composed of 10 principles. It does not constitute a legal document, and its principles must be implemented through legislation and the corresponding norms or regulations. Principle 9 states the following: "Free from hate and violent extremism: Canadians can expect that digital platforms will not encourage or spread hate, violent extremism, or criminal content." Principle 10 states: "Firm application and real responsibility: there will be clear and significant sanctions for violations of laws and regulations that support these principles"<sup>347</sup>.

270. The implementation of the previous principles generates concern to this Office of the Special Rapporteur, since it transfers to private platforms the possibility of censoring content that is considered hate speech, which in principle should be understood in a limited way and in reference to the most extreme content, which, in certain cases, is difficult to identify. The complexity of discerning the nature of the content would be transferred to private companies that own social networks or digital platforms. In addition, it should be noted that in many countries the rules on this subject are used abusively by the powerful to limit nontraditional, dissenting, critical, or minority voices, or debates about social challenges. In addition, tensions generated by cultural or religious differences cannot be resolved through the suppression of the expression of differences, but through the open debate about them. Freedom of expression is therefore a requirement, and not an impediment, for tolerance<sup>348</sup>.

271. The Special Rapporteurs of the IACHR, the UN, the ACPHR, and the representative of the OSCE have established in a Joint Declaration in 2016, the Joint Declaration on freedom of expression and the fight against violent extremism, that the "concepts of "violent extremism" and "extremism" should not be used as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly. Any restrictions drawing upon a countering and preventing violent extremism framework should be demonstrably necessary and proportionate to protect, in particular, the rights of others, national security or public order.[...] No person offering only Internet technical services such as access, searches, or preservation of information in the cache memory should be responsible for content generated by third parties and disseminated through these services, provided that it does not specifically intervene in said content or refuses to comply with a court order that requires its removal when it is in a position to do so ("principle of mere transmission")<sup>349</sup>.

272. Regarding the responsibility of intermediaries, the special rapporteurs have indicated that "States should not subject Internet intermediaries to mandatory orders to withdraw or otherwise limit the content, except when the content is legally limited according to standards described above. States must refrain from pressuring, punishing or rewarding intermediaries in order to limit legal content. [...] At a minimum, intermediaries should not be required to control user-generated content and should not be subject to extrajudicial rules on content cancellation that do not offer sufficient protection for freedom of expression (as is the case with many of the rules on "notification and withdrawal" that are currently applied)<sup>350</sup>.

<sup>344</sup> CBC. May 14, 2019. [Trudeau set to sign New Zealand PM's pledge to tackle violent, extremist online content](#).

<sup>345</sup> Global News. March 21, 2019. [Canada considering forcing social media companies to remove extremist content](#). The Post Millennial. March 2019. [The Trudeau government wants to censor your social media](#).

<sup>346</sup> Vice. May 16, 2019. [Canada Plans Fines for Tech Companies That Spread Disinformation](#). Gaming Post. May 29, 2019. [Trudeau Announces New Digital Charter](#).

<sup>347</sup> Government of Canada. Digital Charter. Available at: [https://www.ic.gc.ca/eic/site/062.nsf/eng/h\\_00108.html](https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00108.html)

<sup>348</sup> Office of the Special Rapporteur for Freedom of Expression. December 19, 2006. [Joint declaration on Publishing Confidential Information, Openness of National and International Public Bodies, Freedom of Expression and Cultural/Religious Tensions, and Impunity in Cases of Attacks Against Journalists](#)

<sup>349</sup> Office of the Special Rapporteur for Freedom of Expression. May 4, 2016. [Joint Declaration on Freedom of Expression and Countering Violent Extremism](#).

<sup>350</sup> Office of the Special Rapporteur for Freedom of Expression. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

## 9. CHILE

273. The Inter-American Commission on Human Rights (IACHR) condemned the excessive use of force and the violation of human rights in Chile in the context of social protests that shook the country, which resulted in fatalities, thousands of injured, as well as journalists and camera operators assaulted both by police forces and violent groups.

274. The Office of the Special Rapporteur draws particular attention to the selective attack on camera operators and journalists during the coverage of protests, in addition to complaints regarding the existence of pressures or censorship of communicators on state television channels and private media. Also, attacks and arson attempts were registered against different media facilities in several cities of the country.

275. There were also reports of illegal detentions and torture, in which the most vulnerable populations such as children and adolescents were victims, as well as sexual attacks against women and the LGBTQ population.<sup>351</sup>

276. This Office has taken note of the legal initiatives that have emerged to restrict various aspects of the protests. The Commission received information on the presentation of a package of bills that could criminalize the exercise of freedom of expression and the right of assembly. The IACHR calls on the State not to develop criminal types that turn into criminal acts conduct commonly observed in protests that, in and of themselves, do not affect property such as the life, security, or freedom of persons.

### A. Freedom of Expression and state of exception

277. On October 6, the government of President Sebastián Piñera announced the increase in the rates of the public transport system<sup>352</sup> by 3.75%, which unleashed a series of protests through a call for mass evasions at the Metro entrances. Although the demonstrations would have begun on Monday, October 14, on the lines of the metropolitan train after a call to protest from high school students<sup>353</sup>, the protests expanded to the rest of the country, including violent actions, through fires in public institutions and looting.

278. In response to the widespread demonstrations<sup>354</sup>, the government announced the closure of the entire Metro network in Santiago and the application of the Internal Security Act of the State. Under the argument of restoring order and public safety, President Piñera decreed on Friday, October 18, the State of Constitutional Exception in Chile<sup>355</sup> in the provinces of Santiago and Chacabuco and in the municipalities of San Bernardo and Puente Alto, and later the measure extended to the entire Metropolitan Region<sup>356</sup>, Valparaíso (center), Concepción (south), the communes of Coquimbo and La Serena), and the commune of Rancagua (center) since the early hours of Sunday, October 20<sup>357</sup>. Through the measure he entrusted the Army with the control of public order.

279. On October 19, the Chilean Army General Javier Iturriaga, decreed the curfew<sup>358</sup> that remained until October 27, when President Piñera raised the State of Emergency, the president also canceled the rise in the subway fare<sup>359</sup>, made changes in his cabinet and called a Constituent Congress, but none of the measures managed to dissuade<sup>360</sup> the demonstrations that demanded greater changes in the tax and pension system and an increase in the budget for health, education, and public housing<sup>361</sup>. Despite the suspension of the state of emergency, the police remained on the streets and the Chilean government called on the National Security Council, and also announced that they would invoke the State Security Law. In that context, President Piñera made stigmatizing statements against sectors of the protesters: “We are at war against a powerful, implacable enemy, who does not respect anything or anyone, who is willing to use violence and crime without any limit<sup>362</sup>”.

<sup>351</sup> IACHR. December 6, 2019. [Press Release 317 IACHR Condemns the Excessive Use of Force during Social Protests in Chile, Expresses Its Grave Concern at the High Number of Reported Human Rights Violations, and Rejects All Forms of Violence](#); Human Rights Watch (HRW). November 26, 2019. [Chile: Police Reforms Needed in the Wake of Protests](#); DW. November 15, 2019. [CIDH denuncia agresiones a periodistas en protestas de Ecuador, Chile y Bolivia](#).

<sup>352</sup> Ministerio de Transportes y Telecomunicaciones. [Ley 20.378](#); Pauta Chile. October 18, 2019. [La irreversible y sistemática alza de precios en el Metro de Santiago](#); Cooperativa. October 16, 2019. [Así opera el panel de expertos que sube las tarifas del transporte público](#).

<sup>353</sup> CNN. October 18, 2019. [Protestas en el metro de Santiago por el incremento del pasaje](#); El Mostrador. October 15, 2019. [Estudiantes realizaron una "evasión masiva" en la estación Santa Ana del Metro](#).

<sup>354</sup> El País. October 19, 2019. [Chile decreta el estado de emergencia por las revueltas contra el precio del metro](#).

<sup>355</sup> Gobierno de Chile. October 18, 2019. [Presidente Piñera decreta Estado de Emergencia en las Provincias de Santiago y Chacabuco y en las comunas de San Bernardo y Puente Alto para normalizar el orden público](#).

<sup>356</sup> La Tercera. October 20, 2019. [Estado de emergencia se extiende a toda la Región Metropolitana](#).

<sup>357</sup> In all there are six cities under state of emergency and three of them with full curfew.

<sup>358</sup> DW. October 19, 2019. [Chile: tres muertos y toque de queda total en tres regiones](#).

<sup>359</sup> BBC Mundo. October 21, 2019. [Protestas en Chile: 4 claves para entender la furia y el estallido social en el país sudamericano](#); The Clinic. November 14, 2019. [Estudiantes secundarios piden participación desde los 14 años en plebiscito municipal: "Fuimos impulsores de la movilización"](#).

<sup>360</sup> Cooperativa. October 19, 2019. [Manifestantes desafían el toque de queda y cantan el Himno Nacional](#); Infobae. October 21, 2019. [Toque de queda en Chile: el Ejército controla las calles luego de que los manifestantes se resistieran](#).

<sup>361</sup> Página 12. October 23, 2019. [El orgullo de resistir copó las calles de Chile](#).

<sup>362</sup> CNN Chile. November 21, 2019. [Piñera: "Estamos en guerra contra un enemigo poderoso"](#); BBC Mundo. October 22, 2019. [Protestas en Chile: "Estamos en guerra", la frase de Piñera que se le volvió en contra en medio de las fuertes manifestaciones](#).

280. After more than a month of protests, President Piñera acknowledged<sup>363</sup> the breach of protocols in the use of force against protesters, but said he would send a bill to the Chilean Congress to use the Armed Forces in the protection of public infrastructure "without the need to establish a state of constitutional exception"<sup>364</sup>. According to the information received by the IACHR, 26 homicides were recorded during the protests in Chile, more than 20,645 detentions<sup>365</sup> -950 of them would still be in pretrial detention at the conclusion of this Report<sup>366</sup>- about 12,652 people injured, the National Institute of Human Rights (NHRI) directly verified in hospitals 2,808 injured in the context of the manifestations of which, the majority, are the result of serious injuries due to impacts of ballistic projectiles and non-ballistic projectiles, of which 229 would be girls, boys and adolescents<sup>367</sup>, 352 eye injuries and mutilations, rib fractures, and lung perforation, among others<sup>368</sup>. In addition, torture and arbitrary arrests, beatings, burns, choking attempts, threats and intimidation, and illegal detentions were carried out by official agents dressed as civilians in non-institutional vehicles or without license plates or patents.

281. The IACHR and its Office of the Special Rapporteur have received information on the attacks and aggressions faced by journalists and communicators from various media, including independent media, when covering mass protests<sup>369</sup>. There would have been around 50 cases of attacks on journalists affected by the violence by state agents, to a greater extent these abuses would have been carried out by police officers and members of the armed forces during the mobilizations and protests<sup>370</sup>. However, also attacks by violent groups on public and private infrastructure were reported, including the burning of some spaces in the facilities of the *El Mercurio* building in Valparaíso, the newspaper *La Estrella*<sup>371</sup> and the *Mega* channel<sup>372</sup>. The *Bio Bio de Concepción*<sup>373</sup> radio and the *Pingüino Multimedia* communication group in Punta Arenas were also attacked<sup>374</sup>.

282. During the protests, undue pressures would also have been registered so that some journalists and the media change or moderate their editorial line, as well as restrictions on the right to access information within the security forces who acted in this context. The information regarding the situation of freedom of expression during protests is detailed below.

## B. Violence and attacks against the press in the context of protests

283. The Office of the Special Rapporteur urges the State of Chile to investigate, in a complete, effective, and impartial manner, these crimes that affect society as a whole, clarify their motives, and judicially determine the relationship they may have with their activity as communicators. In this sense, it is essential that the authorities investigate these facts without ruling out the hypothesis of the link to journalistic activity and freedom of expression. According to information received, the effects of ballistic and non-ballistic projectiles would have left sequels in at least 15 journalists, of which two would have possible eye trauma. In a large number of cases, the shooting by the police would have been carried out at a very short distance, less than 10 meters. Similarly, civil society organizations presented testimonies and audiovisual recordings that would show that reporters would

<sup>363</sup> HispanTV. November 21, 2019. [Piñera admite uso ilegal de fuerza contra manifestantes en Chile](#); Bio Bio. October 20, 2019. [Iturriaga y disparos contra civiles en Puente Alto: "Es un hecho lamentable, pero un hecho menor"](#).

<sup>364</sup> DW. November 24, 2019. [Piñera anuncia proyecto para que militares protejan infraestructura pública](#).

<sup>365</sup> Tele 13 Radio. November 23, 2019. [Fiscalía ha formalizado a más de 17 mil personas por saqueos, lesiones, desordenes y otros delitos](#); El País. November 18, 2019. [Más de 17.000 detenidos en el mes de protestas en Chile](#); DW. November 15, 2019. [Protestas en Chile han dejado 22 muertos y 2.200 heridos](#)

<sup>366</sup> INDH. November 17, 2019. [Información constatada por el INDH DDHH Chile](#); Noticias ONU. October 21, 2019. [Protestas en Chile, migrantes irregulares y el discurso del odio en internet](#)

<sup>367</sup> BBC Mundo. November 13 2019. [Protestas en Chile: "Más de 160 menores recibieron perdigones, balas y maltrato. Es inaceptable, independientemente de lo que hayan hecho"](#); Piensa Prensa / Facebook. November 15, 2019. [Cientos niños son afectados por el uso indiscriminado de bombas lacrimógenas lanzados a metros de colegios básicos cercanos a PLAZA ITALIA](#).

<sup>368</sup> Unidad Trauma Ocular a nivel público nacional (UTO). October 19 - November 8, 2019. [Informe Trauma Ocular. Resultados preliminares obtenidos UTO](#); INDH. November 21, 2019. [Información constatada por el INDH DDHH Chile](#); New York Times. November 10, 2019. [It's Mutilation': The Police in Chile Are Blinding Protesters](#); Colegio de Periodistas. November 10, 2019. [Sociedad Chilena de Psicología Comunitaria rechaza terrorismo de estado](#); Meganoticias. December 6, 2019. [INDH da cuenta de considerable aumento de lesiones oculares: Sube de 241 a 352](#).

<sup>369</sup> IACHR. 174 Period of Sessions. [Audiencias 12A. Situación de derechos humanos en el contexto de la protesta social en Chile](#). Aristegui Noticias. October 21, 2019. [Decretan tercer toque de queda en Chile; van 11 muertos y más de 2 mil detenidos](#). Reuters. November 17, 2019. [Policía de Chile evitó que socorristas auxiliaran a manifestante agónico: organismo de DDHH](#).

<sup>370</sup> DW. November 15, 2019. [CIDH denuncia agresiones a periodistas en protestas de Ecuador, Chile y Bolivia](#); Perfil. October 21, 2019. [Directora del ENACOM: "Este clima de agresión a la prensa puede ser muy peligroso"](#)

<sup>371</sup> Clarín. October 20, 2019. [Protestas en Chile: quemaron la sede del diario El Mercurio en Valparaíso](#). Diario Libre. October 21, 2019. [La SIP denuncia el 'grave atentado contra la libertad de prensa' en Chile](#). Periodista Digital. October 22, 2019. [La violencia se apodera de Chile: Manifestaciones delictivas y represión militar en las calles](#).

<sup>372</sup> FayerWayer. October 29, 2019. [Nuevo intento de ataque incendiario se registra anoche en canal de TV Mega](#).

<sup>373</sup> Sabes. October 26, 2019. [Atacan a Radio Bío Bío en Concepción](#).

<sup>374</sup> Consejo Regional Magallanes. Colegio de Periodistas. October 29, 2019. [Condena a ataque a medio de comunicación en Punta Arenas](#).

have been the deliberate object of the shooting. Indeed, the reporters attacked by the security forces were identified and separated from the protesters when they recorded the police action during the protests<sup>375</sup>.

284. On October 22, in Chiguayante (Bio Bio), *MEGA* cameraman Alejandro Torres<sup>376</sup>, was hit by a projectile in the eye, the wound caused a retinal detachment, which could lead to loss of vision. In the Metropolitan region, the cameraman of *El Desconcierto*, Matias Gamboa, would have received three impacts of pellets on his legs and feet, a teargas bomb impact on the arm and was sprayed with pepper spray directly in the face. On October 21, the cameraman of the newspaper *El Ciudadano*, Juan Rodríguez, would have been shot in the back of the neck by a Special Forces official, while the communicator ran alongside a group of protesters to avoid the repressive action of the uniformed. As stated by him, the police would have shot about 30 or 40 meters away<sup>377</sup>. In Valparaiso, the photographer of the *Reuters Agency*, Rodrigo Garrido would have received the impact of a pellet in the chest and another in his leg, as he indicated: "A policeman moved through Ecuador Street, raised and aimed his shotgun and proceeded to shoot directly where I was, where no one was throwing objects at him, there were only other people taking pictures"<sup>378</sup>.

285. Along these same lines, around seven communicators would have been affected by the indiscriminate use of chemical agents. On October 20, the photographer of *Señal 3 La Victoria*, Julio César Gallardo, would have received the impact of a tear gas bomb on his knee, despite the fact that he was carrying an identifying jacket and credentials; the shots would have been made seven meters away<sup>379</sup>. On November 30, the cameraman of the same channel, *Señal 3 La Victoria*, Gonzalo Barría received the impact of a tear gas bomb in the face, an event that was recorded while the live broadcast of the performance "Un Violador en tu camino" in front of the Tendencia Carlos Valdovinos, municipality of Pedro Aguirre Cerda<sup>380</sup>.

286. Six journalists would have received blows, threats, and intimidation directly from law enforcement<sup>381</sup>. On October 21, Police officers would have beaten and detained the president of the group of independent photographers of Los Rios, Manuel Gonzáles<sup>382</sup>. On October 22, the journalist of the radio station *Mi Radio* of Coquimbo, Leonardo Silva<sup>383</sup>, would have been beaten, confined, and held by the police. On November 9, the *TeleSur* channel denounced the former governor of the Province of Antartica, Juan Arcos Srdanovic, for alleged harassment and defamation of the work of journalists working in the international channel, carried out through messages through different social media profiles<sup>384</sup>.

287. Likewise, the 2013 Joint Declaration on violence against journalists in the framework of social demonstrations indicates that the rights of assembly and freedom of expression "are fundamental and their guarantee is a necessary condition for existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations in order to ensure their peaceful development or disperse those that become violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, dispersing a demonstration must be justified in the duty of protection of persons, and the safest and least harmful measures for protesters should be used. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances in accordance with internationally recognized principles"<sup>385</sup>.

### C. Detentions of journalists during the state of emergency

288. There were also reports of the detention of around six journalists<sup>386</sup> (19 the total number during the crisis) during the state of emergency. On October 26, journalist Franco Manzo spent the entire night in a

<sup>375</sup>IACHR. December 6, 2019. [CIDH condena el uso excesivo de la fuerza en el contexto de las protestas sociales en Chile, expresa su grave preocupación por el elevado número de denuncias y rechaza toda forma de violencia](#); OHCHR. December 13, 2019. [Informe ONU sobre la crisis en Chile describe múltiples violaciones de derechos humanos y hace un llamado a reformas](#); Human Rights Watch. November 26, 2019. [Chile: Llamado urgente a una reforma policial tras las protestas](#). INDH Chile. No Date. [Informe de DDHH en el contexto de la crisis social](#). Amnistía Internacional. November 26, 2019. Chile: [Política deliberada para dañar a manifestantes apunta a responsabilidad de mando](#).

<sup>376</sup>Bio Bio. October 23, 2019. [Camarógrafo recibe disparo de balín de Carabineros en su ojo durante saqueo en Chiguayante](#).

<sup>377</sup>El Ciudadano. October 21, 2019. [Carabineros dispara perdigón que impacta cabeza de camarógrafo de El Ciudadano](#).

<sup>378</sup>Colegio de Periodistas de Chile. November 11, 2019. [Informe sobre situación de agresiones a periodistas y Comunicadores durante Estado de Emergencia, toque de queda y crisis política en Chile](#); Reuters. November 19, 2019. [Chile's police chief suspends use of rubber bullets](#).

<sup>379</sup>El Desconcierto/Facebook, October 20, 2013. [Disparan a la prensa en Plaza Italia. Fotógrafo de la Señal 3 La Victoria](#).

<sup>380</sup>Cooperativa. December 2, 2019. [Bomba lacrimógena impactó a camarógrafo en el rostro: Fue lanzada desde una tenencia de Carabineros](#). Señal 3 La Victoria/YouTube. December 2, 2019. [Urgente Camarógrafo de Señal 3 La Victoria herido por lagrimogena tirada directamente a su rostro](#).

<sup>381</sup>Colegio de Periodistas de Chile. November 11, 2019. [Informe sobre situación de agresiones a periodistas y Comunicadores durante Estado de Emergencia, toque de queda y crisis política en Chile](#). November 9, 2019. [Declaración por la Libertad de Expresión de la Red de Periodistas y Comunicadores Migrantes](#).

<sup>382</sup>Prensa OPAL Chile/Facebook, October 21, 2019. [Si esto no es dictadura, que es](#).

<sup>383</sup>Mi Radio. October 22, 2019. [Carabineros golpea a periodista de Mi Radio en medio de reportaje por barricadas](#).

<sup>384</sup>Colegio de Abogados. November 9, 2019. [Telesur acusa persecución](#).

<sup>385</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>386</sup>Observatorio del Derecho a la Comunicación. December, 2019. IACHR. Visit in Loco. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

gymnasium specially enabled by police officers in Magallanes, as reported to this Office, he would have been released without explanation nor presented before a judge<sup>387</sup>.

289. The Office of the Special Rapporteur draws particular attention to cases of detention and harassment against women journalists, based on gender stereotypes. On October 23 in Arica, the journalists of the *Diario Estrella*, Estefani Carrasco and Patricia Torres were detained along with Alfredo Sanhueza by police officers during the curfew despite having their credentials, both women were forced to undress and do squats in a police station<sup>388</sup>.

290. The limitations to deliver safe-conducts to the press, including allegations of denial of safe-conducts would have contributed to many press workers being subjected to attacks and detentions<sup>389</sup>. On October 20, the 16th Commissar of La Reina refused to give a safe-conduct to *MEGA* journalist Andrea Arístegui<sup>390</sup>, indicating that journalists should not go to work during the curfew; On October 22, the correspondent of the international agency *Pressenza*, Claudia Aranda, who would have a safe-conduct, would have been detained and taken to the third Police Station in Santiago receiving aggressive and intimidating treatment by police<sup>391</sup>.

291. On October 26, the Investigative Police (PDI) retained three Argentine journalists Nazareno Roviello (*La Retaguardia*), Andrés Masotto (*Radio Presente*), and Leandro Díaz del Campo (*ANCAP*) at the Santiago International Airport and would have denied them entry to the country. The police alleged that they would have reproduced images that "incited to hate" and they would have been informed that they would be deported. In addition, the PDI said they wanted to enter with tourist visas and in order to do journalistic coverage they needed a work visa.

292. After different institutions intervened, such as the National Institute of Human Rights (NHRI), the Chilean Commission of Human Rights, and the Journalists Association of Chile, the PDI allowed them to enter<sup>392</sup>.

293. The Office of the Special Rapporteur wishes to recall that in the Joint Declaration on the regulation of the media, restrictions on journalists, and the investigation of corruption, the Special Rapporteurs for freedom of expression of the United Nations, the Inter-American Commission on Human Rights (IACHR), and the Organization for Security and Cooperation in Europe (OSCE), noted that accreditation schemes for journalists "are only appropriate if they are necessary to provide them with privileged access to certain places and/or events; such schemes must be supervised by independent agencies, and accreditation decisions must be taken following a fair and transparent process, based on previously published, clear, and non-discriminatory criteria. Accreditation should never be suspended solely based on the content of a journalist's information"<sup>393</sup>.

#### **D .Government restrictions to editorial line**

294. The Office of the Special Rapporteur was informed and received the supporting documentation on different types of pressures from state authorities to change or allegedly control the media coverage in Chile at a November 11 hearing on the human rights situation in the context of the social protest in the framework of the IACHR's sessions in Ecuador. On that occasion, among the inquiries to the State of Chile by the Special Rapporteur, there were questions about the reported cases of eye injuries that would point to a pattern in the shots fired by the police, which were aimed at the same area of the body: the torso and head of the protesters. Along the same lines, he also inquired on access to the registry of detainees: *Why haven't these records been made public?* Finally, the Special Rapporteur asked the State if it would have information on the possible existence of a pattern of pressure on journalists that was reportedly evidenced through meetings of Chilean authorities with media directors in order to change their coverage or interfere with informational content<sup>394</sup>.

295. On October 26, the directors of *La Tercera* and *El Mercurio* would have held a meeting with the Government in La Moneda. After this meeting, the Government would have provided information from intelligence agencies to said media to condition its editorial line<sup>395</sup>.

<sup>387</sup> "We denounce: colleague arbitrarily detained during the peaceful march held yesterday in Punta Arenas. All while recording other citizens repressed with violence by police. He spends the night in handcuffs and is released without explanation. Account of Periodistas Magallanes". @PeriodistasMaga [October 27, 2019 2:55 P.M.](#) CHV Noticias. October 28, 2019. [Denuncian detención "arbitraria y violenta" contra periodista que cubría marcha en Magallanes.](#)

<sup>388</sup> CNN Chile. October 20, 2019. [INDH anuncia querrela contra Carabineros de Arica por caso de violencia sexual hacia periodistas](#); La Izquierda Diario. October 25, 2018. [ARICA: Periodistas denuncian violencia sexual durante detención policial en toque de queda](#)

<sup>389</sup> Observatorio del Derecho a la Comunicación. Circular Núm. 1.832, 2019 published by Diario Oficial de Chile. "In the documented events there is a systematic breach of the public order protocols of Carabineros".

<sup>390</sup> "Captain Sebastián Veloso of the 16th Police Station of La Reina says that journalists cannot go to work during curfew. What does the @min\_interior say?". Twitter account of journalist Andrea Arístegui. @AndreaAristegui

<sup>391</sup> TeleSur TV / Youtube. October 23, 2019. [Chile: carabineros detienen ilegalmente a periodista Claudia Aranda](#); Pressenza International Press Agency. November 24, 2019. [Una segunda periodista de Pressenza agredida por reportear en Chile.](#)

<sup>392</sup> El Desconcierto. October 26, 2019. [Denuncian que tres periodistas argentinos fueron retenidos en el aeropuerto de Santiago](#); TELAM. October 26, 2019. [Tres reporteros argentinos de medios alternativos retenidos en el aeropuerto de Santiago.](#)

<sup>393</sup> Office of the Special Rapporteur for Freedom of Expression. [Joint Declaration on Regulation of the Media, Restrictions on Journalists, and Investigating Corruption](#). December 18, 2003.

<sup>394</sup> IACHR. 174 Period of Sessions. [Audencias 12A. Situación de derechos humanos en el contexto de la protesta social en Chile.](#)

<sup>395</sup> Interferencia Chile. October 30, 2019. [Artículo 'fake' sobre agentes venezolanos genera crisis en redacción de La Tercera.](#)



296. According to the Federation of Television Channel Workers [*Federación de Trabajadores de Canales de Televisión*] (FETRA TV) and the Journalists Association<sup>396</sup>, the Chilean government would also have tried to intervene in the information agenda of television channels during a meeting on October 19 with former Interior Minister Andrés Chadwick<sup>397</sup>. As a result, lawyer Felipe Ignacio Vega filed a collusion complaint with the National Economic Prosecutor's Office [*Fiscalía Nacional Económica*] during the last days of October<sup>398</sup>.

297. On October 31, *Canal 13* of Chile announced the replacement of the Press Director, Enrique Mujica, who argued "personal reasons" for leaving office. According to information from Chilean media, the director was removed after the release of an interview with the General Director of the Police Department, Mario Rozas, in the news broadcasted on October 29, in which the journalist in charge of the interview criticized the police abuses and asked if human rights violations had been verified<sup>399</sup>. On November 28, the actor and host of a radio program, reported that he was fired from *Radio Play FM*, a decision that would be related to the actor's visible participation in the mobilizations<sup>400</sup>.

298. On November 5, the journalists' union of the COPESA communications company reported that journalists from the newspaper *La Tercera* reported that they would have been forced to publish information that does not correspond to what they have reported on the field. Sebastián Vedoya, author of the chronicle "*Policía identifica a uno de los autores de incendios en estaciones de Metro*", would have received a direct instruction from the director of the media to prepare the note based on a document given to him from the director of the media. Vedoya also denounced that this note -widely disseminated- would have caused a smear campaign against him<sup>401</sup>.

299. On November 6, journalists Carolina Román and Pablo Manríquez were fired as producers of the "Buenos Días a Todos"<sup>402</sup> program of the state media, *Televisión Nacional de Chile* (TVCh). According to information provided by the affected journalists, on October 19 the production of the program made a series of requests for changes in the daily pattern of press releases, among which they mentioned, indications about the exclusion of interviews of certain political leaders or the elimination of the testimony of the father of a young man killed by soldiers in Curicó, in the framework of the curfew. The channel's content management would have also scolded one of the program's commentators, Daniel Stingo, who would have starred in a strong debate with Congress deputies of the official party. Both journalists maintain that their dismissal from TVCh would be due to telling the truth and not hiding the pressures they experienced as a team.

300. On November 13, the deputy editor of the national section of the newspaper *La Tercera*, Felipe de Ruyt Jara, would have been fired from the company after informing the Journalists Association about the editorial management of the media. The executives of the newspaper would have indicated that the dismissal was due "to the needs of the company" motivated by the serious economic problems that COPESA was facing<sup>403</sup>.

301. On November 8, businessman Juan Sutil, leader of the National Society of Agriculture [*Sociedad Nacional de Agricultura*] (SNA) and president of Empresas Sutil, announced the decision to end the sponsorship he had with the program "Agricultural Agenda", broadcasted by *CNN Chile*. Through a letter sent to the television media, the businessman explained that the decision was made due to "the deplorable attitude of CNN and CHV at the time when Chile needed a serious and objective journalism, free of political bias"<sup>404</sup>. The Journalists Association of Chile rejected the fact by calling it an attempt to restrict freedom of expression and opinion of *CNN* and *Chilevisión*<sup>405</sup>.

<sup>396</sup> Colegio de Periodistas de Chile. October 26, 2019. [Colegio de Periodistas rechaza intento intervención del gobierno en canales de televisión.](#)

<sup>397</sup> El Desconcierto. October 27, 2019. [Federación de trabajadores de la TV por encuentro del gobierno con canales: "Los directores ejecutivos corroboraron la reunión".](#)

<sup>398</sup> El Desconcierto. October 30, 2019. [Ingresan denuncia ante la Fiscalía Nacional Económica por presunta colusión de canales de televisión organizada por Chadwick.](#)

<sup>399</sup> Cooperativa. October 31, 2019. [Canal 13 y TVN anuncian cambios en su estructura organizacional.](#) El Filtrador. October 31, 2019. [Las razones políticas de Canal 13 para remover a Enrique Mujica de la Dirección de Prensa.](#)

<sup>400</sup> "Dear auditors of Play V a show I have hosted since Nov. last year on Play radio today I say goodbye to all of you, with whom we tried to build a community of sustainability and environmental care". Twitter account of Héctor Morales. [November 28, 2019. 3.04 P.M.](#)

<sup>401</sup> Radio Paulina. November 5, 2019. [Sindicato de COPESA denuncia presiones a periodistas para publicar tesis instruidas por editores.](#) El Desconcierto. October 28, 2019. [La Tercera se retracta de información falsa sobre "venezolanos y cubanos" involucrados en quema de estaciones de Metro: Open letter from editors and sub-editors of La Tercera.](#) Twitter account of journalist Juan Andrés Quezada. @QuezoQuezada [November 7, 2019. 3.48 P.M.](#)

<sup>402</sup> Bio Bio. November 6, 2019. [Desvinculan a productor ejecutivo y editora periodística de Buenos Días a Todos; Cambio 21.](#) November 8, 2019. [Sigue la censura en los canales: Despiden al abogado Daniel Stingo del matinal de TVN por ser "muy puntudo" con los invitados especialmente del Gobierno.](#)

<sup>403</sup> "Well, I just got fired from #LaTercera for expressing my disagreement with the information manipulation practices that exist inside the newspaper". Twitter account of journalist Felipe De Ruyt. @felipedejara [November 13 2019. 3.34 P.M.](#) El Desconcierto. November 20, 2019. [Habla subeditor desvinculado de La Tercera: "En algunas secciones existe un clima intimidatorio";](#) Colegio de Periodistas. November 14, 2019. [Apoyo y solidaridad con periodista Felipe de Ruyt.](#)

<sup>404</sup> Radio Agricultura. November 8, 2019. [Empresario Juan Sutil retiró publicidad de CNN Chile por ser "absolutamente parcial": "No han actuado a la altura del periodismo correcto";](#) La Tercera. November 8, 2019. [Empresas Sutil corta auspicios a programa Agenda Agrícola de CNN Chile en discrepancia por cobertura a ola de protestas.](#)

<sup>405</sup> Colegio de Periodistas. November 8, 2019. [Colegio de Periodistas rechaza extorsión económica a CNN y Chilevisión.](#)

## E. Access to public information

302. In Chile, civil society organizations and international organizations have denounced the lack of transparency and restrictions on access to information during demonstrations, specifically, on detentions, injured individuals, and complaints about human rights violations. It was denounced that the information systematized and published by the Ministry of Interior, Ministry of Health, Ministry of Justice and the police, would be incomplete, would not be disaggregated, and during the first days of the crisis would not have been published in a timely manner.<sup>406</sup> It was not until October 22 that the Prosecutor's Office offered figures of detainees and confirmation of the number and identity of deceased persons. On October 30, the first figures on investigations into alleged human rights violations were published, data that were updated on November 8 and 26, where data were presented in greater detail.

303. Both the National Institute of Human Rights (NHRI) and the Medical Association, and the Chilean Ophthalmology Society<sup>407</sup> denounced that the figures offered by the Government did not match those they were collecting and reported a lack of transparency by some agencies.

304. On November 18, freelance photographer Diego Ibacache reported having observed, during demonstrations in Concepción, the use of false identifications by police, such as "Super Dick", "Destroyer" and "Raptor"<sup>408</sup>. This motivated a request by the Comptroller to the Police, so that the institution answered to the alleged irregularities in the identification in the uniforms of the police. The Police responded that the measure responded to security reasons and to alleged death threats that the officers would have received; they added that the eventual imposition of sanctions will depend on the direct superior of each offending officer<sup>409</sup>. On November 21, a tweeter posted a video recorded by himself where the Captain of the 18th Ñuñoa police station appears ordering his subordinates "*from now on we are going out without a name, are we clear?*" Although the Police denied the video saying it had been manipulated, the Comptroller General of the Republic said, also through Twitter, that the video was added to the ongoing investigation<sup>410</sup>.

305. According to information provided to the Office of the Special Rapporteur, the Council for Transparency, published a recommendation on October 22 regarding the obligation to deliver public information -reliable and truthful- in exceptional situations, in which it recommended that the availability of official information, easily accessible and in a centralized and permanently updated way, can avoid the spreading of false and confusing news, which would in turn increase people's fear and sense of insecurity<sup>411</sup>. The Council for Transparency issued these recommendations to be complied with by the Police Department.

306. Likewise, it was denounced that in press conferences convened by President Piñera during the State of Emergency, questions from the press would not have been allowed. This same practice occurred with the press conferences offered by military commanders to announce the establishment of a curfew and the measures carried out during the State of Emergency, and in the appearances of the Chief of National Defense, General Javier Iturriaga<sup>412</sup>.

## F. Internet and freedom of expression

307. According to information provided by civil society organizations, there would have been blockages and the elimination of content related to protests on various digital platforms, for allegations of alleged violations to community norms (terms and conditions of their service)<sup>413</sup>.

308. The organizations indicated that the mechanisms of appeal and review of this type of decisions are not accessible to those affected. They added that the insufficient information provided to the affected users would prevent them from fully understanding what the content or suspension of the account was due to, which would force the intervention of civil society organizations (as reliable third parties intermediating before the companies) to obtain the missing information, slowing down the recovery of the content, and risking the ability

<sup>406</sup>CIPER. October 22, 2019. [Manifestante murió en la Posta Central y gobierno no lo incluyó en la lista oficial de fallecidos.](#)

<sup>407</sup>Colegio Médico de Chile. October 25, 2019. [Colegio Médico expuso en comisiones de Derechos Humanos del Senado y la Cámara de Diputados;](#) Sociedad Chilena de Oftalmología. November 11, 2019. [Informe Unidad Trauma Ocular Hospital del Salvador.](#)

<sup>408</sup>Publimetro. November 19, 2019. ["Me pareció raro su parche": fotógrafo denuncia uso de apodos en la identificación de carabineros durante marcha en Concepción.](#)

<sup>409</sup>Emol. November 20, 2019. [Contraloría oficial a Carabineros por presuntas irregularidades en identificación de uniformes.](#) Publimetro. November 24, 2019. [Cómo olvidar a "Superdick": Carabineros ingresa respuesta a Contraloría por uso de apodos y denuncia amenazas de muerte a uniformado.](#)

<sup>410</sup>Fundación Datos Protegidos and Observatorio del Derecho a la Comunicación. *Informe sobre los múltiples casos de violaciones a los derechos humanos en Chile durante las primeras 5 semanas la crisis social. Ch. I. Para. A.* CNN Chile. November 21, 2019. [Contraloría agrega video desmentido por Carabineros a investigación sobre uniformados sin identificación.](#)

<sup>411</sup>Consejo Para La Transparencia (CPLT). October 22, 2019. [Declaración Pública.](#)

<sup>412</sup>Information broadcast by Chilevisión on its nightly news show of October 27. Fundación Datos Protegidos and Observatorio del Derecho a la Comunicación. *Informe sobre los múltiples casos de violaciones a los derechos humanos en Chile durante las primeras 5 semanas la crisis social. Ch. I. Para. C.*

<sup>413</sup>Facebook. [Community Standards Enforcement Report.](#) Fayer Wayer. October 21, 2019. [Chile: ¿Están realmente las redes sociales borrando los videos de denuncia?](#)

to make serious or urgent events visible. In addition, said users would not receive any information regarding the reasons why their accounts or contents have been deleted<sup>414</sup>.

309. Likewise, this Office has received information on complaints regarding investigations and intimidation actions initiated by the Chilean police that would use as evidence information coming from social network monitoring, through the monitoring of Internet users who use some hashtags such as #ChileViolaLosDerechosHumanos #LosMilicosNoSonTusAmigos #ChileNoQuiereMigajas #ChileDesperto #RenunciaPiñera #ChileQuiereCambios,, which would have been trending during every day of social protests and state of emergency in the country<sup>415</sup>.

## G. Progress

310. The Office of the Special Rapporteur has taken note of the approval by the Senate Constitution Commission on June 10 of a large part of the article on the Protection of Personal Data project, although until the end of this annual report a definition would be pending as to whether a specialized Agency will be created or if the role will be assumed by the Council for Transparency<sup>416</sup>.

311. On July 12, the Comptroller General of the Republic of Chile published an opinion in which it resolved that "it is not appropriate" for public institutions to block users of their Twitter accounts. And that, therefore, they must unblock those individuals who are prevented from entering these institutional channels. However, this "in no way means that people can treat the authorities in inappropriate or insulting terms or refer to public services without due respect," according to the entity<sup>417</sup>.

312. According to public information, on November 19, the Court of Appeals of Santiago de Chile accepted an appeal for protection and ordered the press team of the Presidency of the Republic to rule on the request for re-accreditation of the media, *The Times Chile* to cover the activities in the Palacio de La Moneda<sup>418</sup>.

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

314. In addition, the Inter-American Court indicated that, "with regard to accreditations or authorizations to the press media for participation in official events, which imply a possible restriction on the exercise of the freedom to seek, receive, and disseminate information and ideas of all kinds, it must be demonstrated that its application is legal, pursues a legitimate objective, and is necessary and proportional in relation to the objective it intends in a democratic society. Accreditation requirements must be concrete, objective, and reasonable, and its application transparent. It is up to the State to demonstrate that it has complied with the above requirements when establishing restrictions on access to information under its control<sup>419</sup>.

## H. Attacks, threats, and intimidation against journalists and the media

315. On May 14, the National Renovation [*Renovación Nacional*] (RN) Congress Deputy, René García was accused of insulting parliamentarians and assaulting *Radio ADN* journalist Kevin Felgueras<sup>420</sup> in the framework of the debate of the commission investigating the purchase of land by Under Secretary Rodrigo Ubilla. García would have kicked the journalist to prevent him from opening a door. Through a public statement, the bench of congress deputies of the Party for Democracy [*Partido por la Democracia*] (PPD) rejected the attitude of the parliamentarian and recalled that "our code of conduct requires us to strive to act in all aspects of life according to the virtues of an exemplary citizen, and clearly in this case it he has overlooked this rule that regulates our actions"<sup>421</sup>.

316. On June 20, *The Clinic's* site reported that strangers entered their offices and at least 15 computers and other media work equipment were stolen, including sensitive material. In addition, according to a statement

<sup>414</sup>Derechos Digitales. October 2019. [Situación de derechos humanos y el uso de tecnología en el contexto de la protesta social en Chile 2019](#). III, Pag. 6.

<sup>415</sup>Derechos Digitales. October 2019. [Situación de derechos humanos y el uso de tecnología en el contexto de la protesta social en Chile 2019](#). VIII, Pag. 10. La Tercera. October 28, 2019. [Gobierno rastrea rol de venezolanos en Twitter](#).

<sup>416</sup>Senado Chile. June 11, 2019. [Protección de datos personales: dudas por la institucionalidad que se hará cargo](#).

<sup>417</sup>Contraloría de Chile. Dictamen 014953. [PDI, uso cuenta institucional red social Twitter, improcedencia bloqueo usuarios particulares, derecho a petición](#). La Tercera. July 12, 2019. [Contraloría determina que "no procede" que una institución pública bloquee a usuarios de Twitter por opiniones o expresiones](#).

<sup>418</sup>Poder Judicial República de Chile. November 19, 2019. [Corte de Santiago ordena a la Presidencia responder solicitud de reacreditación de medio de prensa](#).

<sup>419</sup>I/A Court H. R. *Case Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, para. 93; I/A Court H. R. *Case Ríos et al v. Venezuela*. Judgment of January 28, 2009. Serie C No. 194. Para. 375; I/A Court H. R. *Case Perozo et al v. Venezuela*. Judgment of January 28, 2009. Serie C No. 195, para. 346.

<sup>420</sup>Cooperativa CL. May 15, 2019. [Diputado García insultó a parlamentarias y agredió a periodista en el Congreso](#).

<sup>421</sup>EMOL. May 16, 2019. [Gobierno llama "al respeto" tras agresión de diputado García a periodista y dice que siempre rechazarán la violencia](#).

from the media, strangers were able to access the entire building, where the facilities of Chile Transparente and other organizations are also located<sup>422</sup>.

317. On August 9, a *TVN* journalist formally denounced the Coquimbo Unido staff for sexual harassment, a situation that would have occurred when she was covering a soccer team's training at the Las Rosas sports complex. According to the journalist's account, a group of players shouted obscenities and made gestures of sexual connotation with their genitals. For its part, the Club defended itself, in a statement, and said that from that moment on it will limit access to the press, arguing that it was the reporter who would have been confused because "the facts show that yesterday a part of the press crew crossed the limits of proximity of the dressing room of our Honor Roll"<sup>423</sup>.

318. On numerous occasions, this Office has emphasized that social gender constructions and historical discrimination against women determine that the patterns of violence that persist in the region against the press have particularities and/or a differentiated impact on women journalists and media workers. The Office of the Special Rapporteur has indicated that violence against women journalists and media workers "manifests itself in different ways, from murder, sexual violence, including sexual harassment to intimidation, abuse of power, and threats based on gender".<sup>424</sup> This Office has also observed that "violence against women is perpetrated by different actors, such as State officials, sources of information, or colleagues and takes place in various contexts and spaces, including the streets, workplace, and state offices or institutions"<sup>425</sup>.

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

## I. Communications Surveillance

320. According to a report called *Operación topógrafo: el espionaje del Ejército a cuatro denunciantes de irregularidades*<sup>426</sup>, of the newspaper *La Tercera*, broadcasted on August 10, the Army Intelligence Directorate (DINE) would have carried out a so-called "Operation W" aimed at spying to journalist Mauricio Weibel Barahonda. Indeed, this body would have followed the aforementioned journalist and would have intervened his telephone lines between 2016 and 2017 from the DINE, when he was finishing the process of his book "Traición a la patria", in which he reported a case of corruption over alleged fraud and diversion of public funds from the Copper Reserved Law that would have been perpetrated by members of the Armed Forces. The investigation had a high impact on public opinion and on the response of the institutions due to the public interest of the investigation and the alleged acts of corruption that it would reveal<sup>427</sup>.

321. After knowing the information, Weibel recalled having been followed by strangers -which was repeated- for several occasions in 2016 and in different activities, both public and private. During that time, he held several meetings with newspaper sources and was still in full investigation into the events inside the Army. The journalist also reported two assaults on *The Clinic* newspaper while publishing reports on irregularities there, in which they only stole computers, as well as having been the victim of computers hacks while working on the *TVN* television channel<sup>428</sup>. In 2017 the authorities would also have intervened the phones of four active and retired Army officials who were suspected of leaking documents to the press about irregularities in the Chilean armed forces. According to the archives published by the newspaper *La Tercera*, the case of espionage on these four officials was called "Operación Topógrafos" and consisted of five records with 18 pages of transcripts and two telephone conversations. In accordance with the powers established in Article 41 of the American Convention on Human Rights, the Office of the Special Rapporteur sent the State of Chile requesting information on the public allegations of alleged espionage on journalist Marcelo Weibel and on four informants of alleged acts of corruption in the Army of that country. The request sent on August 26 was not answered within the granted period, nor by the closing date of this report.

<sup>422</sup> The Clinic. July 1, 2019. [Comunicado público: Desconocidos ingresan a oficinas de The Clinic y se llevan al menos 15 computadores](#). *La Tercera*. July 1, 2019. [Semanao The Clinic sufre robo de "material sensible" en sus oficinas](#).

<sup>423</sup> *La Tercera*. August 10, 2019. [Una periodista de TVN denuncia al plantel de Coquimbo Unido por acoso sexual; el club lo desmiente](#). Bio Bio. August 10, 2019. [Periodista de TVN presenta denuncia contra futbolistas de Coquimbo Unido por acoso sexual](#). 24 Horas Chile / Youtube. August 9, 2019. [Periodista de TVN Red Coquimbo sufrió acoso sexual durante entrenamiento de Coquimbo Unido](#).

<sup>424</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 251.

<sup>425</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 251. The Office of the Special Rapporteur quotes several sources, including: CIMAC. Informe diagnóstico. [Violencia contra mujeres periodistas. México 2010-2011. September 7, 2012](#). P. 11; Committee to Protect Journalists (CPJ). June 7, 2011. [The silencing crime: Sexual violence and journalists](#).

<sup>426</sup> *La Tercera*. August 10, 2019. [Operación topógrafo: el espionaje del Ejército a cuatro denunciantes de irregularidades](#).

<sup>427</sup> *Cooperativa*. August 11, 2019. [Ejército por presunto espionaje: Las actividades de inteligencia se han ajustado a la ley](#). *La Izquierda Diario*. August 12, 2019. [Se destapa el libre espionaje del Ejército de Chile](#).

<sup>428</sup> IFEX. August 20, 2019. [Chile accused of spying on investigative journalist Mauricio Weibel](#). *La Tercera*. August 12, 2019. [Operación W: periodista denunciará caso de espionaje que apunta al Ejército](#).

322. On March 18, a new Mobile Surveillance System in the Metropolitan Region of Santiago was presented in Chile<sup>429</sup>, which through the use of drones and cameras would seek to combat crime and assist in the coordination of the various regional and community authorities to improve security. According to the available information, the unmanned aircraft would be equipped with high-definition cameras to obtain visual information and transmit it live to monitoring centers located in the regional municipalities, where trained operators would observe the images delivered by the drones<sup>430</sup>.

323. This Office was informed that, together with high-definition cameras, aircraft would have computer programs that would allow them to do automated facial recognition. In addition to the aircraft in the Metropolitan Region, a pilot program would have been implemented in Antofagasta in December 2018, and the extension to the regions of Coquimbo, Valparaíso, Biobío, and La Araucanía is planned this year; and the rest of the country will be applied in 2020. In accordance with the powers established in Article 41 of the American Convention on Human Rights, the Office of the Special Rapporteur sent a letter requesting information on the implementation of a new Mobile Surveillance System in the country to the State of Chile, where it is observed that the characteristics of the described program and the technologies involved in it have the potential to affect the right to privacy and freedom of expression, due to its massive, permanent, and indiscriminate nature. The request sent on June 11, was not answered within the granted period, nor at the closing date of this report.

## J. Other social protests

324. Throughout 2019, this Office has registered different complaints about repressive actions that occur in the context of student demonstrations by Police officers in Chile, framed in the so-called Safe Classroom [*Aula Segura*] project, which sought to strengthen the powers of directors of educational establishments, allowing them to immediately expel students who are involved in serious acts of violence. This initiative has received harsh criticism due to complaints of violations of the rights of the girls, boys, and adolescents, which translates, for example, in a systematic review of the backpacks of the students of the National Institute in mobilizations and in the immediate vicinity of the educational establishment<sup>431</sup>.

325. In this context, on May 28, civil society organizations denounced excessive use of force against protesters as well as communication students. The photography student of the Arcos Institute, Javiera Godoy, and the photographer of Agencia Aton, Javier Torres, were attacked, their material stolen, and they were detained by members of the Special Forces (FFEE) of the Police<sup>432</sup>.

326. On September 27, the Climate March was held in the Metropolitan region of Santiago de Chile, which had a violent closure with a report of 13 persons detained and 10 injured, including five press professionals. A relevant case is that of the journalist of *CHV News*, of initials NK, who was stabbed in the leg by a stranger, while the cameraman's equipment would have been stolen. Likewise, cameraman Ricardo Leiva and journalist Sebastián Marchant, both of *TVN*, were assaulted by strangers, and the record of the attack was broadcasted on the channel itself. Aggressions were also reported against the *CNN* press team<sup>433</sup>, Andrea Von Dessauer, Nicolás Krumm, Cristián Álvarez, and Marcelo Villagrán.

327. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical political and social expression of the activities of the authorities. The Commission has pointed out that "it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly"<sup>434</sup> and that "the exercise of the right of assembly to through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its realization"<sup>435</sup>.

<sup>429</sup> Prensa Presidencia de Chile. March 18, 2019. [Presidente Piñera lanza sistema de vigilancia con drones en la Región Metropolitana: "Es nuestro deber hacer todo para llevar más tranquilidad y seguridad a los hogares chilenos"](#).

<sup>430</sup> IFEX. April 5, 2019. [Contra la vigilancia masiva en los espacios públicos del "Sistema de televigilancia móvil"](#).

<sup>431</sup> Ministerio de Educación de Chile. September 20, 2018. [Gobierno envía al Congreso Proyecto de Ley "Aula Segura"](#).

<sup>432</sup> El Ciudadano. May 29, 2019. ["Me golpearon varias veces la cabeza con una lacrimógena": Los relatos de los reporteros agredidos por FFEE en el Instituto Nacional](#). "Testimony of Javiera Godoy photoreporter beaten by Special Forces carabinera Nicole Doumot Guzmán, today at the gates of the National Institute". Twitter account of Piensa Prensa. @PiensaPrensa [May 28, 2019 9.16 P.M.](#) "Mauricio, a photographer arrested by police officers at the gates of the National Institute: "They grabbed me for taking pictures when they were holding detainees ". [May 28, 2019 6.15 P.M.](#) "Carabineros trying to take photo cameras from photographers detained at the National Institute (to hide evidence) of beatings". [May 28, 2019 5.40 P.M.](#)

<sup>433</sup> Cooperativa CL. September 27, 2019. [Encapuchados agredieron a equipos de prensa en marcha por el clima](#). Bio Bio. September 27, 2019. [Apuñalan a periodista de CHV durante marcha contra cambio climático y roban cámara del canal](#). La Nación. September 28, 2019. [Rubilar y agresión a equipos de prensa: "Cuando se ataca a un periodista se ataca al corazón de la democracia"](#).

<sup>434</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>435</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. 139.

## 10.COLOMBIA

328. Throughout 2019, the Office of the Special Rapporteur noted with concern the excessive use of force in the context of social protests initiated since November 21, in Colombia. In particular, it draw attention to a series of actions that led to detentions of journalists, as well as physical attacks and multiple obstacles that the communicators had to face during the coverage and recording of protests. In a more general context, the Office of the Special Rapporteur warns that journalists who carry out investigative journalism were subjected to stigmatization by political leaders, contract termination, and dismissals in various media, which raises concerns about a possible chilling effect on the exercise of freedom of expression.

329. Likewise, the office received information on the murder of four communicators for reasons allegedly linked to their journalistic work and urged to investigate these cases without ruling out the hypothesis related to the exercise of their profession. Finally, this Office highlights progress in the area of the National Unit for the Protection of Journalists and in the area of community broadcasting. Progress was also noted in various investigations concerning murders of journalists, notwithstanding that there are still pending cases that must be addressed with due diligence and sufficient resources to end impunity for crimes perpetrated in previous years.

### A. Prosecution of justice

330. The Office of the Special Rapporteur notes that high levels of impunity persist in Colombia with regard to crimes and attacks against journalists for reasons related to their work. As documented by this Office, between 1995 and 2019 more than 100 journalists were killed in situations related to their professional practice. Likewise, this Office observed in its previous annual reports on the tendency for these crimes to remain in impunity as a result of excessive delays in the investigations that led to the prescription of the cases<sup>436</sup>.

331. Within the aforementioned context, regarding the murder of Jaime Garzón in 1999 that was declared a crime against humanity in 2016<sup>437</sup>, the Office of the Special Rapporteur notes with deep concern the decision of the Criminal Chamber of the Superior Court of Bogotá adopted on July 19, in which it decided to revoke said qualification and reduced by four years the 30 years penalty imposed on the convicted person as the intellectual author of the crime, José Miguel Narváez Martínez, former Deputy Director of the former Administrative Security Department (DAS). At the close of this report, the Criminal Cassation Chamber of the Supreme Court would have pending the definition of the status of the qualification<sup>438</sup>. In turn, the Office of the Special Rapporteur was informed that the Special Jurisdiction for Peace (JEP) would have denied the request for freedom to Colonel (r) Jorge Elfezer Plazas Acevedo, who is being prosecuted for his alleged participation in the crime of journalist Jaime Garzón<sup>439</sup>.

332. Regarding the progress in the investigation into the kidnapping and torture suffered in 2001 by journalist Claudia Julieta Duque, following her journalistic work on the murder of Jaime Garzón, on January 18, the Second Special Criminal Court of Bogotá would have decided to order the freedom by William Alberto Merchán, former DAS agent who would have been involved in the events, due to the expiration of the term for the start of the oral trial<sup>440</sup>. However, on February 19, the Superior Court of Bogotá would have revoked that decision. On February 25, the trial against Merchán<sup>441</sup> would have begun, although on August 14 it transcended in the media that he was again released following the order of a court in Bogotá as a result of delays in the progress of the trial<sup>442</sup>. Within this context, with respect to the process followed against Emiro Rojas Granados, former Deputy Director of the DAS, in July the Office of the Special Rapporteur received with concern the information on a judicial resolution adopted by the Second Specialized Criminal Court of Bogotá that ordered

<sup>436</sup>IACHR. [Annual Report 2014](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II. Doc. 13. March 9, 2015; IACHR. Annual Report 2015. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015; IACHR. [Annual Report 2016](#). [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017; IACHR. [Annual Report 2017](#). Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II. Doc. 210/17. December 31, 2017; IACHR. [Annual Report 2018](#). [Report of the Office of The Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 30. March 17, 2019.

<sup>437</sup>IACHR. [Annual Report 2016](#). [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). (Chapter II) OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 313, 314.

<sup>438</sup>El Universal. July 26, 2019. [Tribunal redujo condena a exdirector del DAS por homicidio de Jaime Garzón](#); El País. July 26, 2019. [Crimen de Jaime Garzón no se puede catalogar como de lesa humanidad: Tribunal](#); El Heraldo. July 31, 2019. [Consejo de Estado y Fiscalía clasificaron crimen de Jaime Garzón como de lesa humanidad: víctimas](#); El Heraldo. August 13, 2019. [Corte definirá si el de Garzón fue un crimen de lesa humanidad](#); lafm. August 12, 2019. [Corte decidirá si caso de Jaime Garzón es un crimen de lesa humanidad](#).

<sup>439</sup>RCN Radio. November 28, 2019. [JEP negó libertad a coronel procesado por el crimen de Jaime Garzón](#); CM& Sistema Informativo. November 28, 2019. [La JEP niega libertad al coronel \(r\) Jorge Eliécer Plazas Acevedo](#).

<sup>440</sup>FLIP. January 30, 2019. [Exfuncionarios del DAS investigados por el delito de tortura contra Claudia Julieta Duque se encuentran en libertad](#).

<sup>441</sup>El Espectador. 25 de febrero de 2019. [Se inicia juicio contra exagente del DAS que habría torturado a Claudia Julieta Duque](#).

<sup>442</sup>Wradio. August 14, 2019. [En libertad acusado de tortura psicológica a periodista Claudia Julieta Duque](#); RCN Radio. August 14, 2019. [En libertad exagente del DAS procesado por tortura psicológica contra periodista](#).

journalist Duque to avoid issuing opinions or non-objective information about the trial<sup>443</sup>. After this judicial decision, journalist Duque announced on November 17 that she would suspend her participation in the criminal proceedings initiated against the alleged perpetrators to avoid further revictimization<sup>444</sup>.

333. Special Rapporteur Edison Lanza spoke on several occasions regarding this restriction imposed on journalist Julieta Duque and recalled that the prohibition of prior censorship is the rule in the inter-American system. Although during criminal proceedings, the courts may adopt certain exceptions to the principle of publicity, they must adhere to protect a legitimate interest and comply with the necessity and proportionality test to achieve the intended purpose. However, in no case should the victim herself be prevented from accessing information and disseminating information about her own case.

334. Despite the context indicated above, this Office documented a series of developments by the State of Colombia in its obligation to seek justice, within which convictions were recorded for crimes of threat against journalists<sup>445</sup> and other progress in investigations and processes related to murders of journalists<sup>446</sup>. Among the cases observed, according to the available information, Jorge Hernando López Escobar, convicted in 2015 as an accomplice to the murder of journalist Orlando Sierra, was presented to the Caldas Sectional Prosecutor on January 22 following a ruling by the Criminal Court of the Supreme Court of Justice issued on December 11, 2018 that ratified the sentence of 36 years and 3 months in prison for Ferney Tapasco González, who was declared as the intellectual author of the crime in 2015. However, the criminal cassation instance reduced the sentence of 28 years and 10 months in prison for a sentence of 17 years for López Escobar and his brother Fabio López Escobar<sup>447</sup>.

335. With regard to the kidnapping, rape and torture of Colombian journalist Jineth Bedoya in 2000, on May 6 of this year, the Fifth Criminal Court of the Specialized Circuit sentenced Alejandro Cárdenas and Jesús Emiro Pereira to 30 and 40 years<sup>448</sup>. However, despite these convictions, at least 25 people, including public officials, would be involved in the facts, and regarding those the investigations have not progressed<sup>449</sup>. Within this context, on July 16, the IACHR presented to the Inter-American Court case 12.954, Jineth Bedoya Lima et. al, v. Colombia for the breach of a series of recommendations to the State for it to carry out a complete, impartial, effective investigation and within a reasonable timeframe that allows to determine all the corresponding responsibilities for the crimes committed against the journalist Jineth Bedoya Lima, including the possible participation of state agents, guaranteeing her safety and that of her family<sup>450</sup>.

336. Regarding the murder of Nelson Carvajal Carvajal in 1998, the Office of the Special Rapporteur welcomes the recognition of the State of Colombia of its international responsibility, in compliance with the ruling of the Inter-American Court of March 13, 2018. The Government made this recognition in the framework of the Half-Year Meeting of the Inter-American Press Association (IAPA) held in Cartagena, Colombia, on March

<sup>443</sup> FLIP. July 25, 2019. [FLIP rechaza orden de censura en el caso de la periodista Claudia Julieta Duque](#); Wradio. July 26, 2019. [Juez prohíbe a Claudia Duque emitir opiniones sobre proceso por tortura psicológica](#); La Nueva Prensa. July 25, 2019. [Periodista Claudia Julieta Duque, víctima de tortura, recusa a juez de su caso y anuncia que la desacatará](#); La Nueva Prensa. July 25, 2019. [Tortura, silenciamiento y censura permanente](#).

<sup>444</sup>El Espectador. November 18, 2019. ["La impunidad ha ganado una vez más la batalla en este país": Claudia Julieta Duque](#); Knight Center for Journalism in the Americas. November 20, 2019. [Colombian journalist Claudia Duque renounces criminal proceedings in case for her psychological torture; denounces impunity](#); Equipo Nizkor. November 18, 2019. [Ante la orden de silenciamiento forzado, CJD renuncia a su presencia en el procedimiento penal y rechaza la competencia de la JEP](#).

<sup>445</sup>República de Colombia. Fiscalía General. September 3, 2019. [Tres condenas por amenazas contra periodistas, defensores de derechos humanos y líderes sociales](#); Asuntos Legales. April 3, 2019. [Fiscalía condenó a 38 meses de prisión a Francisco Andica por amenazas a periodistas y magistrados](#); El Heraldo. April 3, 2019. [Condenan a tuitero que amenazó a 'Matador'](#); FLIP. September 10, 2019. [FLIP reconoce el trabajo de la Fiscalía en investigación de amenazas pero exige más avances](#); FLIP. December 12, 2019. [Juez profiere la condena más alta por amenazas contra periodistas](#).

<sup>446</sup> Regarding progress made in the investigations into the crime against Guillermo Cano Isaza in 1986, who served as director of El Espectador newspaper, the Attorney General's Office obtained a "medida de aseguramiento en cárcel" (jail assurance measure) for Jhon Jairo Velásquez Vásquez aka Popeye, and Gustavo Adolfo Gutiérrez Arrubla, aka Maxwell. As was reported, these individuals "were part of the so-called armed wing of Pablo Escobar's structure and, apparently, had knowledge of and had allegedly influenced the planning of the attack against then director of El Espectador daily." República de Colombia. Fiscalía General de la Nación. May 27, 2019. [Medida de aseguramiento en cárcel para alias Popeye por magnicidio del periodista Guillermo Cano Isaza](#). Regarding the murders of social communicator Luis Peralta and his wife Sofía Quintero in 2015 in El Recreo neighborhood of Doncello, department of Caquetá, legal authorities apprehended a person who was allegedly involved in the crime. In March 2018, the material author of this crime, Yean Arlex Buenaventura, was sentenced "to more than 50 years in prison, for the crimes of aggravated homicide in conjunction with trafficking, manufacturing and illegal carrying of firearms." República de Colombia. Fiscalía General de la Nación. March 22, 2019. [Aprehendida en Doncello \(Caquetá\) adolescente que habría participado en homicidio de un periodista y su esposa en el año 2015](#).

<sup>447</sup>República de Colombia. Corte Suprema de Justicia. Sala de Casación Penal. [SP1658/2018](#). December 11, 2018; República de Colombia. Fiscalía General de la Nación. January 24, 2019. [Capturado para cumplir condena cómplice del homicidio de Orlando Sierra](#); La Patria. January 22, 2019. [Se entregó Jorge Hernando López Escobar, cómplice del asesinato de Orlando Sierra Hernández](#); La Patria. January 23, 2019. [Se entregó cómplice en asesinato de Orlando Sierra](#); WRadio. January 24, 2019. [Fue capturado un presunto cómplice del homicidio de Orlando Sierra](#).

<sup>448</sup> CPJ. May 8, 2019. [Colombia sentences two ex-paramilitary fighters for 2000 attack on Jineth Bedoya](#); Knight Center for Journalism in the Americas. May 8, 2019. [After 19 years, two former paramilitary members sentenced for abduction, torture and sexual abuse of Colombian journalist](#); El Heraldo. May 7, 2019. [Condenan a dos paramilitares por secuestro y violación de la periodista Jineth Bedoya](#); FLIP. May 7, 2019. [Sentencia en contra de paramilitares: punto de partida para la justicia en el caso de Jineth Bedoya](#).

<sup>449</sup> FLIP. May 7, 2019. [Sentencia en contra de paramilitares: punto de partida para la justicia en el caso de Jineth Bedoya](#).

<sup>450</sup> IACHR. July 25, 2019. [IACHR Takes Case Involving Colombia to the Inter-American Court of Human Rights](#).

29, 2019<sup>451</sup>. Likewise, the Office of the Special Rapporteur welcomes the decision adopted on August 14 by the Office of the Prosecutor 95 of the Delegated Unit before the Superior Court of the Judicial District of Bogotá to declare this crime as a crime against humanity<sup>452</sup>.

337. Likewise, the Office of the Special Rapporteur welcomes the request of forgiveness by the State of Colombia to the relatives of the journalist Gerardo Bedoya Borrero, murdered in 1997 in Cali. The recognition of the international responsibility of the State was carried out in a public event held at the La Tertulia Museum, in Cali, Valle del Cauca, on September 30<sup>453</sup>, after the arrival of a friendly solution between the State and the Inter-American Press Association (IAPA) on September 4<sup>454</sup>.

338. Within the context of crimes against journalists that would be close to prescription, the Office of the Special Rapporteur welcomes the decision taken in September by the Attorney General's Office to declare the murder in 1999 of Guzmán Quintero Torresas a crime against humanity; he served as journalist for the newspaper *El Pilón* in the city of Valledupar<sup>455</sup>.

## B. Progress

339. The Office of the Special Rapporteur notes the decisions of the Constitutional Court in which it introduces inter-American standards related to the weighting of the right to freedom of expression, the right to privacy, and the protection of journalists<sup>456</sup>.

340. Among the cases observed by this Office, in accordance with a judgment of that judicial instance of May 15, 2019, regarding an *amparo* writ against the National Protection Unit, the court considered that this institution “violated the right to due process of the petitioner” since “it did not fulfill its duty to assess the relevant elements” in order to weigh the level of risk of a journalist, such as “the profile of the communicator”; “the content of the information or opinion he disseminates”; and “the context of the place in which he performs his duties”<sup>457</sup>.

341. In this case, journalist Herley Ramírez Alzate initiated a “*amparo* writ” against the National Protection Unit (UNP) under the consideration that several rights ended up being violated by such entity, within which were affected his right to work and freedom of the press, because in 2018, protection measures that had been assigned in 2016 were withdrawn. The UNP assessed his risk situation regarding his work as “ordinary”<sup>458</sup>.

342. In accordance with the reasoning of the court, in order to offer a sufficient guarantee of the right to due process facing the need to require a personal protection service “... *the administrative actions that carry out valuation studies and security measures must be justified in individualized and specific technical studies that substantiate them sufficiently and reasonably*”<sup>459</sup>.

343. Likewise, the court considered different inter-American standards in relation to the obligation of the State to protect journalists due to their professional work, indicating the “reinforced responsibility” of the State in contexts of “special vulnerability”; the analysis of “the needs of the communicator's profession and other individual circumstances”; the gender perspective; the non-limitation to “adopt measures after the events have occurred” and the need to put into operation “prevention mechanisms and policies to fight impunity and solve the root causes of violence against journalists”; the analysis of “the local realities that affect them”; among others<sup>460</sup>.

344. On the other hand, a bill introduced in 2018 that sought to “guarantee the protection of the honor and good name of citizens from insults and slander that are presented through social networks and other platforms in the web”, finally ended up being archived on April 3, 2019<sup>461</sup>.

<sup>451</sup> República de Colombia. Consejería Presidencial para los derechos humanos y asuntos internacionales. March 29, 2019. [Estado colombiano reconoce responsabilidad y pide perdón en el caso Carvajal Carvajal y otros](#).

<sup>452</sup><sup>452</sup>Lafm. August 16, 2019. [Crimen del periodista Nelson Carvajal, declarado como de lesa humanidad](#); FLIP. August 22, 2019. [SIP, REK Human Rights y FLIP aplauden declaratoria de lesa humanidad del homicidio del periodista Nelson Carvajal](#).

<sup>453</sup> Inter American Press Association (IAPA). September 30, 2019. [SIP y gobierno de Colombia resaltan figura de periodista asesinado hace 22 años](#).

<sup>454</sup> IACHR. September 4, 2019. [IACHR Welcomes Signing of Friendly Settlement in Case 12,909 Gerardo Bedoya Borrero and Family](#).

<sup>455</sup> El Heraldo. September 14, 2019. [Fiscalía declara crimen de lesa humanidad asesinato de periodista Guzmán Quintero](#); El Pilon. September 15, 2011. [Los crímenes de periodistas declarados de lesa humanidad](#); FLIP. September 26, 2019. [Luego de 20 años, homicidio de Guzmán Quintero Torres es declarado de lesa humanidad](#); FLIP. [Impunidad en Colombia](#).

<sup>456</sup> República de Colombia. Corte Constitucional. [Sentencia T-145/19](#); [Sentencia T-155/19](#); [Sentencia T-102/19](#); [Sentencia T-179/19](#); [Sentencia SU274/19](#); [Sentencia T-361/19](#); [Sentencia C-276/19](#).

<sup>457</sup> República de Colombia. Corte Constitucional. [Sentencia T-199/19](#).

<sup>458</sup> República de Colombia. Corte Constitucional. [Sentencia T-199/19](#).

<sup>459</sup> República de Colombia. Corte Constitucional. [Sentencia T-199/19](#).

<sup>460</sup> República de Colombia. Corte Constitucional. [Sentencia T-199/19](#).

<sup>461</sup> República de Colombia. Congreso de la República. Available at: <http://leyes.senado.gov.co/proyectos/index.php/proyectos-ley/cuatrenio-2018-2022/2018-2019/article/179-por-medio-del-cual-se-crean-normas-de-buen-uso-y-funcionamiento-de-redes-sociales-y-sitios-web-en-colombia>



### C. Murders

345. Despite the progress made by the Colombian State in its obligation to investigate crimes perpetrated against journalists, the Office of the Special Rapporteur observes an increasingly critical climate of violence against the press that translates into a context that seriously restricts freedom of expression and the right of all Colombian society to receive information of high public interest, and also reveals the institutional weaknesses for the prevention of these crimes. During 2019, the Office of the Special Rapporteur documented with deep concern the murder of four communicators for reasons allegedly linked to their professional work and fears that these crimes will lead to the silencing and self-censorship of communicators.

346. Among the crimes documented by the Office of the Special Rapporteur, information was received about the murder of Mauricio Lezama in Arauquita, department of Arauca, on May 9. The victim worked as a departmental film advisor and cultural manager and would have been working on a documentary of historical and political content linked to the armed conflict in Colombia<sup>462</sup>. According to published information, the ELN would be involved in the crime<sup>463</sup>.

347. On June 12, the social communicator Libardo Montenegro was killed with firearms by hitmen in Samaniego, Nariño department<sup>464</sup>. The victim served as an announcer for the community radio station *Samaniego Stereo* and days before his murder he was promoting a march in defense of human rights<sup>465</sup>.

348. Likewise, the Office of the Special Rapporteur received information on the murder committed against Anderson Pérez Osorio, on June 17, in the municipality of Caloto, department of Cauca. As reported, the victim in his past belonged to the ranks of the Farc and was serving as a human rights activist and social communicator<sup>466</sup>.

349. On October 18, the announcer of *Radio Planeta*, Javier Córdoba Chaguendo, was killed with firearms, in the town of the Llorente district of the department of Nariño. The murder would have occurred in front of the station's facilities. According to the available information, the communicator had no threats of any kind and hosted entertainment programs<sup>467</sup>.

350. The Office of the Special Rapporteur recalls that according to Principle 9 of the IACHR Declaration of Principles on Freedom of Expression, "[t]he murder, kidnapping, intimidation, threatening of social communicators, as well as the material destruction of the media, violates the fundamental rights of persons and severely curtails freedom of expression. It is the States' duty to prevent and investigate these acts, to punish their perpetrators and to ensure adequate reparation for the victims".

<sup>462</sup>República de Colombia. Gobernación de Antioquia. [Mauricio Lezama: líder social y Consejero cultural que pierde Colombia](#); República de Colombia. Gobierno Departamental de Arauca. May 13, 2019. [Sentidas condolencias ofrece Gobierno Departamental a la Familia Lezama](#); Nodal. Colombia: May 11, 2019. [Asesinan a cineasta que realizaba un documental sobre víctimas del conflicto armado](#).

<sup>463</sup>TRT Español. May 20, 2019. [Asesinan al director de cine Mauricio Lezama en Arauca, oriente de Colombia](#); El Diario del Llano. May 10, 2019. [ELN sería responsable del asesinato de Mauricio Lezama en Arauca](#); FLIP. July 9, 2019. [El homicidio de Mauricio Lezama y la sentencia de silencio para la prensa en Arauca](#); FLIP. May 9, 2019. [Asesinado en Arauquita el Consejero de Cine Mauricio Lezama](#); Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA, Colombia](#). October 3, 2019.

<sup>464</sup>El País. June 12, 2019. [Asesinan a periodista en Samaniego, Nariño](#); El Nacional. June 12, 2019. [Asesinaron a periodista de radio comunitaria en el suroeste de Colombia](#); 90 Minutos. June 12, 2019. [Investigan asesinato de periodista tras atentado en Samaniego, Nariño](#); La opinión. June 13, 2019. [Asesinado otro periodista en Samaniego, Nariño](#); lafm. June 12, 2019. [Periodista fue asesinado en Nariño](#).

<sup>465</sup>FLIP. June 12, 2019. [La FLIP rechaza el asesinato del periodista Libardo Montenegro en Samaniego y exige investigaciones](#); FLIP. August 12, 2019. [El homicidio de Libardo Montenegro y la condena de la autocensura para Samaniego](#); Servindi. [June 14, 2019. Libardo: una luz de paz y comunicación que la violencia apagó](#); Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA, Colombia](#). October 3, 2019.

<sup>466</sup>Canal1. June 18, 2019. [Denuncian asesinato de excombatiente y periodista de la FARC en Cauca](#); FLIP. June 22, 2019. [Comunicado de la FLIP sobre el asesinato de Anderson Pérez](#).

<sup>467</sup>RCN Radio. October 19, 2019. [Asesinan a locutor de radio en plena cabina en Tumaco \(Nariño\)](#), QHubo Cali. October 19, 2019. [Balearon a sangre fría a un locutor en plena emisora](#); Tubarco. October 19, 2019. [Locutor fue asesinado por sicario que se hizo pasar por cliente](#).

## D. Attacks against journalist

351. The Office of the Special Rapporteur notes with concern the continuity of a context of aggressions<sup>468</sup>, within which there was a high number of episodes of death threats<sup>469</sup>, physical attacks<sup>470</sup>, and intimidation through social networks<sup>471</sup>, text messages<sup>472</sup>, and intimidating calls<sup>473</sup> and pamphlets with intimidating messages<sup>474</sup>, recorded in different regions of Colombia that affects journalists covering different topics of high public interest linked to the peace process, corruption, and drug trafficking, among others. These aggressions were focused on regions of Bogotá, Cali, Cartagena, Cauca, La Guajira, Santa Marta, Mitú, among other locations.

352. The Office of the Special Rapporteur urges the State of Colombia to develop and articulate protection mechanisms for the prevention of violence against journalists, as well as to continue the investigations that lead to sanction of the material and intellectual authors, and to ensure adequate reparation for the victims, in accordance with Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR.

## E. Social Protest

353. The Office of the Special Rapporteur observed the development of numerous social protests during the year in different regions of Colombia, in which there were incidents between protesters and police officers, as

<sup>468</sup>On February 7, during the ceremony of the National Journalism Award, the Minister of Information Technology, Sylvia Constaín, referred to the work of the Fundación para la Libertad de Prensa (FLIP) and expressed her concern over the threats to journalists, and said that "the Government has asked the authorities to take all necessary measures to protect the lives of communicators and to progress in the investigations until they find those responsible". República de Colombia. Ministerio de Tecnologías de la Información. February 7, 2019. [Palabras de la ministra de Tecnologías de la Información y las Comunicaciones, Sylvia Constaín, en el Premio Nacional de Periodismo](#).

The Office of the Special Rapporteur is also aware of the constant monitoring carried out by FLIP: as of late July it had registered more than 200 violations of freedom of expression and more than 250 victims. FLIP. [Mapa de violaciones a la libertad de prensa](#).

FLIP. February 17, 2019. [ELN retiene a periodistas en el Catatumbo y hurta material periodístico](#); El Noticiero del Pueblo. March 11, 2019. [Periodistas De Cartagena Rechazan Amenazas Con Plantón En Plaza De La Paz](#); FLIP. July 5, 2019. [Primer semestre de 2019: 196 ataques a la prensa y una sentencia positiva](#); El Informador. July 23, 2019. [Multinacional rechaza amenazas contra periodistas en La Guajira](#); 90 minutos. August 6, 2019. [FLIP rechazó amenazas de muerte contra tres periodistas de Cali enviadas a su celular](#); El Nodo. August 8, 2019. [#ALERTA Periodistas de varios medios de comunicación reciben amenazas de "Brazo armado" de FARC](#); El País. August 8, 2019. [85 periodistas han recibido amenazas de muerte en lo corrido del año en Colombia](#); Uniminutoradio. August 8, 2019. [Hay preocupación por amenazas a periodistas colombianos](#); 90 minutos. August 9, 2019. [Crece rechazo por amenazas que recibieron tres periodistas y dos camarógrafos de Cali](#); lafm. August 16, 2019. [Cinco periodistas denuncian amenazas de muerte](#); La Nueva Prensa. September 13, 2019. [Claudia Duque: "Hay una estrategia de silenciamiento a la prensa en Colombia"](#); El Espectador. May 3, 2019. [Amenazan a periodista de Radio Nacional de Colombia en Mitú](#); lafm. May 5, 2019. [Periodista Daniel Martínez dejó Arauca por amenazas a su vida](#); RCN Radio. January 11, 2019. [Periodistas fueron intimidados en El Salado durante trabajo de campo](#); Mundonoticias. March 11, 2019. [Hay plantón en contra de las amenazas a periodistas en Cartagena](#); Canal1. [Amenazan a periodista con cuchillo mientras grababa a un colado en TransMilenio](#); Radionacional. March 3, 2019. [Periodista de Radio Nacional en Mitú denuncia amenazas contra su vida](#); Pacocol. May 14, 2019. [Denuncia pública: Continúan amenazas de paramilitares en Arauca](#); IFEX/ Committee to Protect Journalists (CPJ). May 26, 2019. [Colombian photojournalist Federico Ríos flees after online harassment](#); FLIP. October 3, 2019. [Radio Súper Popayán estuvo cinco horas fuera del aire por un ataque a su infraestructura](#); FLIP. October 4, 2019. [El CPJ y la FLIP expresan su preocupación por la amenaza a Daniel Coronell](#);

<sup>469</sup>lafm. January 11, 2019. [Periodistas son amenazados en El Salado cuando hacían trabajo de campo](#); Fecolper. January 19, 2019. [Periodistas de Caracol Radio son amenazados de muerte en El Salado – El Carmen de Bolívar](#); lafm. March 3, 2019. [Periodista Emerson Castro denuncia amenazas de muerte](#); FLIP. June 5, 2019. [La FLIP rechaza la amenaza de la que fue víctima la periodista Tatiana Salamanca](#); FLIP. August 6, 2019. [Preocupantes amenazas de muerte contra periodistas que investigan cultivos ilícitos](#); FLIP. September 11, 2019. [Periodista de RTVC en Nariño fue víctima de nuevas amenazas contra ella y su familia](#);

<sup>470</sup>FLIP. January 31, 2019. [Periodista Tana Montoya fue víctima de intento de homicidio en el municipio de Anzá](#); FLIP. May 23, 2019. [La FLIP rechaza graves agresiones contra periodistas de Q'hubo](#); FLIP. May 27, 2019. [FLIP rechaza obstrucción a la circulación y violencia contra Boyacá 7 Días](#); RED+. July 10, 2019. [En intento de asesinato a periodista de Cúcuta un menor de edad resultó muerto](#); El Tiempo. July 10, 2019. [Periodista de Cúcuta salió ileso de atentado pero su sobrino murió](#); La Opinión. May 23, 2019. [Salvaje agresión a equipo de Q'hubo Bogotá](#); El País. June 10, 2019. [Periodista denuncia ser golpeada por su jefe en Revista Congreso, en Bogotá](#); FLIP. July 29, 2019. [La FLIP rechaza el ataque a un vehículo de Teleantioquia Noticias](#).

<sup>471</sup>Protagonista. January 12, 2019. [Vanessa de la Torre denuncia amenaza de muerte a través de redes sociales](#); Primer Tiempo. May 5, 2019. [PrimerTiempo.CO rechaza amenazas contra periodista Rafa Guerra](#); FLIP. May 20, 2019. [Desconocidos atacaron a periodista de la Silla Vacía a través de sus redes sociales](#); lafm. June 11, 2019. [Ernesto Macías anuncia medidas contra revista Congreso por agresión a periodista](#); FLIP. August 6, 2019. [La FLIP rechaza las amenazas y el ciberacoso en contra de la periodista Vicky Dávila a través de redes sociales](#); Agencia API. September 22, 2019. [Vicky Dávila denuncia campaña de desprestigio en su contra](#).

<sup>472</sup>La opinión. March 17, 2019. [Amenazan a periodista deportivo en Nariño](#); Diario del Sur. March 18, 2019. ["Ojo con lo que dice": periodista deportivo de Pasto recibe escalofriante amenaza de muerte](#); 90 minutos. August 6, 2019. [FLIP rechazó amenazas de muerte contra tres periodistas de Cali enviadas a su celular](#); El Nodo. August 8, 2019. [#ALERTA Periodistas de varios medios de comunicación reciben amenazas de "Brazo armado" de FARC](#); lafm. August 16, 2019. [Cinco periodistas denuncian amenazas de muerte](#);

<sup>473</sup>FLIP. April 3, 2019. [La FLIP rechaza el doxing de Abelardo de la Espriella en contra del periodista Camilo Poveda](#); FLIP. May 2, 2019. [La FLIP rechaza las amenazas contra el periodista Daniel Martínez de RCN en Arauca](#); El País. August 13, 2019. [Periodistas del Cauca denuncian amenazas de disidencias de las Farc](#); RCN Radio. September 7, 2019. [Amenazan a periodista por denunciar corrupción electoral en Pasto](#); FLIP. August 9, 2019. [La FLIP rechaza el hostigamiento a la periodista Jineth Bedoya Lima](#);

<sup>474</sup>El Informador. July 23, 2019. [Multinacional rechaza amenazas contra periodistas en La Guajira](#); Hoy Diario del Magdalena. August 7, 2019. [Con panfletos amenazan a periodistas en Santa Marta](#); República de Colombia. Cámara de Representantes. February 7, 2019. [Representante Liberal Andrés Calle Recibe Amenazas](#); FLIP. September 27, 2019. [Nueve periodistas de Pasto fueron amenazados por las Águilas Negras](#).

well as attacks by state security forces on journalists who provided coverage<sup>475, 476</sup>. Within this context, on April 4, the IACHR and the Office in Colombia of the United Nations High Commissioner for Human Rights urged to reach a peaceful agreement in the context of violence registered by the Mingasocial initiated in Cauca, which caused the death of several people, both mingueros and national police personnel<sup>477</sup>.

354. As of November 21, mass protests began in different regions of Colombia to demand the access of different sectors to social rights, for the fulfillment of the peace agreements, as well as for the context of insecurity and murder of social and indigenous leaders. Within the framework of these protests, the IACHR learned about the excessive use of force, the detention of hundreds of people, and the death of people due to acts of vandalism<sup>478</sup>. In turn, the Office of the Special Rapporteur documented with grave concern serious restrictions by state security forces on journalists covering the protests. Since the beginning of the protests and during the first weeks of December, dozens of attacks by elements of the Police and protesters against journalists were reported, resulting in coverage restrictions, physical attacks, arrests of journalists, as well as damage to work equipment<sup>479</sup>.

355. Among the documented cases, the Office of the Special Rapporteur learned with deep regret of the death of the 18-year-old student Dilan Cruz in a hospital in Bogotá after being hit by a stunning bomb by police officers in a protest in Bogotá on November 23<sup>480</sup>.

356. Within the framework of the protests initiated on November 21, at least 19 reporters would have been arbitrarily detained<sup>481</sup>. During the day of November 21, the Office of the Special Rapporteur was informed of the arrests of the independent journalist Andrés Bayona, who was also physically assaulted by elements of the Police, and of the photographer Andrés Matheo Agudelo<sup>482</sup>. Also, linked to the coverage of the protests, this Office received information on the arrest on December 5 of the journalist María Montiel, of Colombia *Informa*, because of her journalistic coverage of the protests; on December 6, journalist Maritza Sánchez would have been arrested along with a colleague from the *Universo Centro* media, because of publications linked to the actions of the Police during the protests; On December 7, three independent reporters who were covering a protest at the El Dorado airport in Bogotá would have been arrested<sup>483</sup>. While journalists would have been released after a few hours of detention, this Office notes with concern that such measures are deliberately aimed at preventing journalistic coverage.

<sup>475</sup>Entre los casos documentados, en marzo, una serie de protestas por parte de comunidades indígenas se llevó adelante en una zona fronteriza con Ecuador, donde los manifestantes bloquearon las calles impidiendo el paso de frontera. Esto despertó la reacción policial y se registró una fuerte represión por parte de los agentes de seguridad. Las protestas se habrían llevado en razón por la violencia en las zonas donde radican estas comunidades y por incumplimientos por parte del gobierno en relación con compromisos asumidos.

Canal1. 5 de enero de 2019. [San Andrés protesta contra gobierno militar impuesto por Duque](#); El País. 1 de marzo de 2019. [Varios heridos y detenidos dejan protestas sindicales en Popayán, Cauca](#); Publimetro. 25 de abril de 2019. [Fotógrafo habría sido agredido por la Policía en medio de las protestas](#); Portafolio. 25 de abril de 2019. [Así fue el balance de las marchas de este jueves en el país](#); Publimetro. 25 de abril de 2019. [Vandalismo y disturbios en el paro: daños a la Catedral Primada y la Plaza de Bolívar](#); FLIP. 26 de abril de 2019. [La FLIP rechaza las agresiones contra la prensa durante el cubrimiento del Paro Nacional](#); ONIC. 26 de abril de 2019. [ONIC alerta sobre represión a la protesta social pacífica en la vía Quibdó – Risaralda](#); Eje21. 26 de abril de 2019. [Protestas en Colombia dejan 35 personas detenidas y 11 más heridas](#); FLIP. 22 de marzo de 2019. [La FLIP rechaza obstrucciones e intimidaciones contra periodistas en el Cauca](#); FLIP. 20 de marzo de 2019. [La FLIP rechaza las agresiones del Esmad en contra de periodistas que cubrían la Minga en el Cauca](#); FLIP. 11 de abril de 2019. [La FLIP rechaza las agresiones a la prensa en medio del cubrimiento de la Minga en el departamento del Cauca](#); Publimetro. 4 de septiembre de 2019. [Revelan videos de policías agrediendo brutalmente a estudiantes en Soacha](#); OCEColombia. [USO rechaza represión del ESMAD a protesta pacífica de la UIS](#); FLIP. 9 de octubre de 2019. [Esmad agredió a periodista de Colombia Informa durante las manifestaciones en la Universidad Industrial de Santander](#).

<sup>476</sup>Semanario Universidad. March 14, 2019. [Protesta indígena en Colombia es respondida con represión y choques](#); Perú 21. [Colombia: Protesta indígena bloquea importante vía y genera represión y choques](#).

<sup>477</sup>IACHR. April 5, 2019. [IACHR and Colombian Branch of the OHCHR Insist on the Need to Keep up Talks, Stress their Call for Non-Violence in Cauca](#).

<sup>478</sup>IACHR. December 2, 2019. [IACHR Concerned about Repression by Government Agents in Colombia, Rejects All Forms of Violence in the Context of Protests](#).

<sup>479</sup>El Universal. December 16, 2019. [La nueva generación de la protesta en Colombia](#); El País. December 11, 2019. [Flip ha registrado 47 violaciones a la labor periodística desde el inicio de las protestas](#); Blu Radio. November 22, 2019. [Los cinco desmanes del Esmad más repudiados en redes sociales](#); Seguimiento.co. November 25, 2019. [Periodistas de Noticias RCN han sido expulsados durante cubrimiento de protestas](#); LaFm. November 29, 2019. [En libertad periodistas retenidos por Esmad en Barranquilla](#); RCN Radio. December 11, 2019. [Flip analiza si existe patrón de Policía para entorpecer trabajo de la prensa](#); Blu Radio. December 7, 2019. [Denuncian conducción arbitraria de tres periodistas que cubrían plantón en El Dorado](#); Opanoticias.com. November 28, 2019. [\(Video\) Policía agrede a 'pata y hollito' a periodista hasta dejarla inconsciente en Bogotá durante protestas](#); FLIP. December 11, 2019. [Nuevos hechos de violencia contra la prensa se presentaron durante las movilizaciones del 10 de diciembre](#); FLIP. November 21, 2019. [En paro del #21N la Policía agredió e incumplió sus compromisos con la prensa](#); El Tiempo. November 22, 2019. [Denuncian ataques de la Policía a periodistas internacionales](#); FLIP. November 26, 2019. [La FLIP rechaza los ataques contra los periodistas en el marco de las manifestaciones y alienta a la prensa para que continúe su cubrimiento](#); Fecolper / Twitter account. "The country and the world have the right to know what is happening in #NationalStrike #Colombia from all sides. We demand the Public Forces and individuals do not restrict journalistic exercise. Let's guarantee the human right to information! @IvanDuque @PoliciaColombia". @FECOLPER. [November 30, 2019](#); Kien y Ke Noticias. December 3, 2019. [Van 61 periodistas agredidos durante el paro](#); FLIP. December 11, 2019. [Nuevos hechos de violencia contra la prensa se presentaron durante las movilizaciones del 10 de diciembre](#).

<sup>480</sup>El País. November 26, 2019. [Muere Dilan Cruz, el joven que recibió un disparo de un policía durante las protestas en Colombia](#); La Vanguardia / EFE. November 26, 2019. [Comoción en Colombia por la muerte de un estudiante durante las protestas](#).

<sup>481</sup>FLIP. December 7, 2019. [FLIP rechaza descomunal aumento de detenciones ilegales a periodistas](#).

<sup>482</sup>FLIP. November 21, 2019. [En paro del #21N la Policía agredió e incumplió sus compromisos con la prensa](#).

<sup>483</sup>FLIP. December 7, 2019. [FLIP rechaza descomunal aumento de detenciones ilegales a periodistas](#).

357. The Special Rapporteur recalls that social protest is a fundamental tool for the defence of human rights and essential for the critical political and social expression of the authorities' activities. The Commission has pointed out that "it is in principle inadmissible to criminalize per se demonstrations in the public arena when they are carried out in the context of the right to freedom of expression and the right of assembly"<sup>484</sup> and that "the exercise of the right of assembly through social protest should not be subject to authorization by the authorities or to excessive requirements that make it difficult to carry out".<sup>485</sup>

358. Likewise, the Joint Declaration on Violence against Journalists in the Context of Social Demonstrations, adopted in 2013, indicates that the rights of assembly and freedom of expression "are fundamental and guaranteed as a necessary condition for the existence and functioning of a democratic society. Furthermore, the dispersal of a demonstration must be justified by the duty to protect persons, and the safest and least harmful measures for the demonstrators must be used. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances, in accordance with international principles known."<sup>486</sup>

## F. Protection mechanisms

359. The Office of the Special Rapporteur recognizes the efforts of the Protection Unit of the State of Colombia in the implementation of various protection mechanisms for journalists and human rights defenders, while urging them to make progress and articulate more effective mechanisms in order to prevent and curb the growing context of violence against the press.

360. This Office highlights that on March 7, the director of the National Protection Unit, Pablo Elías González Monguí, participated as a panelist in an event called "Regional Dialogue Table on the implementation and effectiveness of measures to protect journalists and the Open meeting on Media and Democracy in the Americas" held in Washington D.C., on issues such as the protection of journalists in Colombia, at the invitation of the Office of the Special Rapporteur for Freedom of Expression. In this event, the official presented a series of measures adopted by the UNP, the implementation of measures for the protection of journalists and their effectiveness. Likewise, he participated in the event "Women Journalists: Discrimination and Gender-based Violence against women journalists in the exercise of their profession" in the law faculty of George Washington University.

361. Regarding what was stated by the representative of the UNP in the first activity indicated, he discussed the legal framework for the protection of journalists in Colombia, which starts from the Constitution, whose text has a special norm for the protection of journalistic activity to guarantee freedom and independence journalist's professional, based on the concept that "the press is free, although responsible." In accordance with the aforementioned, the Constitutional Court has interpreted the obligation to provide security according to three dimensions: as a value; as a collective right; and, as an individual right. Therefore, he emphasized that the protection mechanism has an individual and collective protection program. In addition, following the parameters of the doctrine of the Constitutional Court, he said that it should be identified whether the risk is ordinary or extraordinary. If a risk is identified, there is an obligation to assess, based on a careful study of each individual situation, the existence of the characteristics of this risk and the possibility of its being specified. Likewise, he pointed out that there is an obligation to identify the source or origin of the risk, and if there is a risk linked to a threat, under the parameters of the Constitutional Court that defines risk, threat, and vulnerability. In addition, he indicated that for any of these three elements protection can be provided. Among other points mentioned, the director clarified that the Unit is attached to the Ministry of Interior, and has 6,500 escorts and 2,500 armored cars, and has 200 risk analysts. On the other hand, he indicated by means of a graph how the number of journalists killed has dropped since protection mechanisms were put in place. He also reported that currently under the protection mechanism 181 journalists are protected by 258 men, vests, and 40 armored cars that have been assigned. Finally, he mentioned the developing work carried out with the Prosecutor's Office on risk agents and homicides<sup>487</sup>.

<sup>484</sup> IACHR. [Informe sobre Seguridad Ciudadana y Derechos Humanos](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Párr. 197.

<sup>485</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. 139.

<sup>486</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>487</sup> The director also addressed the ways to define protection measures, when danger is imminent, a situation in which, for example, it is necessary to move the person out of the territory; as well as situations where "soft" protections are available such as providing a vest. Risk assessment is carried out every 12 months. He also pointed out the prohibition of creating a greater risk, for example, through stigmatizing statements. Regarding protection approaches, he mentioned that there is a gender perspective and an ethnic approach. He also mentioned there is a risk scale. The danger must be certain, significant, exceptional, and imminent. For a journalist to receive protection, he or she must be accredited as a journalist. Thus, information about the applicant's activity is sought. The risk of each request is analyzed and weighted and it is determined which measure to request from a Committee that is in charge of recommending the corresponding measures. Temporality is also defined and security measures are implemented, surveillance of the measures is carried out and even if they are misused. Also, he said some areas have been identified that are at greater risk and are located in the Colombian Pacific and the Catatumbo area, places with drug trafficking. In these areas, risks have been identified and collective protection is implemented, i.e., self-organization by communities is encouraged as well as their own joint protection mechanisms. Collective protection has had better results with indigenous

362. The IACHR and the office of its Special Rapporteur have defined some of the requirements for effective protection mechanisms. For example, to emphasize: 1) the importance of guaranteeing the financial and personnel resources necessary for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for implementing measures of prevention, protection, and justice; 3) the need to adequately define the protection measures contemplated by 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 convenience of seeking support from the international community for the operation of the mechanism<sup>488</sup>.

### G. Stigmatizing statements

363. The Office of the Special Rapporteur identifies in Colombia a trend to stigmatize journalists and the media that publish or disseminate critical information against the Government. This context is set by high-level state authorities and public officials<sup>489</sup>, which puts at risk the free exercise of journalistic work and undermines the obligation to “adopt a public discourse that contributes to preventing violence against journalists”<sup>490</sup>.

364. Among the cases observed by the Office of the Special Rapporteur, this Office documented the context of threats and stigmatizing statements directed against the *New York Times* correspondent, Nicholas Casey, for the publication of an article on May 18 titled “*Las órdenes de letalidad del Ejército colombiano ponen en riesgo a los civiles, según oficiales*”<sup>491</sup> in which he questions the work of military commanders in the framework of the fight against armed groups and alleged cases of “false positives”. Following this, the journalist was the victim of harassment that originated from high parliamentary authorities who also disseminated deliberately false information with the intention of discrediting him and linking him to the guerrillas. Within this context, Casey had to leave the country on May 19 in the face of growing threats received through social networks. Likewise, the *New York Times* photographer, Federico Ríos Escobar had to leave the country because of the threats received by a photo published by Senator María Fernanda Cabal on her Twitter account that gave rise to stigmatization against Casey<sup>492</sup>.

365. This Office urges the State of Colombia and its authorities to adopt a public discourse that helps prevent violence against journalists in response to the growing context of attacks against the press.

### H. Subsequent liabilities

366. According to the information received by the Office of the Special Rapporteur, this Office learned of the civil lawsuit initiated by Senator Álvaro Uribe in the United States against journalist Daniel Coronell for a series of publications made on issues related to the senator<sup>493</sup>. Within this context, the journalist published on April 7, 2019 a column called “*¿Por qué quiero silenciarme?*” In which he denounces that lawsuit<sup>494</sup>. On the other hand, the Office of the Special Rapporteur received information on the filing of criminal complaints for insult and

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people because they control the territory, and with black communities, as stated. He mentioned he has a budget of 350 million, with resources that come entirely from the State. He observed the complexity of the situation in the case of murdered individuals and social leaders who had received no threats, as far as the Protection Unit knew. In this regard, the unit director pointed out the early warning system by the Ombudsman’s Office. It is important that the Unit has its own information and risk map, and that it does not depend in any way on other entities, he stated. He also mentioned there should be a network formed by social organizations, the police, the army, and an elite group that must react quickly.

<sup>488</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81; IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 712.

<sup>489</sup> RCN Radio. March 6, 2019. [Corte Suprema archivó denuncia de periodista contra Uribe por injuria y calumnia](#); Publimetro. September 10, 2019. [El ataque de Álvaro Uribe a reconocida periodista por una columna](#); Red+. September 10, 2019. [Petro reveló nombres de periodistas que habrían recibido dineros de Odebrecht](#); Hoy Diario del Magdalena. September 11, 2019. [Tres periodistas denuncian a Petro](#); FLIP. October 12, 2019. [La FLIP expresa su preocupación por la situación de la prensa en Ipiales](#); Las20rillas. September 3, 2019. [El despiadado señalamiento del candidato uribista de la alcaldía de Cucuta a un periodista. Video](#); FLIP. September 4, 2019. [Candidato del Centro Democrático señaló al editor general del Q'huho de Cúcuta de ser vocero de FARC](#);

<sup>490</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>491</sup> The New York Times. May 18, 2019. [Colombia Army's New Kill Orders Sell Chills Down Ranks](#).

<sup>492</sup> La Opinión. May 19, 2019. [Periodista del New York Times salió de Colombia tras informe sobre el Ejército](#); La República. May 19, 2019. [Periodista del New York Times salió del país por razones de seguridad](#); Red+. May 19, 2019. [Periodista Nicholas Casey sale del país por señalamientos de senadora María Fernanda Cabal](#); FLIP. May 20, 2019. [FLIP condena estigmatizaciones al periodista Nicholas Casey](#); Uniminatoradio. May 20, 2019. [Periodista del New York Times salió del país. El fotógrafo también](#); lafm. May 21, 2019. [Nicholas Casey, periodista del NYT, fue víctima de noticia falsa](#); Publimetro. May 22, 2019. [La 'fakenews' que divulgó María Fernanda Cabal sobre Nicholas Casey](#).

<sup>493</sup> FLIP. April 9, 2019. [La FLIP rechaza acoso judicial contra el periodista Daniel Coronell](#); El Herald. May 19, 2019. [SIP preocupada por demandas de expresidente Uribe contra periodista Coronell](#);

<sup>494</sup> Semana. April 7, 2019. [¿Por qué quieren silenciarme?](#)

slander initiated by former prosecutor Néstor Humberto Martínez against a group of journalists because of a series of publications that reveal irregularities done by Martínez when he was Prosecutor<sup>495</sup>.

367. The Special Rapporteur reiterates, in accordance with Principle 11 of the IACHR's Declaration of Principle on Freedom of Expression, that "[p]ublic officials are subject to greater scrutiny by society. Laws that criminalize offensive expression or that target public officials are generally known as 'insult laws', which undermine freedom of expression and the right to information.

### I. Legal Reforms

368. The Office of the Special Rapporteur learned of a bill filed on August 20 in the House of Representatives that seeks to regulate "the policies for the use and appropriation of social networks and other general provisions." The proposal aims to "protect users against harmful or potentially dangerous behaviors resulting from the overreach or inappropriate use of virtual social networks"; establishes a series of definitions; prohibitions, such as "being under 14" for the use of social networks, "usurping the identity of another and create profiles that do not represent a real person or incur the commission of punishable criminal offenses", "publishing expressions or insulting or threatening comments about other people, groups, or communities that aggravate, affect, or offend their good name, honor, privacy, personal integrity, freedom of expression or harassment on the Internet", among others. It also seeks to create the obligation for users to corroborate or verify the information before sharing or publishing it<sup>496</sup>. At the close of this report, the Office of the Special Rapporteur had not received information on the status of the project.

369. In another case, the Office of the Special Rapporteur also learned of a bill that was in the Senate on July 20 that seeks to modify the current Criminal Code and adopt "criminal and administrative measures against corruption." The proposal, among other provisions, seeks to extend Art. 418 of the Criminal Code and impose the penalty of prison of up to 54 months for "disclosure of secrets" by public officials, as well as increase the penalty currently in force. However, the proposal has a paragraph that seeks to guarantee source confidentiality for journalists<sup>497</sup>.

### J. Censorship of journalistic material / Prior censorship / Direct and indirect censorship

370. In the context of an investigation into corruption cases in the penitentiary field, on January 31, following a decision of the Municipal Criminal Court 22, a group of reporters was prevented from accessing a series of preliminary hearings that were carried out at different times until February 18. On February 14, this group filed an *amparo* writ before the Criminal Chamber of the Superior Court of Bogotá requesting a precautionary measure to enter the remaining hearings, a claim that was denied. On February 27, the court denied the merits petition on the grounds that the hearings had already concluded. The Court ended up confirming the ruling on the grounds that the decision sought to protect the right to life of integrity of the possible victims and guarantee the results of the investigation, although it also warned about the adoption of measures for the media so they can do their job<sup>498</sup>.

371. In the 174 Period of Sessions of the IACHR of November 12, 2019, the civil society representatives presented the mentioned context and noted that it is a "conduct widely repeated throughout the territory" which "has caused journalists to opt for not covering the judicial hearings that as a rule are of a public nature". For its part, the State representatives set forth the regulatory framework applied to criminal trials and the exceptions allowed. Special Rapporteur Edison Lanza noted the importance of weighing in accordance with inter-American standards and pointed out that the issue is not only about the right of journalists to cover hearings, but the right of the whole society to receive information of high public interest, more when dealing with facts connected with possible situations of corruption, accountability, transparency in the exercise of public function, social control, among others<sup>499</sup>.

372. On the other hand, the Office of the Special Rapporteur received information about the cancellation of the column of the investigative journalist Daniel Coronell in the magazine *Semana* by the board of directors, at the end of May. The decision would have been taken after the publication of a column in which he questioned

<sup>495</sup> Periódico El Jurista. April 9, 2019. [Por injuria y calumnia exfiscal Martínez denuncia a periodista](#); Publimetro. August 15, 2019. [Periodista denuncia que exfiscal Néstor Humberto Martínez lo intimidó](#); Las2Rodillas. [Por 'injuria y calumnia', exfiscal Martínez denuncia al senador Jorge Robledo](#); WRadio. August 26, 2019. [Néstor Humberto Martínez vuelve a denunciar a Jorge Enrique Robledo](#); El Espectador. August 18, 2019. [El lío judicial entre Néstor Humberto Martínez y un periodista por programa de YouTube](#);

<sup>496</sup> República de Colombia. Cámara de Representantes. Proyecto N°176/2019C. ["Por medio del cual se regulan las políticas de uso y apropiación de las redes sociales y se dictan otras disposiciones generales"](#). August 20, 2019.

<sup>497</sup> República de Colombia. Cámara de Senadores. Proyecto 010/2019C. ["Por medio del cual se adoptan medidas en materia penal y administrativa en contra de la corrupción y se dictan otras disposiciones"](#).

<sup>498</sup> República de Colombia. Corte Suprema de Justicia. STP5404-2019; FLIP. May 7, 2019. [FLIP rechaza fallo de la Corte Suprema que limita el derecho de acceso a audiencias](#).

<sup>499</sup> IACHR. 174 Public Hearings. [Libertad de expresión y acceso a la información en juicios penales en Colombia](#). November 12, 2019.

the directive for not publishing information related to measures taken by military commanders<sup>500</sup>. However, the editorial announced in June that the column of the journalist was reinstated in its usual space<sup>501</sup>.

373. In another case, according to the available information, an *amparo* writ filed by the FLIP and the “Univertopias” program was admitted on July 19 by the Second Criminal Court for Adolescents with the Guarantee Control Function of Bogotá against the District University Francisco José de Caldas due to the withdrawal of a radio program from the station<sup>502</sup>.

374. Also, in another episode, according to the information received by the Office of the Special Rapporteur, in August the Criminal Chamber of the Superior Court of Cali in a case following an *amparo* writ, resolved to order the *El País* media to censor the face of a person in a video who was involved in a traffic accident until the affected person consents to the disclosure<sup>503</sup>.

375. Also, the Office of the Special Rapporteur received information on the impediment of entering the country in October to Mexican journalist Alejandra Rajal who was to be part of a program of the International Women's Media Foundation (IWMF). Regarding this situation, the immigration authority would have said that the impediment decision was based on a “sovereign” and “discretionary” decision, in addition to the fact that she did not have the required documents and would not have explained the reasons for her presence in the country<sup>504</sup>.

376. This Office was informed of the cancellation during December 2018 of the “Los Puros Criollos” program broadcasted by *Radio Televisión Nacional de Colombia*. According to information of public knowledge, the reasons for the cancellation would have arisen following a series of inquiries in the presenter of the program on the bill of modernization of the Ministry of Technology and Communication<sup>505</sup>. In addition, the Office of the Special Rapporteur learned of the cancellation in September of the news report “Noticias Uno” broadcasted on weekends on Channel 1 in *Cable Noticias*, a subscription channel. The management of the channel reported that the reason for the cancellation was for financial reasons<sup>506</sup>, while other sectors denounced this as a case of censorship for political reasons<sup>507</sup>.

377. The office of the Special Rapporteur recalls that Article 13(3) of the American Convention establishes that “[n]o one may restrict the right of expression by means or through indirect means, such as the abuse of official or private controls over newsprint, radio frequencies, or equipment used in the dissemination of information or by any other means aimed at preventing the communication and circulation of ideas and opinions.

## K. Freedom of expression in electoral contexts

378. Within the regional electoral context in Colombia, the IACHR expressed concern at the serious acts of violence that have taken place in the framework of this process. Since the beginning of the electoral campaigns, in July of this year, there have been high levels of violence against political candidates. More than 20 episodes of violence were recorded, including threats, kidnappings, and attacks. The Ombudsman's Office also identified that 402 municipalities and 16 non-municipal areas of Colombia presented electoral risk due to the incidence of illegal armed groups, of which 78 would be at extreme risk<sup>508</sup>. Likewise, the Office of the Special Rapporteur documented episodes of harassment of journalists within this context<sup>509</sup>.

<sup>500</sup> El País. May 30, 2019. [La revista colombiana 'Semana' cancela la columna de Daniel Coronell](#); FLIP. May 29, 2019. [Sobre la salida de Daniel Coronell de Revista Semana](#).

<sup>501</sup> Semana. June 11, 2019. [Daniel Coronell regresa a SEMANA](#).

<sup>502</sup> FLIP. July 24, 2019. [Admitida tutela contra la Universidad Distrital por retiro de programa radial](#); Las2Orillas. July 31, 2019. [Juez admite tutela contra la Universidad Distrital por retiro de programa radial](#).

<sup>503</sup> RCN Radio. August 20, 2019. [Periódico El País apelará fallo que ordena edición de una foto](#); El País. 16 de agosto de 2019. [SIP expresa su preocupación por fallo contra El País Cali y periodismo en general](#).

<sup>504</sup> Noticias Barranquilla. October 20, 2019. [Polémica en redes por inadmisión de periodista mexicana en Colombia – Servicios – Justicia](#);

<sup>505</sup> El Espectador. February 20, 2019. [“Los Puros Criollos podrían volver cuando haya cambio de Gobierno”](#); Santiago Rivas; SEMANA. February 23, 2019. [“Si hubo censura, él sabe que hubo censura”](#); Coordinador de la Liga contra el Silencio.

<sup>506</sup> CM& Sistema Informativo. September 2, 2019. [Canal 1 anuncia cancelación de los noticieros del fin de semana](#); Blu Radio. September 2, 2019. [Anuncio del fin de Noticias UNO se convierte en agria lucha política en redes](#).

<sup>507</sup> Telesurtv. September 1, 2019. [Denuncian cierre de noticiero independiente en Colombia](#); El Tiempo. September 2, 2019. [Las reacciones tras anuncio de salida del aire de Noticias Uno](#).

<sup>508</sup> IACHR. September 10, 2019. [CIDH expresa preocupación por violencia durante el proceso electoral en Colombia](#).

<sup>509</sup> Canal Tropical. August 11, 2019. [Por amenaza de asonada y posible atentado a periodista, cancelan debate de candidatos a alcaldía de Soledad](#); FLIP. August 15, 2019. [FLIP presenta queja ante el CNE en contra de Carlos Caicedo](#); FLIP. August 31, 2019. [Periodista Blanca Urango denuncia graves agresiones por parte de Adelina Covo, candidata a la alcaldía de Cartagena](#); RCN Radio. September 7, 2019. [Amenazan a periodista por denunciar corrupción electoral en Pasto](#); Bocaya Extra. September 8, 2019. [“Vas a quedar con la boca llena de moscas”: escalofriante amenaza a periodista de Nariño](#); Radio Nacional. September 9, 2019. [Periodista de Radio Nacional en Pasto denuncia amenazas contra su vida](#); El Planeta. [Periodista denuncia por ataque a candidata a la Alcaldía de Cartagena](#);

379. In another context, at the request of different civil society organizations, a group of political parties and movements signed an agreement on freedom of the press and against misinformation on May 3 in order to ensure that citizens can vote freely in regional elections<sup>510</sup>.

## L. Community broadcasting

380. The Office of the Special Rapporteur highlights the progress made by the State of Colombia in the process of extending the granting of permits directed to different regions of the country, which would occur after ten years since the last process was carried out. According to the information released by the Government, the final specifications for the expansion of community radio stations in different regions of the country were published, seeking to ensure that “with this service they may have new channels that help strengthen their regional identity and opportunities of communication, turning the population into a participatory agent that provides solutions to the problems that occur in their territory and that promotes free expression”<sup>511</sup>.

381. Also, according to the information, 626 community radio stations are registered in Colombia. Before the opening of the aforementioned process, the MinTIC received 1,573 expressions of interest in 578 municipalities in the country, which would mean more than 250% of all stations currently operating<sup>512</sup>.

382. The Special Rapporteur recalls that in our region, community media play a fundamental role in the exercise of freedom of expression and access to information by different sectors of society<sup>513</sup>. For this reason, it is necessary for States to recognize them legally and to consider reserves of spectrum for this type of media, as well as equitable conditions of access to licenses that differentiate the different realities of the private non-commercial media. Given the existing situation of exclusion, States should adopt positive measures to include the non-commercial sectors in the media. These measures include securing frequencies in the broadcasting spectrum for different types of media, and specifically providing that certain frequencies be reserved for the use of community media, especially when these are not equitably represented in the spectrum. In this regard, the Special Rapporteur has insisted on the need for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.<sup>514</sup>

## M. Internet and Freedom of Expression

383. The Special Rapporteurship has received reports of a series of actions that seek to block technological platforms for collaborative mobility through administrative and judicial processes to censor their dissemination<sup>515</sup> in recent years in Colombia. In this regard, on 20 December, in the framework of a process promoted by the telecommunications services company COTECH S.A. against Uber in Colombia (Uber S.A.S, Uber Technologies, and Uber BV) for alleged unfair competition, corresponding to violations of public transport regulations and deviation of customers, the Colombian Superintendency of Industry and Commerce (SIC) ordered the immediate blocking of Uber's technological application throughout the country<sup>516</sup>.

384. The decision would force Uber to immediately suspend the use of the technological application in the Colombian territory through the different web pages linked to the company. On the other hand, the SIC would also oblige Internet and cell phone companies to block Uber's technological application.

385. In their Joint Declaration on Freedom of Expression on the Internet made in 2011 by the IACHR and UN Special Rapporteurs, they indicate that freedom of expression applies to the Internet in the same way as it does to all media. Restrictions on freedom of expression on the Internet are only acceptable when they comply with international standards that provide, inter alia, that they must be provided by law and pursue a legitimate aim recognized by international law and be necessary to achieve that aim (the "tripartite" test).

386. The principle of neutrality is a design principle of the Internet, by which the utility of networks is maximized, treating all "data packets" equally without distinction. As the Office of the Special Rapporteur

<sup>510</sup> EFE. May 4, 2019. [Partidos políticos colombianos firman un pacto por la "libertad de prensa"](#); El Espectador. May 3, 2019. [Partidos firmaron pacto político en favor de la libertad de prensa para las elecciones de octubre](#); FLIP. 7 de mayo de 2019. [El PAN convoca partidos políticos para firmar pacto contra la desinformación](#);

<sup>511</sup> República de Colombia. Ministerio de Tecnologías de la Información y de las Comunicaciones. October 4, 2019. [Condiciones definitivas para adjudicar emisoras comunitarias](#).

<sup>512</sup> República de Colombia. Ministerio de Tecnologías de la Información y de las Comunicaciones. October 4, 2019. [Condiciones definitivas para adjudicar emisoras comunitarias](#); <sup>512</sup> República de Colombia. Ministerio de Tecnologías de la Información y de las Comunicaciones. October 4, 2019. ["Con asignación de nuevas emisoras comunitarias, estamos cumpliendo la promesa de ampliar el acceso a la información en las regiones": Ministra de las TIC](#).

<sup>513</sup> IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 414; IACHR. [Annual Report 2002. Report of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41.

<sup>514</sup> IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 92 and following.

<sup>515</sup> Ignacio Boulind. FEBRUARY 30, 2019. Disponible en Archivo Relatoría Especial para la Libertad de Expresión. Infoner. January, 2018. [Cómo defendernos de las #fakenews y la posverdad](#).

<sup>516</sup> Superintendencia de Industria y Comercio. [Sentencia de Primera Instancia 20 de diciembre de 2019](#). Semana. December 20, 2019. [88.000 conductores y 2 millones de usuarios, los afectados de la decisión según Uber](#).



maintained, net neutrality is a necessary condition for exercising freedom of expression, and it is transversal to the guiding principles. What this principle pursues is that the freedom of access and choice of users to use, send, receive or offer any content, application or legal service through the Internet is not conditioned, directed or restricted, by means of blocking, filtering, or interference. States must guarantee the validity of this principle through adequate legislation.

### **N. Deliberate Misinformation**

387. During 2019 in Colombia, different journalistic verification websites denounced the use of deliberate information to attack journalists, activists, and politicians who oppose the government of Colombia. Among them is an investigation called "La liga contra el silencio" where, through hacking a group of Whatsapp, led by government officials, they allegedly designed a series of strategies on social networks to position issues of political interest<sup>517</sup>.

388. The Inter-American Court has established, with regard to possible civil liability, that civil sentences in the area of freedom of expression must be strictly proportionate so as not to cause an inhibiting effect on this freedom, since "the fear of civil sanctions, in the face of the claim can be as or more intimidating and inhibiting to the exercise of freedom of expression than a criminal sanction, insofar as it has the potential to compromise the personal and family life of the person who denounces a public official, with the obvious result of self-censorship, both for the person affected and for other potential critics of the actions of a public official"<sup>518</sup>.

### **O. Other relevant situations**

389. According to the information available, during the IAPA half-year meeting held from March 29 to 31 in Cartagena, Colombia, President Iván Duque highlighted the importance of freedom of expression and ratified Chapultepec's statement as a commitment in favor of this right<sup>519</sup>. Likewise, Vice President Marta Lucía Ramírez highlighted and joined the message given by the IACHR and the Office of the Special Rapporteur for Freedom of Expression "which notes that in the region women have less participation and visibility in the crucial issues on government and politics, which means that the work of women journalists is less visible, less valued" which results in "an unjustified wage gap with respect to their male colleagues"<sup>520</sup>.

390. On the other hand, the Office of the Special Rapporteur noted with particular concern a context of mass layoffs of journalists from some media outlets. According to the information available, more than three hundred layoffs would have been registered in different media outlets due to economic motivations, particularly in print and television media<sup>521</sup>.

<sup>517</sup> La Liga del Silencio. February 7, 2020. [En las entrañas de una bodeguita uribista](#).

<sup>518</sup> Corte IDH. Caso Tristán Donoso Vs. Panamá. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 27 de enero de 2009. Serie C No. 193. Párr.129.

<sup>519</sup> La República. March 30, 2019. [Presidente Duque ratifica compromiso con libertad de prensa al firmar Declaración](#); Metro. [Durante reunión de la SIP, presidente Duque ratifica compromiso con la libertad de prensa](#).

<sup>520</sup> República de Colombia. Vicepresidencia. March 30, 2019. [Palabras de la Vicepresidenta de la República, Marta Lucía Ramírez en la Reunión de Medio Año de la Sociedad Interamericana de Prensa \(SIP\)](#).

<sup>521</sup> Pacifista. April 10, 2019. [Despidos de periodistas causan miedo y silencio en los medios colombianos](#); Publimetro. June 25, 2019. [Así funcionará ahora El Tiempo sin los 150 periodistas despedidos](#); La República. March 23, 2019. [El medio de comunicación Vice Colombia despide a todos los periodistas de su plantilla](#); Fundación Gabo. April 3, 2019. [¿Cómo interpretar la ola de despidos en medios de comunicación este año?](#); Pulzo. June 25, 2019. [Periodistas 'de vieja data' de El Tiempo confirman su salida del medio en redes sociales](#);

## 11.COSTA RICA

391. During 2019, the Office of the Special Rapporteur observed an increasing tendency in violent acts against the media and journalists in social protest contexts, accompanied by excessive use of force towards protesters. Likewise, it took note of legislative projects that are pending study by Congress and that would establish regulations for the exercise of the right to freedom of peaceful assembly, such provisions could adversely affect the right to freedom of expression. Finally, this Office welcomed the ruling issued on August 9 by the constitutionality chamber of the Supreme Court of Justice that reiterated that no compulsory membership is required, nor would it be mandatory to join the Journalists' Association, to be able to practice journalism in the country.

### A.Progress

392. The Office of the Special Rapporteur welcomed the ruling issued on August 9 by the Constitutional Court of the Supreme Court of Justice (SCJ) which reiterated as unconstitutional to require compulsory membership, and that it would not be mandatory to join the Journalists' Association, in order to practice journalism<sup>522</sup>. The ruling was issued in the context of a statement by the Journalists' Association of Costa Rica [*Colegio de Periodistas de Costa Rica*] (COLPER), in which it threatened to report unlicensed persons before the competent judicial bodies. The Constitutional Court maintains that as "guarantor of dignity, the rights and freedom of people, it reiterates that journalism can be exercised without having to have an academic degree or being a member of the Journalists' Association." This is determined by sentences 2019-15038 and 2019-15039 respectively. The Court concluded in the sentences that a journalist is the one who regularly or habitually dedicates themselves to informing, and highlights the definition that the Inter-American Court of Human Rights states of this profession (Advisory Opinion oc-5/85 of November 13, 1985): "The "professional journalist" is the person who has decided to exercise freedom of expression in a continuous, stable, and remunerated manner".

393. The Office of the Special Rapporteur recalls that principle 6 of the Declaration of Principles on Freedom of Expression of the IACHR states that "compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State"<sup>523</sup>.

394. The Inter-American Court of Human Rights maintains on the compulsory membership in an association prescribed by law for the practice of journalism that "the professional journalist is not, nor can it be, anything other than a person who has decided to exercise freedom of expression in a continuous, stable, and remunerated manner"<sup>524</sup>.

### B. Attacks, threats, and intimidation against journalists and the media

395. On July 27, an explosive device detonated in front of the facilities of *Televisora* in Costa Rica, in Sabana Oeste. The Judicial Investigation Agency (OIJ) would confirm there was planning prior to the placement of the explosive on the outskirts of *Televisora*, since a basic knowledge of its operation and activation would have been necessary<sup>525</sup>. On the topic, the body said that it is conducting an investigation into the case, and that the device found in the place is one of the most important clues<sup>526</sup>.

396. The *Representaciones Televisivas* (Repretel) journalist Laura Brenes and cameraman Rodrigo Ramírez, denounced that they would have been attacked by protesters while they were covering the protests on August 7 where public sector union organizations demanded the autonomy of the Costa Rican Social Security Fund (CCSS) just outside the Ministry of Finance<sup>527</sup>. According to information received by this Office, journalists from *Teletica*, *Repretel* and *CRHoy*, would have been receiving attacks during demonstrations by that union sector since September 2018<sup>528</sup>.

397. On September 3, the photographer of the newspaper *La Nación*, John Durán, reported having been assaulted while covering the demonstrations convened by the Union of educators before the approval of Bill

<sup>522</sup>Sala Constitucional. Resolución N. 2019015039 Exp. 19-009887-0007-CO. Available at: [https://drive.google.com/file/d/1cPk8rsPTdnGuV7ZCPL-SmsHQa46\\_8zBS/view?usp=sharing](https://drive.google.com/file/d/1cPk8rsPTdnGuV7ZCPL-SmsHQa46_8zBS/view?usp=sharing) Listin Diario. August 10, 2019. *Corte de Costa Rica reitera que no se necesita título para ejercer periodismo*. El País. December 9, 2019. *Sala IV: Título universitario no es requisito para ejercer el periodismo*.

<sup>523</sup>IACHR. *Declaration of Principles on Freedom of Expression*. 2000.

<sup>524</sup>I/A Court H. R. Advisory opinion OC-5/85. Available at: [http://www.corteidh.or.cr/docs/opiniones/seriea\\_05\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_05_ing.pdf)

<sup>525</sup>Civicus. August 15, 2019. *Dispositivo explosivo sale en frente de la estación de televisión de Costa Rica*; *Teletica*. August 4, 2019. *Artefacto explosivo daña ventanal de Televisora de Costa Rica*.

<sup>526</sup>Amnesty International. July 29, 2019. *Costa Rica: Attack on television station is deeply concerning*; Instituto de Prensa y Libertad de expresión (IPLEx). July 29, 2019. *Unirnos en contra de la violencia y en defensa de la Democracia*; Inter American Press Association (IAPA). July 31, 2019. *IAPA condemns attack on Costa Rican TV channel*;

<sup>527</sup>Am prensa. August 8, 2019. *Manifestantes tiran agua a equipo de Repretel para echarlo de huelga* (VIDEO); *CR Hoy*. August 8, 2019. *Reportaje enoja a sindicatos y agreden a periodista de Repretel*; *Noticias Costa Rica*. August 8, 2019. *Sindicatos agreden a periodista de Repretel que dio a conocer caso de asegurado que murió*.

<sup>528</sup>CRHoy. August 8, 2019. *Reportaje enoja a sindicatos y agreden a periodista de Repretel*.

21049 in front of the Legislative Assembly<sup>529</sup>. Other journalists from *Canal 6 de Noticias Repretel*, *CRHoy* and *El Observador*, reported that their press equipment were damaged during the same coverage<sup>530</sup>.

398. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[t]he murder, kidnapping, intimidation, of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation”<sup>531</sup>.

399. The Office of the Special Rapporteur recalls that, according to the Joint Declaration on Violence Against Journalists and Communicators in the Framework of Social Demonstrations, “attacks against journalists covering these situations violate both the individual aspect of freedom of expression —because they are prevented from exercising their right to seek and disseminate information, and a chilling effect is generated— as its collective aspect —since society is deprived of the right to know the information that journalists obtain—. For this reason, the rapporteurs have acknowledged that given the importance of the work of journalists covering these situations, States must grant them the maximum degree of guarantees to fulfill their function. This duty is not limited to granting concrete protection measures for communicators. It also includes the obligation to create the necessary conditions to mitigate the risk of exercising the profession in these situations.”

### C. Social Protest

400. The Office of the Special Rapporteur has received information on the approval in the first debate by the Legislative Assembly of Costa Rica on September 3 of Bill 21049, “To provide legal security on strikes and its procedures,” presented by the Partido Liberación Nacional (PLN). This project would propose new regulations to exercise the right to freedom of peaceful assembly, arguing the obligation of the State to guarantee the continuity of the provision of public services during strikes<sup>532</sup>.

401. According to public information, on September 3 while the last motions were submitted to the project, a group of protesters would have questioned the possible violation of ILO Convention 87 “on freedom of association and protection of the right to organize”, signed with the International Labor Organization (ILO), as well as the prohibitionist nature of the project<sup>533</sup>.

402. This Office has taken note of the constitutionality consultation presented on September 5 by congress deputies opposing the approval of the project and which would currently be pending resolution by the Constitutional Chamber of the Supreme Court of Justice, causing a stop in the course of its legislative process<sup>534</sup>.

403. The Office of the Special Rapporteur is concerned about the direct and indirect restrictions on the rights of trade unions and their union members to exercise their right of association, to freedom of peaceful assembly, and expression through the exercise of their trade union freedoms and recalls that the right of assembly is protected by Articles XXI of the American Declaration and 15 of the American Convention. This right, also recognized in other international instruments<sup>535</sup>, is essential for the enjoyment of various rights such as freedom of expression, the right of association, and the right to defend rights. Political and social participation through the exercise of the right of assembly is an essential element for the consolidation of the democratic life of societies and therefore, it has an imperative social interest. The protection of the right of assembly entails not only the obligation of the State not to interfere in its exercise in an arbitrary manner, but also the obligation to adopt, in certain circumstances, positive measures to ensure it<sup>536</sup>.

404. University students linked to the Interuniversity Autonomous Front protesting in San Pedro, Heredia, due to the budgetary reclassification of the Special Fund for Higher Education (FEES) denounced the excessive use of force for the disproportionate amount of riot control and use of weapons by the Police<sup>537</sup>.

405. The Office of the Special Rapporteur recalls that according to Article 13.2 of the American Convention, in all its limitations on freedom of expression, to be legitimate, they must meet a strict tripartite test, which requires that the sanctions: (1) be defined precisely and clearly through a formal and preexisting material law;

<sup>529</sup> La Nación. September 3, 2019. [Fotógrafo de “La Nación” relata como fue agredido: “Albino me señala y la gente se viene contra mí”](#).

<sup>530</sup> Inter American Press Association (IAPA). October 3, 2019. [Report to the 75th General Assembly of the IAPA. Costa Rica](#).

<sup>531</sup> IACHR. [Declaration of Principles on Freedom of Expression](#). 2000.

<sup>532</sup> La Nación. September 3, 2019. [Con 40 votos a favor y 15 en contra aprobada ley para frenar abusos en huelgas en primer debate](#); Efe. September 4, 2019. [El Congreso de costa Rica aprueba en primer debate una ley para regular las huelgas](#); Teletica. September 4, 2019. [Diputados aprueban en primer debate el proyecto para regular huelgas](#).

<sup>533</sup> Semanario Universidad. September 10, 2019. [Proyecto para regular huelgas muestra múltiples choques con convenio de OIT](#); Asociación de profesores de segunda enseñanza. September 6, 2019. [Campaña con opiniones de expertos sobre el Proyecto de Ley Anti-huelgas N21049](#).

<sup>534</sup> Diario Extra. April 1, 2019. [Amenazas latentes a la prensa en Costa Rica](#).

<sup>535</sup> This right is also recognized by article 20.1 of the Universal Declaration of Human Rights; by article 21 of the International Covenant on Human Rights and by article 5 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

<sup>536</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. 130.

<sup>537</sup> El Mundo.cr. November 21, 2019. [Estudiantes de la UNA denuncian que fueron reprimidos con gases lacrimógenos por la Policía](#); CR Hoy. November 21, 2019. [Con gases lacrimógenos, así levantaron bloqueos universitarios](#) (VIDEO)

(2) be aimed at achieving legitimate objectives authorized by the Convention ("respect for the rights or reputation of others" or "protection of national security, public order, or public health or morals"); and (3) be necessary in a democratic society (for which they must meet the requirements of suitability, necessity, and proportionality). This test is applied with a special intensity when prohibitions are established through criminal law. Likewise, the IACHR and the Court have consistently held that the necessity test for limitations must be applied in a more strict manner whenever it concerns expressions pertaining to the State, matters of public interest, of public officials in the exercise of their functions or candidates for public office, or individuals voluntarily involved in public affairs, as well as political discourse and debate.

406. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the political and social critical expression of the activities of the authorities. The Commission has pointed out that "it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly"<sup>538</sup> and that "the exercise of the right of assembly through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its materialization"<sup>539</sup>.

#### D. Subsequent liabilities

407. According to information received by this Office, on December 27, 2018, *Teletica, Canal 7*, announced the dismissal of the humorist Francisco Blanco, after he told a joke in the transmission of the *Tope San José* program, which would have been described as "machista" (sexist)<sup>540</sup>. In this regard, the Minister of Justice, Marcia González<sup>541</sup> and the Minister of the Status of Women, Patricia Mora<sup>542</sup>, said on social networks that the program was opposed to efforts to combat gender violence by government agencies, asking to take action against the Television, such as a readjustment of its contents and the dismissal of the comedian.

408. According to the information available, in January the Office of Protection of Citizens' Data [*Protección de Datos de los Habitantes*] (Prodhab) attached to the Ministry of Justice, notified to *Diario Extra* the instruction to remove the photograph of a person published in one of their notes, arguing that the Law on Data protection No. 8968 gave citizens the power to ask the media to remove images and other details from their files that would identify them in news. *Diario Extra* filed an *amparo* writ before the Constitutional Court, which would be pending resolution, arguing that this Law should not be used as a mechanism to regulate journalistic activity<sup>543</sup>.

#### E. Legal Reforms

409. The Office of the Special Rapporteur has taken note of Bill 21187 "Law to Combat Cybercrime," presented by the Partido Unidad Social Cristiana (PUSC) and discussed on July 4 by the Commission on Security and Drug Trafficking<sup>544</sup>. This Office observes that the approval of this project could be used to persecute journalists who publish content incompatible with the interests of certain sectors of the population, because it contemplates prison for those who manufacture or disseminate deliberate misinformation<sup>545</sup>.

410. In accordance with principle No. 2 of the Joint declaration on freedom of expression and "fake news", disinformation, and propaganda, of 2017, the Special Rapporteurs of the UN, OSCE, IACHR, and ACHRP, stated that "Criminal laws on defamation constitute restrictions disproportionate to the right to freedom of expression and, as such, must be repealed. Civil law rules regarding the establishment of subsequent responsibilities for false and defamatory statements will only be legitimate if the defendants are granted a full opportunity to prove the truthfulness of those statements and they do not prove such truthfulness, and if the defendants can also present other defenses, such as a fair comment defense.

#### F. Censorship

411. According to public information, on December 22, 2018, the Office of control and propaganda attached to the Ministry of Interior and Police of Costa Rica, notified *Diario Extra* an administrative resolution that

<sup>538</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>539</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. 139.

<sup>540</sup> CrHoy. December 27, 2018. [Despiden a un humorista por chiste sobre violencia doméstica en Costa Rica](#); Montevideo portal. December 27, 2018. [Despiden a humorista de TV en costa Rica por chiste sobre violencia doméstica](#); La Teja. December 27, 2018. [Despiden a humorista de Teletica que hizo chiste sobre la violencia doméstica](#).

<sup>541</sup> Marcia González Aguiluz/Facebook, December 27, 2018. <https://www.facebook.com/MarciaGonzalezAguiluz/posts/2258235604389984>

<sup>542</sup> Patricia Mora Castellanos/Facebook. December 26, 2018. [La violencia contra las mujeres no es un chiste](#).

<sup>543</sup> *Diario Extra*. April 1, 2019. [Amenazas latentes a la prensa en Costa Rica](#).

<sup>544</sup> Proyecto de Ley. Ley para combatir la ciberdelincuencia Expediente No. 21.187. Available at: <http://www.aselex.cr/boletines/Proyecto-21187.pdf>

<sup>545</sup> CRHoy. January 6, 2019. [Producir y difundir fake news podría llevarlo a la cárcel](#); Radio y televisión Martí. August 2, 2019. [El gobierno de costa Rica inicia lucha contra las "fake news"](#).

censored the content of one of its covers, claiming that it was improper use photos or other images from social networks, despite their public nature<sup>546</sup>. Various civil society organizations would have expressed concern about the fact<sup>547</sup>.

412. On February 22, the Constitutional Court ruled against the digital newspaper *La Teja*, ordering it to delete a video about the sentimental life of a model uploaded to its website, arguing the violation of her right to privacy in relation to honor and good name, as well as her right to free personality development. The judges applied in this case the rule of the right to forget that affects the right to information<sup>548</sup>.

413. The Office of the Special Rapporteur recalls that all restrictions on freedom of expression, including those affecting expression on the Internet, must be established clearly and precisely by law, proportional to the legitimate objectives sought, and based on a judicial determination of contradictory procedures. In accordance with principles 10 and 11 of the Declaration of Principles on Freedom of Expression of the IACHR, this Office recalls that “reputation protection must be guaranteed only through civil sanctions”, particularly “in cases where the offended person is a public official or public or private person who has voluntarily become involved in matters of public interest” because the officials “are subject to greater scrutiny by society”. In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression.

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

### **G. Access to public information**

415. According to public information, on November 13 the project “Reform of Articles 17 and 34 of the Municipal Code, Law N. 7794, of April 30, 1998, and its reforms to guarantee transparency and access to information in the entities belonging to the Municipal Regime” was transferred to the Permanent Committee on Affairs. This project seeks to give citizens access to information on municipalities. The project would have been debated on November 19 and would be pending approval by the Executive at the close of this report.

416. The Office of the Special Rapporteur has taken note of the complaint made by the digital newspaper *CRHOY*, on the decision of the Ministry of Communication not to publish the presidential agenda, highlighting that access to spaces to request information from the president is increasingly reduced, which would affect the work of the media<sup>549</sup>. According to the available information, also in 2018 various media outlets would have denounced the State for their lack of transparency<sup>550</sup>.

417. Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[a]ccess to information held by the State is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Taking into account the principle of maximum disclosure, the law should guarantee the most effective and widest possible access to public information, and exceptions should not become the general rule in practice. In addition, the exceptions regime must be interpreted restrictively and any doubt must be resolved by transparency and access.

<sup>546</sup> Oficina de Control de propaganda. December 21, 2019. Resolución 228/2018.

<sup>547</sup> The Inter American Press Association (IAPA) sent a letter to the Office of propaganda control criticizing the State interference in the media’s criteria and content, requesting the withdrawal of the notification of censorship. The Colegio de Periodistas stated that it was dangerous for any organ to previously censor the covers or publications of notifications; *Diario Extra*. January 10, 2019. [SIP denuncia intromisión de Gobierno en Diario Extra](#).

<sup>548</sup> Sala Constitucional. February 22, 2019. Resolución N° 03316 – 2019. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-911421>

<sup>549</sup> CRHoy. February 15, 2019. [Para evitar a la prensa, ministra oculta agenda de Alvarado](#).

<sup>550</sup> La República.net. August 6, 2018. [Falta de transparencia del gobierno evita saber cómo gasta dinero de impuestos](#).

## 12.CUBA

418. Restrictions on freedom of expression, access to public information, and protest have persisted in Cuba during 2019. President Miguel Díaz-Canel's administration has reportedly intensified crackdowns on dissidents and opponents, as well as the harassment and systematic persecution of independent journalists, human rights advocates, activists, and dissidents who disseminate information and opinions on matters of public interest outside the control of the State.<sup>551</sup>

419. The harassment of journalists, activists, artists and human rights defenders is not only physical, but also psychological, and being subjected to humiliating treatment as part of police and government control has become normalized. Notably, CubaNet journalist Roberto Jesús Quiñones Haces was sentenced to one year in prison for the crimes of resistance and disobedience due to his decision to cover the hearings in a trial of public interest. This Office, together with the United Nations (UN), sent an Article 18 letter requesting information on the conditions in which the journalist was being held.

420. The Office of the Special Rapporteur has also expressed its concern over the potential enactment of new laws such as Decree Law No. 370 "on the computerization of society in Cuba," which undermines the exercise of freedom of expression and the possibilities for establishing digital media outlets. Similarly, Decree Law No. 349 punishes noncompliance with Cuba's cultural policy, and has reportedly led to the intensified censorship and persecution of artists in Cuba.

### A. New constitution and Freedom of expression in Cuba

421. A new national Constitution<sup>552</sup> was adopted for the first time in 44 years in February 2019, amid complaints about the lack of access to information and persecution of citizens who sought to discuss the draft. According to reports, there were several flaws in the process with respect to public awareness and debate of the draft Constitution. Despite the organizations' efforts to generate a multi-stakeholder dialogue, there were "legal and political barriers" that limited effective citizen participation,<sup>553</sup> as well as a lack of media pluralism.

422. The Office of the Special Rapporteur observes that, despite the fact that this new Constitution includes rights and guarantees<sup>554</sup> that were absent from the 1976 Constitution, it fails to effectively create the mechanisms needed to implement them in practice,<sup>555</sup> and it upholds a Cuban legal system that restricts the exercise of freedom of expression. Indeed, the Constitution itself subordinates the exercise of this right to the protection of certain objectives and interests, in a manner incompatible with international human rights instruments.

423. The new Constitution provides for the preservation and strengthening of the socialist State, sole state or social ownership of the media, and the interests of the working people; as well as criminal laws that include various forms of contempt of public authority [*desacato*] or subversion intended to protect State security forces and the socialist order, among other things. The Cuban legal system takes a restrictive and instrumental view of freedom of expression with regard to the activities of journalists and the media. Articles 54 and 55 are particularly relevant to the exercise of freedom of expression in Cuba. The first article states that:

424. Art. 54. The State recognizes, respects, and guarantees freedom of thought, conscience, and expression. Conscientious objection may not be invoked with the intention of evading compliance with the law or preventing another from complying with the law or exercising their rights.

425. This Office observes that the Constitution adopted in February 2019 establishes the State's general obligation to recognize, respect, and guarantee freedom of thought, conscience, and expression, while the 1976 Constitution did not contain any similar provision. However, for those rights to be enforceable in Cuba, they must be interpreted in conjunction with other constitutional provisions that prevent political pluralism and non-government ownership of media outlets, thus preventing *de facto* the free exercise of freedom of expression through independent media. Moreover, as this Office of the Special Rapporteur stated in its 2018 Special Report on the situation of freedom of expression in Cuba, the constitutional reform of 2019 also failed to establish legal proceedings to guarantee or protect the exercise of fundamental freedoms.<sup>556</sup>

426. Similarly, it is troubling that the new Cuban Constitution kept the main restrictions of the previous legal system in terms of subordinating freedom of the press to interests not authorized under international law,

<sup>551</sup> Telemundo 51. [Díaz-Canel descarta libertad de prensa en Cuba](#). July 16, 2018; Radio y Televisión Martí. [Informe ante ONU denuncia violaciones a derechos humanos en Constitución cubana](#). May 1, 2019.

<sup>552</sup> El Diario. [La SIP lamenta que el Estado cubano siga reprimiendo la libertad de prensa](#). July 20, 2019; New York Times. [Cubans Approve a Constitution, but Opponents Speak Out](#). February 25, 2019.

<sup>553</sup> IACHR. [Press Release 058/19 IACHR Concerned about Cuba's New Constitution and its Implementation](#). March 4, 2019.

<sup>554</sup> BBC Mundo. [Referendo Constitucional en Cuba: 5 puntos que explican la polémica por la Constitución que se votó este domingo](#). February 26, 2019.

<sup>555</sup> Race & Equality. [Condenas premeditadas: Análisis de la situación de la administración de justicia en Cuba](#). June 2019. Ch. VIII.

<sup>556</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 43.

rendering the exercise of the right illusory and its recognition purely rhetorical.<sup>557</sup> This relates to Article 55, which provides that:

427. **Art. 55.** Citizens are entitled to freedom of the press. This right is exercised in accordance with the law and the aims of society. The fundamental means of communication, in any of its forms, are the socialist property of all the people, or of political, social, and mass organizations; they are not subject to any other form of ownership. The State establishes the principles of organization and operation for all media.

428. This Office notes that, in addition to continuing to subject freedom of expression to the “objectives of socialist society,” the new Constitution maintains the prohibition of non-state media. As the provision expressly states, the media “are the socialist property of all the people.” This is even more worrisome considering that the article designating the PCC as the country’s highest leading force also remains in effect. This Office observes that maintaining the government’s monopoly on the media is also contrary to the provisions of the new Constitution, which defines Cuba as a democratic State governed by the rule of law. In other words, it is impossible to speak of the existence of a democratic system without full respect for freedom of expression and the opportunity for citizens to exchange information, ideas, and opinions from a variety of information sources, including the ability to establish or co-found media outlets.<sup>558</sup>

429. Article 4 of the new Constitution is also relevant. It establishes that “Citizens have the right to combat through any means, including armed combat when other means are not available, against anyone that attempts to overthrow the political, social, and economic order established by this Constitution,” which could open the door to the use of physical violence against persons who express their interest in changing the country’s political order.

430. Finally, the Office of the Special Rapporteur observes that Article 53 of the new Constitution recognizes the right to access to public information, establishing that “All people have the right to request and receive information from the State that is true, objective, and timely, and to access the information generated by bodies of the State and its entities, according to the established regulations.” While this is a step forward, given that the 1976 Constitution did not recognize the right to access to information, its wording does not fully encompass the scope and content of that right. Under Article IV of the American Declaration of the Rights and Duties of Man, “Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.”

431. The Office of the Special Rapporteur stresses the importance of ensuring that the laws enacted to guarantee the exercise of the right to access to public information are fully consistent with the respective obligations. It must have a limited regime of exceptions, an effective and suitable remedy to ensure the satisfaction of the right to access to information, an appropriate mechanism for individuals to enforce this right if the State refuses to provide information, and the opportunity to have decisions reviewed on appeal by a guarantor body. At the same time, the right to judicial review of the administrative decision should be established through a remedy that is simple, effective, prompt, and inexpensive, and that allows individuals to contest the decisions of public officials.<sup>559</sup>

### **B.State media monopoly, censorship, and compulsory membership in a professional association to practice journalism**

432. The Office of the Special Rapporteur has taken note of the hostile environment in which journalists and reporters have been working in 2019. This hostile environment continues to be observed by different human rights institutions and international bodies, which place Cuba among the top 10 countries with the most widespread censorship practices in the world.<sup>560</sup> Reporters Without Borders (RSF) places Cuba 169 out of 179 countries included in its 2019 ranking, which it compiles based on the degree of freedom enjoyed by journalists.<sup>561</sup>

433. According to available information, various forms of repression persist, such as compulsory membership in a professional association to practice journalism; threats, summonses, and interrogations designed to intimidate; illegal and/or arbitrary detentions; searches and seizures of journalistic equipment or other property; dismissals and denials of authorization to practice a profession or economic activity; pressures and threats to journalists’ families and the people around them, as well as defamatory practices; and barriers to departure from Cuba and other arbitrary restrictions on freedom of movement. Criminalization and the use of

<sup>557</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 44.

<sup>558</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 45.

<sup>559</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Paras. 29 and 63-64.

<sup>560</sup> CPJ. [10 Most Censored Countries](#). 2019 report.

<sup>561</sup> This report measures the situation of freedom of the press, based on an assessment of pluralism, independence of the media, quality of the legal framework and safety of journalists in these countries. [[Reporters Without Borders. Clasificación Mundial de RSF 2019: Balance de América Latina: La mecánica del Miedo](#)].

the criminal law has been normalized, seriously undermining journalism and those who seek to express their opinions in Cuba. For instance, it was reported that in May 2019 the Chief Justice of the People's Supreme Court threatened to impose a "Gag Rule" on individuals who work with foreign media and in furtherance of the objectives of the Helms-Burton Act, title III of which was fully implemented in April by President Donald Trump, allowing U.S. citizens to file lawsuits as of May 2 of this year against businesses operating on properties seized by the Cuban regime.<sup>562</sup>

434. In addition, independent journalists have unlawful status under Cuba's existing legal framework, given that journalists are required to be members of the official media, or of the Union of Cuban Journalists (UPEC)—the sole and official journalists' union—in order to practice the profession.<sup>563</sup> According to public knowledge, journalists who practice the profession despite these restrictions are threatened with criminal prosecution for the offenses of "impersonation of a public official" or "acting without legal capacity." This is openly contrary to freedom of expression and freedom of the press, which require guarantees for their full enjoyment.<sup>564</sup>

### C. Persecution of the independent press

435. The Cuban State uses arbitrary detentions—usually short in duration—, internal deportations, summonses to police stations, home raids, pressure on families, travel restrictions, and the confiscation of work materials to prevent independent journalists from working freely. Reported complaints<sup>565</sup> state that those affected are often intercepted in the street, and that State agents frequently carry out "seizures" in operations in which they raid homes, intimidate families, and arrest journalists. This Office has been informed that detained journalists are held incommunicado and reportedly crowded into cells together with detainees accused of common crimes.<sup>566</sup> It is reportedly also common for relatives of independent journalists to be pressured to cooperate with State security forces.<sup>567</sup>

436. The Office of the Special Rapporteur has noted that those raids, summonses, and detentions of independent journalists intensify in the lead-up to major political events, to prevent journalists from being able to provide news coverage.<sup>568</sup> On August 16, independent journalists reported threats and arrests that had kept them from leaving their homes to cover the protest demonstrations of SNet users in Cuba, including, for instance, writer and photographer Ariel Maceo of ADN Cuba, journalist José Jasán Nieves of the magazine *El Toque*, and *El Estornudo* journalist Abraham Jiménez.<sup>569</sup>

437. This Office has noted that on November 11 several activists, artists, and independent journalists reported that the political police had begun a wave of arrests to restrict their movements or keep them besieged in their homes, allegedly because of the visit of Spain's royal couple and the official celebration of Havana's 500th anniversary.<sup>570</sup> On November 12, independent journalist and religious activist Ricardo Fernández was detained for 29 hours by State security forces in a cell at Villa María Luisa based on their criminal complaint alleging that he "acted without legal capacity."<sup>571</sup> On November 15, journalist Yoani Sánchez condemned a police operation

<sup>562</sup> Miami Diario. October 11, 2019. [Siguen las amenazas contra periodistas independientes en Cuba: Autoridades del régimen buscan aplicar la «Ley Mordaza»](#). Cubanos por el Mundo. October 15, 2019. [Régimen de Cuba amenaza con aplicar «Ley Mordaza» a periodistas independientes en Granma](#). Cibercuba April 17, 2019. [Estados Unidos confirma la aplicación del Título III de la Ley Helms-Burton a partir del 2 de mayo](#); Radio Televisión Martí. May 9, 2019. [Cuba amenaza con la Ley Mordaza en respuesta a la activación de la Helms-Burton](#); Cubanet. May 10, 2019. [FDHC al Tribunal Supremo de Cuba: "No le corresponde amenazar a los ciudadanos"](#); Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA. Cuba](#). October 7, 2019; CNN. April 17, 2019. [Trump administration targets so-called 'troika of tyranny' with wave of new sanctions](#).

<sup>563</sup> See article 2 of the UPEC Statutes: "The Upec is a trade organization recognized in Article 7 of the Constitution of the Republic that states: 'The Cuban socialist state recognizes and encourages mass and social organizations, arising in the historical process of the struggles of our people, which group different sectors of the population within them, represent their specific interests and incorporate them into the tasks of building, consolidating and defending the socialist society'".

<sup>564</sup> IACHR. 173 Period of Sessions, Hearing on Serious Human Rights Violations in Cuba. September 23, 2019.

<sup>565</sup> Interviews with IACHR in 2019. Office of the Special Rapporteur. Julio Cesar Álvarez and Vladimir Turro Páez. Aristegui Noticias. October 10, 2019. [Medios cubanos exigen legalización del periodismo no estatal y denuncian agresiones](#).

<sup>566</sup> CubaNet. September 24, 2019. [La cárcel que encierra a Roberto Quiñones](#). Cibercuba. October 1, 2019. [El periodista Roberto Quiñones cuenta sus malas condiciones en una cárcel de Cuba](#). ADN Cuba. September 27, 2019. [Denuncian violación de derechos a Roberto Quiñones en la prisión de Guantánamo](#).

<sup>567</sup> Interviews with IACHR in 2019. Office of the Special Rapporteur. Journalist of digital magazine *El Estornudo*. Abraham Jiménez. Film producer and artist Michel Matos.

<sup>568</sup> Diario de Cuba. October 9, 2019. [La Seguridad del Estado 'visita' a la familia de un periodista de DIARIO DE CUBA](#). Cibercuba. November 9, 2019. [Activistas cubanos convocan a campaña por los derechos humanos durante visita de los Reyes de España a la isla](#).

<sup>569</sup> On August 16, 2019, the director of *El Toque* magazine, José Jasán Nieves Cárdenas, reported he was summoned by telephone due to his coverage of protests by SNet users in Cuba. [Más de un centenar de usuarios de SNet protestan frente al Ministerio de Comunicaciones](#). 14 y Medio. August 10, 2019. [Con arrestos y amenazas, la Seguridad del Estado aborta una protesta a favor de SNet](#). 14 y Medio. August 17, 2019.

<sup>570</sup> Diario de Cuba. November 13, 2019. [Operativos de la policía política en toda Cuba por la visita de los reyes de España](#). Diario de Cuba. November 14, 2019. [Casas sitiadas y llamadas de advertencia: más represión por la visita de los reyes de España](#). Cibercuba. November 9, 2019. [Activistas cubanos convocan a campaña por los derechos humanos durante visita de los Reyes de España a la isla](#).

<sup>571</sup> APLP. November 14, 2019. [Arrestado el periodista Ricardo Fernández Izaguirre](#). Diario de Cuba. November 14, 2019. [Liberado bajo amenazas el periodista independiente Ricardo Fernández Izaguirre](#).



at her apartment that reportedly prevented her and her spouse Reinaldo Escobar—also a journalist—from moving freely and leaving their residence.<sup>572</sup>

438. The Office of the Special Rapporteur has also received reports of landlords being pressured to evict independent journalists from their rented homes, as said to have happened in the cases of Adriana Zamora, Odalina Carmona, Sol García, and Ernesto Carralero.<sup>573</sup>

439. According to available information, the Cuban State has tightened controls and restrictions on both the foreign and domestic travel of journalists, editors, and freedom of expression activists through practices known as “regulations,”<sup>574</sup> which are used frequently and generally without due process.<sup>575</sup> At least 200 such “regulations” were reported in 2019, including, according to the information received as of the close of this 2019 report, in the cases of *La Hora de Cuba* journalists Inalkis Rodríguez, Iris Mariño, Sol García, Isal Arango, Augusto César San Martín, Osmel Ramírez, and Camila Acosta.<sup>576</sup>

440. This Office has also documented the denial of entry into Cuba of reporters seeking to cover various topics.<sup>577</sup> There have been restrictions on the coverage of public demonstrations and protests, such as the case of *Washington Blade* editor and reporter Michael Lavers, who was detained at José Martí International Airport in Havana before being deported and declared “persona non grata” because he intended to cover the Conga, a well-known parade organized by the Cuban LGBTI+ movement.<sup>578</sup> On May 11, an LGBTI+ march called by independent activists following the cancellation of the traditional official march ended in repression and arrests, including those of reporters Ileana Hernandez of *Cibercuba* and Boris Gonzalez Arenas of *Diario de Cuba*.<sup>579</sup>

441. In 2019, the Office of the Special Rapporteur has monitored more than 50 complaints of violent persecution against independent journalists, activists, and advocates in 10 of the island’s 14 provinces.<sup>580</sup> The Cuban Human Rights Observatory (OCDH) documented at least 1,468 arbitrary arrests in just the first 10 months of the year, and this situation has reportedly intensified as a result of the different movements campaigning for a “no” vote on the new Constitution in the February 2019 referendum on its adoption. In this context, there were at least 218 arbitrary detentions on the island in November.<sup>581</sup>

442. The Office of the Special Rapporteur has also received information on the normalization of subjecting independent journalists in Cuba to humiliating treatment, such as in the case of Osvaldo Landín Baños,<sup>582</sup> an independent journalist from Perico, in Matanzas, who was reportedly struck by a National Revolutionary Police (PNR) vehicle in 2019. Also of special concern are cases reported by women journalists in detention, who have reported being forced to undress and placed in humiliating positions.<sup>583</sup> Iris Mariño, a journalist from the independent newspaper *La Hora de Cuba*, for instance, stated that she had counted 22 instances of harassment against her, including detentions and interrogations where no female officer had been present.<sup>584</sup>

443. In April 2019, the IACHR granted precautionary measures on behalf of *Diario de Cuba* journalists Manuel Alejandro León Velázquez, Osmel Ramírez Álvarez, and Adriana Zamora García, as well as their relatives, on the grounds that their right to life and personal integrity faced “a situation of seriousness and urgency.” On that same occasion, the IACHR asked the Cuban State to take measures to protect the right to freedom of expression of the newspaper *Diario de Cuba*.<sup>585</sup>

<sup>572</sup> ADN Cuba. November 15, 2019. [Prohíben salir de su casa a Yoani Sánchez y Reinaldo Escobar](#).

<sup>573</sup> Diario de Cuba. August 18, 2019. [La policía política deja sin vivienda a dos periodistas de DIARIO DE CUBA a punto de ser padres](#).

<sup>574</sup> ADN Cuba. June 3, 2019. [Crece la lista de periodistas y activistas “regulados” en Cuba](#). Interviews with IACHR in 2019. Office of the Special Rapporteur. Testimony of independent journalist Lázaro Yuri Valle Roca.

<sup>575</sup> Race & Equality. June 2019. [Condenas premeditadas: Análisis de la situación de la administración de justicia en Cuba](#). *Cibercuba*. November 17, 2019. [Autoridades cubanas impiden salir del país a la periodista independiente Camila Acosta](#). According to public information, these impediments, commonly called “regulations,” maintain a list of the names of Carlos Alejandro Rodríguez, Maily Pérez, Regina Coyula, Joan Manuel Núñez Díaz, Sol García, Maykel González, Yoandy Izquierdo, Anderlay Guerra, Raúl Velázquez, Iván Hernández, Abel Estrada, Henry Constantín, Augusto Cesar San Martín, Yusimí Rodríguez, Ileana Álvarez, and Yudel Estenoz. Other journalists who have recently reported bans are: Julio Aleaga, Amarilis Cortina, Victor Manuel Domínguez, Niober García, Jose Fornaris, Anay Remon, Osmel Ramírez, Manuel León, Javier Valdez, Luz Escobar, Boris González Arenas, Manuel Alejandro León Velázquez, among others.

<sup>576</sup> ADN Cuba. May 22, 2019. [Prohíben salir del país a 4 jóvenes de la revista La Hora de Cuba](#); Puente a la vista. May 25, 2019. [Reguladas: El caso de ‘La hora de Cuba’](#). Diario de Cuba. October 10, 2019. [El periodista de DIARIO DE CUBA Osmel Ramírez Álvarez cumple 700 días ‘regulado’](#). *Cibercuba*. October 24, 2019. [Gobierno de Cuba impide viajar a 15 activistas para asistir a evento en Miami](#). *14 y Medio*. November 4, 2019. [Crece la represión en Cuba: Ferrer sigue “desaparecido” y suben a 200 los ‘regulados’](#).

<sup>577</sup> Radio y TV Martí. January 18, 2019. [Expulsan de Cuba a dos estudiantes brasileños por entrevistar a esposa de opositor](#). *Telemundo51*. May 2, 2019. [Reportera de Telemundo es deportada de Cuba](#). *Cubanet*. November 19, 2019. [Régimen cubano impide salir del país a la periodista Camila Acosta: Régimen cubano impide salir del país a la periodista Camila Acosta](#).

<sup>578</sup> The Washington Blade. May 9, 2019. [Cuba blocks Blade reporter from entering country](#).

<sup>579</sup> The Washington Blade. May 9, 2019. [Cuba blocks Blade reporter from entering country](#).

<sup>579</sup> APLP. October 10, 2019. [Arrestados en La Habana tres periodistas](#). Radio y TV Martí. November 14, 2019. [Contra la Censura](#). *Cibercuba*. September 29, 2019. [Detienen a la reportera de CiberCuba Iliana Hernández por protestar contra “la política de regulados” del Gobierno](#).

<sup>580</sup> IACHR 173 Public hearings. Septiembre, 2019. Informe primer semestre APLP Cuba. Race and Equality Report 2019.

<sup>581</sup> Observa Cuba. October 3, 2019. [Gobierno de Díaz-Canel casi duplica las detenciones arbitrarias en septiembre](#). Diario de Cuba. December 4, 2019. [Noviembre: el mes de los arrestos domiciliarios en Cuba](#).

<sup>582</sup> ADN Cuba. July 25, 2019. [Denuncian atropello y causa legal fabricada contra periodista independiente](#).

<sup>583</sup> IACHR 173 Public hearings. Septiembre, 2019. [173 Período de Sesiones Audiencias CIDH](#).

<sup>584</sup> ADN Cuba. November 1, 2019. [Dos Journal Heroes cubanas](#).

<sup>585</sup> IACHR. [Medidas cautelares No. 1025-18](#). 4 de abril de 2019.

444. Finally, according to available information, other journalists who have been repeatedly and deliberately harassed in Cuba in the past five years include: Yoani Sánchez (the beneficiary of precautionary measures issued by the IACHR), José Jasán Nieve,<sup>586</sup> Luz Escobar,<sup>587</sup> Ileana Álvarez,<sup>588</sup> Roberto Quiñones, Eider Frometa,<sup>589</sup> Yoarielis Centelle,<sup>590</sup> Arodis Pelicie,<sup>591</sup> Osmel Ramírez,<sup>592</sup> Martha Liset Sánchez,<sup>593</sup> Carlos Alejandro Rodríguez, Maily Esteves,<sup>594</sup> Alberto Corzo, Alberto Castaño,<sup>595</sup> Rudy Cabrera,<sup>596</sup> José Fornaris, Boris González,<sup>597</sup> Mario Echevarría, Regina Coyula, Joan Manuel Núñez, Roberto Rodríguez, Luis Cino, Sol García,<sup>598</sup> Emiliano González, Raúl Velasquez, Manuel Alejandro León,<sup>599</sup> Alexander Rodríguez, Alejandro Hernández, Osniel Carmona, Yuri Valle, Anderlay Guerra, Augusto César San Martín, Carlos Alberto Torres, Niorbis García, Yordis García, Daniel González, Deris Solís, Adrián Quesada, Vladimir Turró, Eradily Frómota, Inalkis Rodríguez,<sup>600</sup> Rosalia Viñas, Idilsa Bailly,<sup>601</sup> Oscar Padilla, Dagoberto Valdés, Yoandy Izquierdo, Rafael Gordo, Mario Echavarría, Yaudel Estenoz, Yuri Valle,<sup>602</sup> Odalina Carmona,<sup>603</sup> Ernesto Carralero, Julio Aleaga, and Henry Constantin,<sup>604</sup> among others.<sup>605</sup>

#### D. Politically motivated criminalization of critical or dissenting speech

445. As the Office of the Special Rapporteur stated in its 2018 Special Report on the situation of freedom of expression in Cuba, journalists, artists, human rights advocates, and activists, as well as political dissidents, intellectuals, and thought leaders continue to face serious hostility, persecution, and harassment. Multiple sources have consistently reported that such persons are frequently deprived of their liberty arbitrarily on criminal charges—such as contempt of public authority [*desacato*], attack against a public authority [*atentado*], and disorderly conduct—at times being subject to assaults, threats, and abuse while in custody. The most commonly reported forms of harassment include physical assaults, vandalism, public repudiation, and other acts targeting opponents of the Cuban government. In a joint communiqué published simultaneously on October 7 by 19 independent Cuban media outlets, the island's journalists condemned a wave of repression by Miguel Díaz-Canel's government designed to silence them.<sup>606</sup>

446. According to the information received, the misuse of the criminal law mechanism of subsequent liability against persons who express opinions, share information, or criticize matters of public interest, or refer to government employees or officials, is one of the most severe tactics used against particular groups. This Office has identified different civil society organizations<sup>607</sup> that remain active despite this harassment, including, for instance, the Cuban Institute for Freedom of Expression and the Press (ICLEP), the Association for Press Freedom (APLP), and the Patriotic Union of Cuba (UNPACU).<sup>608</sup>

447. This Office attaches special importance to the arrest of opposition activist José Daniel Ferrer, who was detained at UNPACU headquarters in an operation carried out by 60 members of the special forces, the police, and the State security forces. He was missing for about 30 days before being charged with assault and battery.

<sup>586</sup> Puroperiodismo/ Youtube. August 22, 2019. [José Jasán Nieves de elTOQUE sobre el periodismo móvil en Cuba.](#)

<sup>587</sup> CiberCuba. May 22, 2019. [Prohíben salir de Cuba a la periodista Luz Escobar.](#)

<sup>588</sup> 14 y Medio. August 16, 2019. ["Resistir por resistir no tiene ningún sentido".](#)

<sup>589</sup> Diario de Cuba. February 12, 2019. [José Daniel Ferrer: 'O nos respetan o nos matan'..](#)

<sup>590</sup> Radio Televisión Martí. February 22, 2019. [Entrevistas con periodistas del Instituto Cubano por la Libertad de Expresión y Prensa.](#)

<sup>591</sup> CiberCuba. June 21, 2019. [Redada a la prensa independiente.](#)

<sup>592</sup> Diario de Cuba. October 10, 2019. [El periodista de DIARIO DE CUBA Osmel Ramírez Álvarez cumple 700 días 'regulado'.](#)

<sup>593</sup> Radio Televisión Martí. June 25, 2019. [Cacería de brujas contra periodistas independientes en Cuba.](#)

<sup>594</sup> Confidencial. September 19, 2019. [Declaración de la prensa independiente de Cuba.](#)

<sup>595</sup> Knight Center. June 26, 2019. [Cuban journalists report increase in detentions and other abuses of power by authorities..](#)

<sup>596</sup> CubaNet. September 27, 2019. [Escapando en silencio o la autocensura en Cuba.](#)

<sup>597</sup> CibeCuba. October 10, 2019. [La esposa del activista cubano Boris González Arenas denuncia que sigue en paradero desconocido.](#)

<sup>598</sup> ADN Cuba. October 6, 2019. [Asamblea de la SIP en Miami denuncia represión al periodismo independiente cubano.](#)

<sup>599</sup> CiberCuba. October 24, 2019. [Gobierno de Cuba impide viajar a 15 activistas para asistir a evento en Miami.](#)

<sup>600</sup> CiberCuba. May 22, 2019. [Impiden a periodistas independientes de Camagüey participar en evento en el extranjero.](#)

<sup>601</sup> Diario Las Américas. October 19, 2019. [Cuba niega salida de periodista para asistir a congreso de prensa interamericana.](#)

<sup>602</sup> Diario de Cuba. June 19, 2019. ['Expatriaciones forzosas': nueva denuncia contra el régimen cubano ante la ONU.](#)

<sup>603</sup> Infobae. September 17, 2019. [Informe denuncia "terrorismo de Estado" contra periodistas en Cuba.](#)

<sup>604</sup> Inter American Press Association (IAPA). August 31, 2019. [Detienen temporalmente a Henry Constantín, representante de la SIP en Cuba.](#)

<sup>605</sup> Asociación Pro Libertad de Prensa de Cuba. September 2019. [Monthly monitoring report.](#) IACHR. 173 Public Period of Hearings. Freedom of Expression and Human Rights in Cuba.

<sup>606</sup> Knight Center. October 7, 2019. [19 independent Cuban media outlets publish joint declaration demanding more protection and respect for the press from government.](#)

<sup>607</sup> IACHR. Office of the Special Rapporteur. [Press Release R152/18. The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for desacato laws in Cuba.](#) July 17, 2018.

<sup>608</sup> Asociación Pro Libertad de Prensa de Cuba (APLP). [November 2019 report.](#) Yucabyte. October 2019. [Declaración de Medios Independientes Cubanos.](#) INFOBAE. October 5, 2019. [La SIP denunció que la libertad de prensa en Cuba está peor que nunca.](#) Amnesty International. August 27, 2019. [Cuba: Amnistía Internacional adopta cinco nuevos presos de conciencia.](#) EuropaPress. November 7, 2019. [Al pide por carta al Rey que en Cuba se interese por José Daniel Ferrer y por la liberación de seis presos de conciencia.](#) CiberCuba. October 2, 2019. [Al menos 125 presos políticos "por oposición al régimen", según Cuban Prisoners Defenders.](#)

His wife Nelva Ortega Tamayo, and their three minor children, were also detained while holding a peaceful protest for his release.<sup>609</sup>

448. Among the exemplary cases highlighting the situation is the case of *Cubanet* journalist Roberto Jesús Quiñones Haces, who was sentenced to a year in prison for the crimes of resistance and disobedience. According to reports, on April 22, Quiñones was arrested and beaten by National Revolutionary Police (PNR) officers while covering the trial in a case that the Cuban State had brought against the married couple Rigal-Exposito, who were prosecuted for the decision to homeschool their children, among other older cases.<sup>610</sup> On October 1, Quiñones Haces and other inmates sent a letter to *Cubanet* describing the conditions to which they were subjected in prison. After the letter was published, his son, Roberto José, denounced internationally that the journalist had been subjected to reprisals through “disciplinary measures.” These measures reportedly included the suspension of telephone calls and being barred from going out into the prisonyard.<sup>611</sup>

449. The Office of the Special Rapporteur has also documented serious politically motivated structural discrimination in the exercise of human rights; anyone who thinks or speaks out about matters of public interest in a way that the State considers contrary to its official discourse faces persecution and harassment. Although the new Constitution includes an acknowledgement of the right to equality and nondiscrimination in broad terms, it does not address politically motivated discrimination. While the Office welcomes the inclusion of prohibited grounds for discrimination such as gender, gender identity, sexual orientation, ethnicity, and disability,<sup>612</sup> it notes that political opinion is also a prohibited ground—widely recognized in human rights instruments<sup>613</sup>—but it is not protected in the text of the Constitution. A democratic system must have regulatory conditions under which all persons, without discrimination, can exercise their rights freely.

### E. Censorship and persecution of artists

450. For more than three decades, the IACHR has affirmed that there is a practice of tight government control in Cuba that shows “intense intolerance of works of art that might raise questions as to the virtues of the political system or the correctness of the ruling group.” On this point, the IACHR and its Office of the Special Rapporteur have continued to receive information indicating that ideological differences have served as grounds for hindering artistic expression.<sup>614</sup> To wit, Decree 349<sup>615</sup> was enacted to update Decree 226 of 1997, and regulates the cultural policy and the “provision of artistic services.” Various artists and activists who call themselves “artists” have complained<sup>616</sup> that the law requires the approval of government authorities for artists to be able to present their work to the public and provides for an “inspector” who can close an exhibition or end a concert if he or she determines that they are inconsistent with the cultural policy of the Revolution.

451. The information received in 2019 shows that numerous artists—such as theater directors,<sup>617</sup> musical groups,<sup>618</sup> writers, and others<sup>619</sup>—continue to be badly harassed in an attempt to keep them from expressing

<sup>609</sup> 14 y Medio. September 8, 2019. [Detenido José Daniel Ferrer junto a otros activistas en Santiago de Cuba](#). Radio y TV Martí. December 2, 2019. [Activistas de Amnistía Internacional reclaman libertad de José Daniel Ferrer](#). 14 y Medio. October 25, 2019. [Liberados los hijos y la esposa de José Daniel Ferrer tras ser arrestados durante una protesta](#). EFE. November 2, 2019. [El opositor cubano José Daniel Ferrer cumple un mes detenido en paradero desconocido](#). New York Times. December 3, 2019. [Activist's case hints at what changes and what stays the same in Cuba](#).

<sup>610</sup> Knight Center. September 13, 2019. [Cuban journalist begins serving year-long prison sentence after being convicted of resistance and disobedience](#)

<sup>611</sup> ADN Cuba. September 27, 2019. [Denuncian violación de derechos a Roberto Quiñones en la prisión de Guantánamo](#). Radio y TV Martí. November 12, 2019. [Quiñones Haces denuncia vejaciones en documentos escritos desde prisión](#). Radio y TV Martí. November 12, 2019. [Niegan visitas al abogado y periodista Roberto Jesús Quiñones](#).

<sup>612</sup> [Proyecto de Constitución de la República de Cuba](#). Article 40.

<sup>613</sup> See *inter alia* Universal Declaration. Article 2; PIDCP. Article 2.1; and CADH. Article 1.

<sup>614</sup> IACHR. Special Report on the Situation of Freedom of Expression in Cuba. OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 127.

<sup>615</sup> Gaceta Oficial de la República de Cuba. Ministerio de Justicia. DECRETO No. 349/2018. Letras Libres. December 10, 2018. [¿Qué es el Decreto 349 y por qué los artistas cubanos están en contra?](#) New York Times. February 17, 2019. [Is This the End of Cuba's Astonishing Artistic Freedom?](#)

<sup>616</sup> El País. September 14, 2019. [Tania Bruguera, la artista enemiga número 1 del régimen castrista](#). CiberCuba. October 26, 2019. [Serie documental independiente reúne voces contra censura del Decreto 349](#).

<sup>617</sup> In December 2017, the Interior Ministry had reportedly summoned theater director Adonis Milás after he decided to join an alternative biennial. Likewise, members of Milan's group, Perséfone Teatro, were pressured. The director reportedly belonged to the Asociación Hermanos Saiz that had recently organized presentations of the Hamletmachine play in Santiago de Cuba. The play had been previously approved by a jury of the Provincial Council of the Performing Arts of Santiago de Cuba. However, State Security allegedly suspended the second performance, claiming that the play would question Fidel Castro's image. Due to the alleged pressure of the regime's agents, the actors reportedly now fear working. IACHR. [Annual Report 2017](#). Office of the Special Rapporteur for Freedom of Expression. Chapter IV.B. Cuba. Para. 69.

<sup>618</sup> Likewise, members of the punk rock music group Porno para Ricardo claimed they were harassed and censored by the government, and unable to perform publicly in Cuba, due, among other things, to a repertoire that reportedly criticizes the official regime. Puente Democrático. [El punk rock cubano en Buenos Aires](#). May 3, 2017.

<sup>619</sup> Diario de Cuba. [#00Bienal: el régimen responde al arte independiente con represión](#). May 13, 2018; Martí Noticias. [Creadores buscan espacios fuera de la UNEAC y las instituciones oficiales de Cuba](#). February 27, 2018.

their social and political concerns through art.<sup>620</sup> This Office has received information about persecution unleashed against artists who oppose Decree 349, including, for instance, Luis Manuel Otero Alcántara, who has reportedly been arrested several times this year.<sup>621</sup> In September 2019, he was detained along with artists Iris Ruiz and Amaury Pacheco in Havana during the celebration of the first anniversary of the declaration of the San Isidro Movement.<sup>622</sup> Artist Tania Bruguera reportedly had a similar experience on December 5, 2018, when she was detained on her way to a protest across from the Ministry of Culture. This was reportedly the third time Bruguera had been arrested in a week.<sup>623</sup>

452. The Office of the Special Rapporteur observes that this practice is based on existing law. Indeed, this Office notes that Cuba's new Constitution, adopted in February 2019, has adhered to the same line as the 1976 Constitution, as Article 32 states that, "In its educational, scientific, and cultural policy, the State abides by the following tenets: [...] h. Freedom of artistic creation is promoted in all of its expressions, in accordance with the humanist principles upon which the State's cultural policy and the values of socialist society are based;" and Article 79 stipulates that the State "promotes culture and various artistic expressions, in accordance with cultural policy and the law," which, as this Office observed, is patently incompatible with freedom of artistic expression.<sup>624</sup>

453. In more specific terms, the Office of the Special Rapporteur observes that the provisions implementing cultural policy dictated by the Ministry of Culture include (i) the Regulations of the National Registry of Fine Art and Applied Art Creators; (ii) the Regulations for the system of artistic hiring, marketing, and compensation in music and performing arts events in the national territory; (iii) the Regulations for the system of labor relations of workers in the arts sector; and (iv) the Regulations of the evaluation system for workers in the arts sector. Recently, on December 7, 2018, Decree No. 349 was enacted, having been approved on April 20, 2018. This decree penalizes noncompliance with the cultural policy<sup>625</sup> and, according to reports, has exacerbated the censorship and persecution of artists in Cuba.

454. Chapter II of this Decree Law, which establishes the violations, is particularly relevant. For instance, under Article 2.1, "any person who, as an individual artist or acting on behalf of the group to which he or she belongs, provides artistic services without the authorization of the appropriate entity" is in violation, as is "any person who provides artistic services without being authorized to perform artistic work in an artistic position or occupation." In addition, Article 4.1 establishes that is a violation when a person or entity "establishes spaces for the sale of fine art without the required authorization, or without being registered with the Registry of Fine Art and Applied Art Creators."

455. In general terms, this policy establishes that in order to practice professionally, Cuban artists must be qualified by the State. Only artists listed in the Registry of Fine Art and Applied Art Creators can exhibit their work, provide services in public, or have commercial spaces. They are evidently required to establish ties with a State institution in order to be remunerated for their work, and only the institutions authorized by the Ministry of Culture or the ICRT can establish work or commercial relationships with artists. They cannot enjoy shows or productions, or develop or exhibit their skills in public, without the authorization of the State. Apparently, public servants are authorized to decide when a work of art fails to comply with ethical and cultural values, or other broad criteria. The measures that can be applied range from fines or the seizure of goods, to the immediate suspension of the show or cancellation of the authorization to perform the activity.<sup>626</sup>

456. The Office of the Special Rapporteur finds that these laws preserve the State's limitation and restriction of artists' freedom of expression, by allowing for the punishment of those artists who do not share the official ideological discourse or have differences with the ideology imposed by the Cuban government, through excessively broad drafting language. They also limit access to culture, to the extent that only those listed in the

<sup>620</sup> Diario de Cuba. [La Seguridad del Estado impide la celebración de un evento literario con escritores censurados](#). February 4, 2018; Martí Noticias. [Policía política reprime evento literario contra la censura en Cuba](#). February 4, 2018. In 2018 it was reported that the Political Police prevented literary event "Palabras excluidas" from being held on February 3 at the Museo de la Disidencia. State Security allegedly prevented several writers from reaching the venue, including writer [Ángel Santiesteban](#)

<sup>621</sup> Artforum. August 13, 2019. [Cuban artist Luis Manuel Otero Alcántara arrested over performance with Cuban flag](#); 14yMedio. August 11, 2019. [El artista Luis Manuel Otero lleva 24 horas en paradero desconocido](#); IVPress Online. August 13, 2019. [Lanzan artistas cubanos reto por bandera](#); Cuba comenta. July 10, 2019. [Gobierno cubano promulga nueva Ley de Símbolos Nacionales](#); Diario Las Américas. July 10, 2019. [Régimen cubano censura uso de símbolos nacionales en prendas de vestir](#); Invasor. July 13, 2019. [En Cuba, nuevas leyes de Pesca, de Símbolos Nacionales y Electoral](#).

<sup>622</sup> CiberCuba. September 15, 2019. [Fernando Rojas arremete contra Luis Manuel Otero Alcántara: "No tiene aval artístico"](#); ADN Cuba. September 17, 2019. ["La libertad es un vicio para mí": Exclusiva con Luis Manuel Otero Alcántara](#); 14yMedio. September 15, 2019. [Liberado el artista Otero Alcántara tras pasar más de 72 horas detenido](#).

<sup>623</sup> AFP. December 5, 2018. [Artista Tania Bruguera detenida en Cuba por protestar contra decreto oficial](#); El Nuevo Herald/AFP. December 5, 2018. [Tania Bruguera detenida por tercera vez en Cuba por protestar contra un decreto oficial](#); The Guardian. December 6, 2018. [Cuban artists fear crackdown after Tania Bruguera arrest](#).

<sup>624</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 129.

<sup>625</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 130.

<sup>626</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 131.

Registry of Fine Art and Applied Art Creators may hold exhibitions, provide services in public, or have commercial spaces.

457. The Office of the Special Rapporteur notes that UN Rapporteurs, including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, also expressed their views on June 12 in a communication to Cuba. According to the Rapporteurs, “the vagueness and excessively broad wording of Decree 349 allows for the possibility of its arbitrary application and, therefore, it runs the risk of violating not only the right to freedom of artistic expression and creativity of all persons in Cuba, but also the right of everyone to seek and receive information and ideas of all kinds.” They also expressed their “particular concern that the Decree establishes a system of prior censorship of the arts, as its provisions appear to go beyond any legitimate objective of regulating the artistic sphere and therefore directly conflict with Cuba’s obligations under international human rights law with respect to freedom of expression, artistic freedom, and the right to participate in cultural life.” In addition, they found it troubling that this Decree “gives inspectors absolute authority to impose penalties based on their personal opinions. Moreover, given that the sanctioning body and the appeals body are one and the same, [they] are also concerned that there is no meaningful and impartial appeal process; therefore, it is not an effective [judicial] remedy by the competent judicial, administrative, or legislative authorities.”<sup>627</sup>

458. As this report has already mentioned, independent artists have reportedly tried to have a discussion with government officials in response to the Cuban law, launching digital campaigns for its review like #NoAlDecreto349 and protests that were violently repressed and resulted in the arrest of “artists.”<sup>628</sup> Since the law entered into force, this Office of the Special Rapporteur has documented—among others—the arrest of rappers Lázaro Leonardo Rodríguez Betancourt, known as “Pupito en Sy,” and Maikel Castillo Pérez, known as Maikel el Osorbo, who were reportedly being persecuted for having come out in opposition to Decree 349 and the Cuban regime.<sup>629</sup> According to available information, the former was released from custody and the latter was sentenced to a year and a half in prison for the crime of “attack against a public authority” (*atentado*).<sup>630</sup> The Office was also informed that artists Yanelis Núñez and Nonardo were reportedly in exile in Spain after being targeted for constant harassment.<sup>631</sup> It also received reports of the suspension of a concert by Osvaldo Navarro Veloz, known as “Navypro,”<sup>632</sup> the arrest of six artists in Havana during a peaceful protest outside the Cuban Ministry of Culture, and the persecution and arrest of husband and wife authors Nancy Alfaya and Jorge Olivera Castillo.<sup>633</sup>

459. Finally, according to available information, the “artists” denounced an increase in the excessive use of force in the repression of their public protest through artistic actions. One example of this was when police intervened in an activity organized by the Club of Independent Writers and Artists and the Di.Verso Project.<sup>634</sup> Another example of the use of violence through arrest is the case of theater director Adonis Milan,<sup>635</sup> who was held in solitary confinement, allegedly subjected to psychological torture, and forced to sign a report on counter-revolutionary activities.

## **F.Limitations on the right to freedom of expression on the Internet**

460. As the Office of the Special Rapporteur stated in its 2018 Special Report on the situation of freedom of expression in Cuba, if anything has changed recently in the area of freedom of expression, it has been due essentially to the slow and gradual development of communication technologies that, even with severe restrictions, have become relevant in a country whose legal media are controlled by a single-party State. In recent years, Internet use and the development of digital media have allowed for the opening of spaces for the circulation of information and ideas beyond the reach of official government control. It has been thanks to these technologies that a growing number of journalists have started digital media outlets in the last couple of years outside the official discourse and the control of the State to disseminate their work, as well as to promote the exchange of information and opinions.<sup>636</sup>

461. The main cadre members of the regime seem to recognize the importance of the platform for disseminating content and knowledge, as long as it does not contravene the rules and principles geared towards

<sup>627</sup> United Nations. Mandatos de la Relatora Especial sobre los derechos culturales; del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión; del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación; y del Relator Especial sobre la situación de los defensores de derechos humanos. [Referencia OI.CUB 2/2019](#). June 12, 2019.

<sup>628</sup> La Vanguardia. December 3, 2018. [Detenidos en Cuba Bruguera y dos artistas más por protesta contra Decreto 349](#).

<sup>629</sup> Cubanet. August 25, 2019. [Régimen cubano acusa de “atentado” a rapero Maikel el Osorbo](#). November 9, 2018. Diario de Cuba. [‘Nunca me he callado’, dice el rapero cubano Pupito en Sy tras su excarcelación](#).

<sup>630</sup> Cubanos por el mundo. April 26, 2019. [Maikel Castillo Pérez ‘El Osorbo’ sentenciado a año y medio de prisión por criticar el 349](#).

<sup>631</sup> Diario de Cuba. March 28, 2019. [Dos activistas contra el Decreto 349 se exilian en Madrid](#).

<sup>632</sup> [Cibercuba](#). March 24, 2019. [Autoridades cubanas suspenden concierto en Matanzas del rapero independiente Navypro](#).

<sup>633</sup> PEN International. No Date. [Comunicado PEN](#).

<sup>634</sup> Diario de Cuba. October 1, 2019. [Un violento despliegue policial frustra un taller de escritores independientes y el proyecto Di.Verso](#).

<sup>635</sup> El Diario de Cuba. September 9, 2019. [‘Tengo miedo de que el miedo me haga traicionar mis principios y a la gente que yo quiero’](#).

<sup>636</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 197.

maintaining and favoring the regime; however, any use of the Internet for other purposes, particularly open criticism of the system, runs the risk of being removed, blocked, or filtered from the web by the authorities.<sup>637</sup>

462. This Office has received multiple complaints during 2019 about the ambiguous regulations on the computerization of society in Cuba, specifically Decree Law 370, which enhances government regulation and relegates the private sector to a simple, monitored “complement.”<sup>638</sup> In addition, there have been reports that—less than six months after the Internet became accessible through mobile data in Cuba—there have been service failures, limited compensation, mobilizations, and campaigns to lower the price of the Internet (#BajenLosPreciosDeInternet).<sup>639</sup>

463. The Office of the Special Rapporteur observes that, according to available information, access to the web is seriously constrained by (i) highly restrictive and ambiguous legal provisions, (ii) the limited connectivity of the Cuban population, (iii) the blocking and censorship of critical media, and (iv) web surveillance, as discussed in this section. The risks of persecution and repression against those involved in this type of activity seriously undermine progress in terms of press freedom on the Internet in Cuba.<sup>640</sup>

464. The Office of the Special Rapporteur has received information confirming that the Cuban population faces serious obstacles to Internet connectivity and universal access. According to reports, Cuba first connected to the worldwide web in 1996, but the private use of personal computers was not authorized by the State until 2008. Despite the government’s claims that it intends to promote the widespread use of the Internet on the island—and the fact that Cubans have been able to have home wifi since July 29, 2019<sup>641</sup>—over the years Cuba has been ranked last in Latin America in terms of the spread of information and communication technologies, due in part to high prices.<sup>642</sup> According to the International Telecommunication Union (ITU), in 2017, Cuba ranked 137 out of 176 countries, two spots lower than the previous year.<sup>643</sup> According to figures that cite independent estimates and government statistics as a source, between 5% and 27% of the population has access to the Internet, but none of the estimates clearly states the methodology used to calculate access. In the case of government statistics, the figure does not distinguish between connecting to the Internet and Cuba’s intranet, a closed network of sites hosted mainly on Cuban domains.<sup>644</sup> In addition, according to available information, there are still a number of decrees, ministerial resolutions, and various regulations governing the use of new technologies in the country. Some of the ones that the Office of the Special Rapporteur considers to have the greatest impact on freedom of expression are: Decree No. 209 of 1996, Resolution No. 56 of 1999, Resolution No. 92 of 2003, Resolution No. 179 of 2008, and Resolutions No. 72 and No. 73 of 2009.

465. The Office of the Special Rapporteur observes the recent publication in 2019 of **Decree Law 370** “on the computerization of society in Cuba.” According to its text, the decree seeks, *inter alia*, “to strengthen the computerization process, with a view to coherently modernizing all spheres of society and contributing to the economic and social development of the country.”<sup>645</sup> Although this may be a step forward for information and communication technologies in the country in terms of the legal system, IT security, and other aspects, the Office of the Special Rapporteur notes that provisions like Article 68 and Chapter II are of special concern.

466. For instance, Article 68, which establishes “violations associated with communication and information technologies,” could establish a censorship regime in the country and serve as a legal instrument to punish the independent press. For instance, this article stipulates that it is a violation (f) “to host a site on servers located in a foreign country, other than as a mirror or replica of the main site on servers located within the country.”<sup>646</sup> The Ministry of Communications clarified through a Tweet that this would not apply to blogs, or to personal or news sites.<sup>647</sup> Nevertheless, according to reports, different organizations have expressed concern over the wording of the provision, which refers clearly to “sites,” without further specification.<sup>648</sup> The Office of the Special

<sup>637</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 198.

<sup>638</sup> Freedom House. [Global Press Freedom in Peril 2019](#). Radio y TV Martí. July 5, 2019. [Así funciona el “corralito” digital cubano](#). 14 y Medio. July 5, 2019. [El Gobierno refuerza su control sobre el contenido de las redes](#). El País. August 13, 2019. [Cuba y los derechos informáticos](#).

<sup>639</sup> Yucabyte. December 2, 2019. [Internet por datos móviles en Cuba: un año y contando...](#)

<sup>640</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para.199.

<sup>641</sup> New York Times. July 31, 2019. [Cuba Expands Internet Access to Private Homes and Businesses](#); Radio Televisión Martí. September 17, 2019. [CPJ: Nuevas medidas sobre acceso a Internet en Cuba, “una trampa” para medios independientes](#); El Comercio. July 29, 2019. [Cuba amplía su acceso a internet, una herramienta para defender la revolución](#).

<sup>642</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para.217.

<sup>643</sup> ITU. [Measuring the Information Society Report 2017](#). P. 31

<sup>644</sup> CPJ. [Connecting Cuba:](#)

[More Space for Criticism but Restrictions Slow Press Freedom Progress](#). 2016. P.27.

<sup>645</sup> Decreto-Ley 370 “[sobre la informatización de la sociedad en Cuba](#)”. Published on July 4, 2019. Article 5 (4).

<sup>646</sup> Decreto-Ley 370 “[sobre la informatización de la sociedad en Cuba](#)”. Published on July 4, 2019. Article 68 (f).

<sup>647</sup> DL-370 computerization, contraventions subsection f), in the case of natural persons, refers to national platforms and applications of services offered on the Internet and used by citizens, it does not refer to blogs, personal or informational sites”. Twitter account of Ministerio de Comunicaciones Cuba @MINCOMCuba. [July 5, 2019](#).

<sup>648</sup> Tremenda Nota. July 10, 2019. [Decreto-Ley 370: internet bajo control en Cuba](#); Knight Center. July 10, 2019. [Independent Cuban media criticize government decree establishing sanctions on sites hosted outside of the country](#).

Rapporteur is of the opinion that this law could be used against non-State media in Cuba, which are all hosted outside the country because they are unable to acquire “.cu” domains or be legally recognized.

467. Similarly, subsection (i) makes it a violation to “disseminate, through public data transmission networks, information contrary to the social interest, morals, propriety, and the integrity of individuals.”<sup>649</sup> The Office of the Special Rapporteur observes that this subsection would not pass the *three-part test* of legality, necessity, and proportionality for implementing permissible limitations to freedom of expression online. In this regard, its excessively broad and open-ended wording—which would not meet the minimum standards required by the principle of strict legality—could allow for a broad interpretation of the article and leave that interpretation to the discretion of judges. This could serve to establish undue restrictions on the exercise of the rights to freedom of expression and assembly through the Internet, affecting the free flow of information. The Office of the Special Rapporteur also observes that the penalties provided for in Chapter II of the Decree Law would be disproportionate, by including, for instance, the “seizure of the equipment and means used to commit the violations,” “temporary suspension or permanent cancellation of the license,” “the closure of facilities,” and fines that could amount to several hundred U.S. dollars, substantial sums in Cuban pesos.

468. At the same time, different administrators and users condemned the imminent disappearance of what is considered the largest informal Internet network in the world, which connects at least 20,000 people, the so-called Street Network (SNet). According to reports, on May 21, 2019, the Cuban government passed two resolutions on wireless telecommunications that establish new requirements for the use of the country’s radio spectrum, which make the network illegal and will lead to its disappearance.<sup>650</sup>

469. The Office of the Special Rapporteur has also documented the blocking of several media sites that cover Cuban news, reportedly carried out at irregular intervals with no notice to those affected. According to information provided to the Office of the Special Rapporteur, *Tremenda Nota*, *14yMedio*, *ADN* and *Diario de Cuba* were among the blocked sites.<sup>651</sup>

470. Finally, the Office has received information on alleged surveillance activities targeting Internet users, contrary to the right to privacy and protection of personal data. This has occurred either as a consequence of using email and messaging services, or by means of software that allows general surveillance of the web, especially of users who connect from cybercafés.<sup>652</sup> It is particularly troubling that, in recent years, State surveillance of web activity has reportedly been used as a means to identify independent journalists and political dissidents, leading to patterns of harassment<sup>653</sup>—traditionally used against the print media—against individuals engaged in this kind of Internet activity.<sup>654</sup>

## G.Repression of social protest

471. As the Office of the Special Rapporteur stated in its 2018 Special Report on the situation of freedom of expression in Cuba, There is systematic repression in Cuba by State agents and groups loyal to the ruling party, who seek to prevent peaceful protests or meetings organized by human rights defenders, activists, or government opponents to protest human rights violations and/or political or social issues<sup>655</sup> Article 56 of the Cuban Constitution establishes the right to peaceful freedom of assembly in the following terms:

472. **Art. 56.** “The State recognizes the rights of assembly, demonstration, and association for lawful and peaceful purposes, provided that they are exercised with respect for public order and in compliance with the requirements established by law.”

473. This Office observes that the broad interpretation and application of the concept of “public order” in Cuba—including through the abusive application of the criminal law—and the regulatory framework currently in force, may make it impossible in practice to exercise this right without being subject to obstacles and retaliation.<sup>656</sup> The use of force to prevent the exercise of the right to peaceful assembly, including cases of street

<sup>649</sup> Decreto-Ley 370 “[sobre la informatización de la sociedad en Cuba](#)”. Published on July 4, 2019. Article 68 (i).

<sup>650</sup> Diario de Cuba. August 23, 2019. [Someterse o desaparecer, las opciones que deja el régimen cubano a la red independiente SNet](#).

<sup>651</sup> Tremenda Nota. September 14, 2019. [Tremenda Nota, otra revista que no puede leerse en Cuba](#).

<sup>652</sup> Recently it was also reported that the new toDus messaging application, created by the Universidad de Ciencias Informáticas (UCI) and ETECSA, would jeopardize the personal data of users in the hands of the government. Informe País Cuba 2018. Para. 238.

<sup>653</sup> According to the available information, for example, Sol García Basulto and Henry Constantín, journalists from La Hora de Cuba, were permanently spied on and were victims of cyberbullying through social networks. Informe País Cuba 2018. Para. 242.

<sup>654</sup> FH. [Freedom on the Net 2017: Cuba](#); FH. [Freedom on the Net 2016: Cuba](#); FH. [Freedom on the Net 2015: Cuba](#); FH. [Freedom on the Net 2014: Cuba](#). Pp. 13-16.

<sup>655</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 185.

<sup>656</sup> IACHR. [Informe Especial sobre la situación de la Libertad de Expresión en Cuba](#). OEA/SER.L/V/II CIDH/RELE/INF.21/18 December 31, 2018. Para. 187.

beatings, public humiliation and physical assault, is reportedly a common practice.<sup>657</sup> Cases of excessive use of force against demonstrators generally go unpunished.<sup>658</sup>

474. Organizers and participants have also been subject to arrests—normally of short duration—detentions, assaults, and threats. According to the information received, they are routinely detained, often in anticipation of future protests, for exercising and trying to exercise their right to protest.<sup>659</sup> They are also frequently threatened or criminalized for offenses like disturbing the peace, attack against a public authority [*atentado*], and contempt of public authority [*desacato*].<sup>660</sup> In some cases, detainees are reportedly beaten, kept incommunicado, subjected to degrading treatment, and even forced to say revolutionary slogans and participate in activities in support of the regime.<sup>661</sup> Different members of civil society<sup>662</sup> have reported to this Office that the use of violent force by security agents to prevent public demonstrations has been aggravated by the current situation in the region, specifically the popular protest uprisings in Venezuela and Nicaragua.<sup>663</sup>

475. Finally, this Office of the Special Rapporteur notes that some of the most relevant examples from 2019 include the violent repression of the alternative march against homophobia, held in Havana on May 11, after the State cancelled the traditional “Conga” organized by the National Center for Sexual Education. (Cenesex).<sup>664</sup> According to public knowledge, a few participants were detained and interrogated for several hours by plainclothes officers identified as members of the Cuban State security forces. Other activists were similarly detained by the Cuban police hours prior to the March to keep them from participating.<sup>665</sup> Another case reported was the blocking of the march against animal abuse on World Environment Day. The Municipal Assembly of People’s Power in the territory of Santa Clara reportedly refused to authorize the demonstration and called its objective into question.<sup>666</sup>

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<sup>657</sup> IACHR. IACHR. [Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 452; IACHR. Annual Report 2015. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 429, 434; IACHR. [Annual Report 2014](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 320; IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 252; IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 47, 250, 251; IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 5 corr. 1. March 7, 2011. Para. 402; IACHR. [Annual Report 2008](#). OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Para. 233; IACHR. [Annual Report 2002. Report of the Special Rapporteur for Freedom Of Expression](#). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 104, 105; IACHR. [IACHR Concerned Over Assault on Beneficiary of Precautionary Measures in Cuba](#). November 10, 2011

<sup>658</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 9-34; IACHR. [Annual Report 2014](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II. Doc. 13. March 9, 2015.

<sup>659</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Informe País Cuba 2019. Paras. 190, 191, 192.

<sup>660</sup> DDC. August 16, 2018. [El poco conocido Gulag del Caribe](#).

<sup>661</sup> Radio Martí. February 27, 2017. [Lisandra Rivera Rodríguez: ‘58 días en una celda por negarse a obedecer a sus carceleros’](#); Civicus and CCDHRN. October 5, 2017. P. 14. [Presentación conjunta al EPU de las Naciones Unidas](#).

<sup>662</sup> Interviews with IACHR in 2019. Available at: Archive of Special Rapporteur for Freedom of Expression.

<sup>663</sup> Interviews with IACHR in 2019. Available at: Archive of Special Rapporteur for Freedom of Expression. Manual Silvestre Cuesta, Michael Matos y Gorki Aguila.

<sup>664</sup> Cubanet. May 29, 2019. [Denuncian represión de régimen cubano contra asistentes a marcha LGBTI](#).

<sup>665</sup> Noticiero Universal. May 29, 2019. [OCDH denuncia la represión del gobierno de Cuba contra participantes de la Marcha del 11-M](#)

<sup>666</sup> Cubanet. April 25, 2019. [Autoridades de Santa Clara frenan marcha contra el maltrato animal](#).



## 13. DOMINICA

476. During 2019, the government of Dominica requested assistance to carry out an electoral reform to the CARICOM Secretariat (CARICOM), the Commonwealth Secretariat (COMSEC) and the General Secretariat of the Organization of American States (SG / OAS), which in August carried out a Joint Special Mission in the country. The three organizations made a series of recommendations, noted the lack of information from citizens regarding electoral reform and their right to vote, stating that “not all people had received sufficient and accurate information that would allow them to understand the issues and form opinions substantiated”, and highlighted the need to improve and balance the access of all parties to public and private media. According to public information, Deputy Héctor John and the brother of the leader of the United Workers Party Brian Linton would have been arrested and charged with incitement at a public meeting of that party, after demanding that the aforementioned electoral reform be carried out.

### A. Legal reforms

477. The Government of Dominica asked the CARICOM Secretariat (CARICOM), the Commonwealth Secretariat (COMSEC), and the General Secretariat of the Organization of American States (GS/OAS) to assist the country with various aspects of electoral reform.

478. The three organizations teamed up in a Joint Special Mission to the country, conducted August 6-9. During the mission, they met with key actors in the electoral process, including government authorities, electoral authorities, political parties, and members of civil society.<sup>667</sup>

479. Finally, the Mission made several recommendations with respect to updating the voters' list, issuing identification cards, and voting by the diaspora. It also highlighted the importance of educating the public about the electoral reform, affirming that in this case, “not all persons had received sufficient, accurate information to allow them to understand the issues and to form considered opinions.” The report also shows that the stakeholders consulted expressed their concern about the need to improve and level the playing field for all parties in their access to public and private media.<sup>668</sup>

480. In addition, Dominica Freedom Party (DFP) leader Kent Vital proposed freedom of information as one of the electoral reforms needed to ensure a free and fair election. In this regard, he maintained that, “Transparency reduces the ability of elected officials to hide official information that could be important for the public to exercise fair judgement in selecting the government that they want to manage their affairs.”<sup>669</sup>

481. The Office of the Special Rapporteur recalls that, “Elections are tightly linked to freedom of expression and information as it is essential for citizens to have as much information as possible to make a decision in casting their votes. Accordingly, free circulation of facts, ideas, and opinions is crucial. Unquestionably, the most common way for citizens currently to inform themselves is through the media.”<sup>670</sup>

### B. Social Protest

482. According to available information, Hector John, MP for the Salisbury constituency, was arrested and prosecuted for incitement based on statements made at a public meeting of the United Workers Party (UWP) about the civil unrest that would occur if elections were held without electoral reform [“I am going to tell you something before I leave, don't think that you will call the elections without electoral reform. You will have civil unrest on your hands”].<sup>671</sup>

483. Brian Linton, the brother of UWP leader Lennox Linton, was also arrested and taken to the police headquarters in Roseau for questioning in connection with allegations of incitement. Linton was released without charge several hours later.<sup>672</sup>

484. The IACHR has reiterated that social protest is a fundamental tool for the defense of human rights, and an essential means of expressing political and social criticism of the activities of government authorities. The Commission has stated that, “It is, in principle, inadmissible to punish demonstrations in public places as such when they are held in the framework of the rights to freedom of expression and of assembly,” and that “The

<sup>667</sup>The Commonwealth. August 5, 2019. [Joint Special Mission to Dominica](#); CARICOM. August 6, 2019. [Joint Special Mission heads to Dominica](#); Government of Dominica Web Portal. [Report of the Joint CARICOM – Commonwealth – OAS Special Mission to Dominica](#).

<sup>668</sup>CARICOM – Commonwealth – OAS Special Mission to Dominica. August 6-9, 2019. [Report of the Special Mission](#); Government of Dominica Web Portal. [Report of the Joint CARICOM – Commonwealth – OAS Special Mission to Dominica](#).

<sup>669</sup>Dominica News Online. June 2, 2019. [DFP leader proposes electoral reform measures for free and fair elections](#).

<sup>670</sup>IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI Freedom of Expression and the Electoral Process: The Case of Opinion Polls and Exit Polls. OEA/Ser.L/V/II.124 Doc. 77 February, 2006. Para. 2.

<sup>671</sup>Dominica News Online. 13 de septiembre de 2019. [Hector John charged with incitement](#); Dominica News Online. 14 de septiembre de 2019. [Hector John granted bail in incitement case](#); Caribbean Chronicle. 14 de septiembre de 2019. [Hector John granted bail in incitement case](#); Q95DA. 16 de septiembre de 2019. [Salisbury MP speaks to the media after his arrest and subsequent release on an incitement charge](#).

<sup>672</sup>Dominica News Online. 14 de noviembre de 2019. [Brother of UWP leader picked up by police](#); Dominica News Online. 14 de noviembre de 2019. [Brian Linton released without charge](#); Q95DA. 14 de noviembre de 2019. [Leader of the UWP Lennox Linton shares statements on the situation which saw his brother arrested for incitement charges earlier this morning](#).

exercise of the right to freedom of assembly through social protest must not be subjected to a permit from the authorities or to excessive requirements that prevent it from happening.”

485. The Office of the Special Rapporteur has stated that, “The application of criminal law to the conduct of participants in a demonstration constitutes a serious restriction with far-reaching consequences for freedom of expression, and for the rights of assembly, association, and political participation, which [...] can only be used in very exceptional circumstances and is subject to a higher level of scrutiny.”<sup>673</sup> It has additionally stated that, “The criminalization of those who participate in or lead public demonstrations not only has an impact on the rights to freedom of expression and assembly, but also has serious and systemic effects on the exercise of the rights to freedom of association and political participation. In particular, criminalization affects the free functioning and coordination of organizations, political parties, unions, networks, movements, and other groups to which the accused persons belong.”<sup>674</sup>

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<sup>673</sup>IACHR. [Protest and Human Rights](#). OEA/Ser.L/V/II. CIDH/RELE/INF.22/19. September 2019. Para. 185.

<sup>674</sup>IACHR. [Protest and Human Rights](#). OEA/Ser.L/V/II. CIDH/RELE/INF.22/19. September 2019. Para. 193.

## 14. ECUADOR

486. Between January and June 2019, Ecuador was in a transition process initiated with the change of government of President Lenin Moreno, marked by actions that sought to dismantle a series of repression and control mechanisms over the press, the media, and civil society organizations. Still, the Office of the Special Rapporteur expressed its concern regarding violence against communicators and the media, as well as violations to the right to freedom of expression during social protests and the state of exception decreed in October.

487. In April, the Ecuadorian government launched the Interinstitutional Committee for the Protection of Journalists and Communication Workers, as suggested by the IACHR and its Office of the Special Rapporteur in its recommendations after the country visit. This Committee is an instance of inter-institutional coordination of the Ecuadorian Government and instances of civil society organizations, although these are only listed as guests.

488. The Office of the Special Rapporteur has taken note of the elaboration of a document called Public Policy for the Protection of Communication Workers, carried out through different meetings and thematic roundtables by the Information and Communication Council, an institution that exercises the technical secretariat of said Committee, in order to broaden the spectrum of inputs focused on developing the basis for a public policy of security for journalists.

### A. Progress

489. The Office of the Special Rapporteur highlights the decision adopted on September 4 by the Constitutional Court of Ecuador, through which it revoked the decision adopted by the First Criminal Chamber of the Pichincha Provincial Court of Justice<sup>675</sup>, via the right of reply, against the newspaper *La Hora Ecuador* and Editorial Minotauro SA, for being inadmissible<sup>676</sup>. The Court observed that the information published by the newspaper *La Hora* referred to the figures for government advertising expenses reported by a civil society organization<sup>677</sup>. It indicated that data referring to public spending constitute information of public interest and have the character of discourse specially protected by the right to freedom of expression<sup>678</sup>. The ruling also reiterated that the right to rectification or response constitutes an effective mechanism so that those who believe to be affected by information they consider false -in the case of rectification- and inaccurate or aggravating -in the case of a reply-, may request that the information be corrected, or render their version of the published information. The Court concluded that the protection action initiated to establish a right of response in this case, in addition to being inadmissible, has the potential to generate an inhibitory effect in the media regarding information of public interest.

### B. Freedom of expression, protests, and state of exception

490. On October 5, the government of President Lenín Moreno issued Executive Decree No. 884 to impose a state of exception for 60 days<sup>679</sup> nationwide in Ecuador, which was applied with respect to the "freedom of association, assembly, and free transit", and was then extended through Executive Decree No. 888, with the establishment of a curfew and the militarization of the capital, Quito<sup>680</sup>. The state of emergency was the response to the protests unleashed by a series of measures announced on 1 October that would have been taken to reduce public spending<sup>681</sup>. In the economic<sup>682</sup>, labor, and tax reforms<sup>683</sup>, the abolition of fuel subsidies was included, which would have triggered greater social rejection, which was manifested through the occupation of oil wells in the Amazon, roadblocks, and a call for massive demonstrations throughout the national territory<sup>684</sup>.

491. This Office has noted with concern<sup>685</sup> the excessive use of public force by Ecuadorian security agents to suppress protests organized by different sectors of civil society in the National Strike<sup>686</sup> that was held from October 2 to 13.

<sup>675</sup> El Universo. November 14, 2012. [Diario La Hora rectifica nota tras orden de juez por demanda del gobierno.](#)

<sup>676</sup> El Comercio. September 11, 2019. [Corte Constitucional dice que entidades del Estado no pueden argumentar daño al honor.](#)

<sup>677</sup> Sala de lo Constitucional de la Corte Suprema de Justicia. [Judgment No. 282-13-JP/19](#) of October 4, 2019.

<sup>678</sup> Sala de lo Constitucional de la Corte Suprema de Justicia. [Judgment No. 282-13-JP/19](#) of October 4, 2019. Para. 70.

<sup>679</sup> Corte Constitucional del Ecuador. October 7, 2019. Constitutionality ruling modified by [Release](#).

<sup>680</sup> El País. October 12, 2019. [Lenin Moreno decreta la militarización y el toque de queda en Quito.](#)

<sup>681</sup> Infobae. October 1, 2019. [Ecuador anunció que abandonará la Organización de Países Exportadores de Petróleo en 2020.](#)

<sup>682</sup> BBC Mundo. October 11, 2019. [¿Cuál es el papel del FMI en la crisis de Ecuador?](#)

<sup>683</sup> La Razón. October 8, 2019. [El "hachazo" económico de Lenin Moreno y las medidas para suavizarlo.](#) France24. October 8, 2019. [Ecuador, en estado de excepción entre la furia contra el retiro de los subsidios a los combustibles.](#)

<sup>684</sup> Decree No. 884 informs the Presidency of Oficio No. 2019-3679-CG-QX-PN on events carried out in places occupied or made unusable by protesters. It details "serious alterations to public order" and it "does not rule out the occupation of facilities of state institutions", among others.

<sup>685</sup> IACHR. [Press Release 252/19. IACHR and its Special Rapporteurship Concerned about Excessive Use of Police Force against Demonstrators and Attacks on Journalists during Protests in Ecuador.](#) October 9, 2019.

<sup>686</sup> Página 12. October 10, 2019. [Crisis en Ecuador: masiva marcha y paro en Quito contra el ajuste.](#)

492. The State of exception was reviewed by the Constitutional Court, which in its resolution indicated that the state of exception required<sup>687</sup> that the National Police and the Armed Forces fulfilled their duties to protect and prevent the integrity and rights of citizens, and limited its validity to 30 days<sup>688</sup>.

493. According to public knowledge information<sup>689</sup>, during the 12 days of protest, seven<sup>690</sup> people would have lost their lives, the number of detainees would have reached 1,152<sup>691</sup>; it should be noted that among them there would be several children with their mothers<sup>692</sup>, who also denounced the lack of due process guarantees in the detentions<sup>693</sup>. The Ombudsman of Ecuador reported 1,340 detainees<sup>694</sup>. Regarding the number of people injured during the demonstrations, for its part, the National Police of Ecuador counted 430 wounded agents, 108 patrolmen, and 7 burned motorcycles, also 26 Community Police Units (UPC) would have been attacked<sup>695</sup>.

494. The Office of the Special Rapporteur recalls that States must act on the basis of the legality of protests or public demonstrations and under the assumption that they do not constitute a threat to public order. In order to contribute to the non-repetition of these events. In that sense, State security operations must be carefully planned under clear action protocols that guarantee the use of less lethal, progressive, and proportional weapons, with absolute adherence to human rights, and favor dialogue. This Office emphasizes that the fact that some groups or individuals exert violence in a demonstration does not make, per se, the entire protest violent, nor authorizes the security forces to dissolve the protest through the use of force or to practice mass detentions. In that sense, it warns that the use of the police and security forces must focus strictly on the containment of acts of violence; as well as guaranteeing the right to protest, without any direct repression or arbitrary detention of peaceful protesters.

### C. Aggressions and attacks on the press during protests

495. The escalation of violence also led to the obstruction of the work of the press, due to a series of attacks against journalists and media outlets by both public security forces and protesters. These incidents would have been enhanced by stigmatizing statements against journalists and the media, disseminated during mobilizations by radicalized sectors<sup>696</sup>.

496. The Office of the Special Rapporteur has expressed its condemnation and concern regarding acts of violence perpetrated towards the press, originated by both security agents and protesters. According to reports collected by this Office, there would have been more than a hundred attacks against journalists, community communicators, photographers, camera people, and the media<sup>697</sup> consisting of threats, harassment, arbitrary detentions, physical attacks, impediment of coverage, confiscation of equipment, indiscriminate use of chemical agents, surveillance, suspension of transmissions, raids of media, blocking of websites and social networks, among other violations to freedom of expression.

497. According to information provided by civil society organizations<sup>698</sup>, the Ombudsman's Office and other government institutions in Ecuador, about 120 attacks<sup>699</sup> against the media and journalists (including photographers, camera people, community communicators) would have been registered, the number of media

<sup>687</sup> INFOBAE. October 10, 2019. [La ministra del Interior de Ecuador se disculpó por la actuación policial durante las protestas](#).

<sup>688</sup> IACHR. Press Release 252/19. IACHR and its Special Rapporteurship Concerned about Excessive Use of Police Force against Demonstrators and Attacks on Journalists during Protests in Ecuador. October 9, 2019. United Nations. [Ecuador: ONU Derechos Humanos expresa preocupación por violencia en manifestaciones](#). Press release of October 6, 2019. Amnesty International. [Ecuador: Authorities must end repression of demonstrations immediately](#). Press release of October 9, 2019.

<sup>689</sup> Amnesty International. October 9, 2019. Press release. [Ecuador: Authorities must end repression of demonstrations immediately](#).

<sup>690</sup> Defensoría del Pueblo Ecuador. October 9, 2019. [Pronunciamiento: Defensor del pueblo exige al gobierno nacional detener la violencia que vive el país](#). October 14, 2019. Seventh report: [La defensoría del pueblo presenta séptimo informe con resultados de la vulneración de derechos durante el estado de excepción](#).

<sup>691</sup> Defensoría del Pueblo Ecuador. October 14, 2019. Seventh report: [274 people prosecuted while 878 were released without prosecution or criminal responsibility. La defensoría del pueblo presenta séptimo informe con resultados de la vulneración de derechos durante el estado de excepción](#).

<sup>692</sup> Fundación Regional de Asesoría en Derechos Humanos (INREDH), Comisión Ecuatoriana de Derechos Humanos, Observatorio de Derechos y Justicia (ODJ Ecuador). October 7, 2019. Joint press release. [Alerta de derechos humanos: Represión en zonas de paz, detenciones irregulares y falta de acceso a la justicia](#).

<sup>693</sup> El Comercio. October 9, 2019. [La Fiscalía procesó a 142 de 676 detenidos por paralización](#).

<sup>694</sup> Expreso. October 13, 2019. [Defensoría del Pueblo eleva a siete los fallecidos en protestas](#).

<sup>695</sup> Ministerio de Gobierno Ecuador. October 15, 2019. [Conferencia de Prensa y Comunicado](#).

<sup>696</sup> VOA Noticias. October 9, 2019. [¿Qué ocurre con la prensa en Ecuador en medio de la actual crisis?](#) IACHR. [Informe Especial sobre la Situación de la Libertad de Expresión en Ecuador](#). June 2019. Paras. 433 - 434. FUNDAMEDIOS. October 14, 2019. [La prensa fue blanco de los violentos: 135 periodistas agredidos en 12 días de protestas](#).

<sup>697</sup> IFEX. October 14, 2019. [IFEX-ALC condemns repressive actions against journalists in Ecuador](#). FUNDAMEDIOS. October 14, 2019. [La prensa fue blanco de los violentos: 135 periodistas agredidos en 12 días de protestas](#). United Nations News. October 7, 2019. [La ONU pide garantizar el derecho a manifestarse pacíficamente en Ecuador](#).

<sup>698</sup> IACHR. Visit in Loco to Ecuador. UNP. October 29, 2019 Available at: Archive of Special Rapporteur for Freedom of Expression.

<sup>699</sup> IACHR. Visit in Loco to Ecuador. FUNDAMEDIOS. October, 2019. [La prensa fue blanco de los violentos: 138 periodistas agredidos en 12 días de protestas](#). Available at: Archive of Special Rapporteur for Freedom of Expression.

attacked would reach 20<sup>700</sup>, which would have taken place in the provinces of Pichincha, Guayas, Tungurahua, Chimborazo, Morona Santiago, Manabí, Azuay, Pastaza, and Sucumbíos.

498. The excessive use of force<sup>701</sup>, and the use of chemical agents and rubber bullets left as a result several injured journalists, among them, stands out for its gravity, the impact of a tear gas grenade in the face<sup>702</sup> of the digital media reporter, *Wambra*, Juan Carlos González in Quito; it was also reported that a motorized National Police in Guayaquil ran over the *Universal* newspaper reporter, Ronald Cedeño. *Tomebamba* radio journalist, Juan Francisco Beltrán<sup>703</sup>, *El Comercio* photographer, Julio Estrella<sup>704</sup>, and the API agency photographer, among others, were sprayed with pepper spray directly on the face when covering the protest. The *Primicias* portal reporter, Adriana Noboa, and *El Comercio* reporter, Yadira Trujillo were prevented by at least 12 riot police from filming repression against protesters with their cell phones and reported being beaten (by toletazos)<sup>705</sup> by the Police. The journalists Charlie Granda, Luis Granda, and Wilson of the community radio *#Periférik*, were attacked by a tank<sup>706</sup>. On Saturday, October 5, the cameraman of the *Guarmillas* site, David Aguiar, was injured with a rubber bullet in the upper right part of the thorax<sup>707</sup>.

499. The attacks perpetrated against press workers also came from protesters<sup>708</sup>, union members, and social movements<sup>709</sup> who participated in the protests, among the multiple complaints of cases and incidents is that of *TVC* reporter Andrea Orbe and her cameraman Tito Correa, who would have been physically and verbally assaulted when they covered the closure of roads in the North Pan American Highway<sup>710</sup>. On the same day, the *TC Televisión* television journalist, Mauricio Ceballos and his cameraman would have been attacked through beatings with sticks and stones by protesters in the town of Santa Lucia (Guayas)<sup>711</sup>. The journalists of *Red Informativa* in Quito, as well as William Rivadeneira of *Cable Mágico*, Carlos López of *Macas News*, and César Correa of *radio Shalom* denounced physical aggressions and harassment of protesters in Morona Santiago while broadcasting live.

500. Along the same lines, the Inter-American Commission on Human Rights (IACHR) and its Office of the Special Rapporteur<sup>712</sup> took note that some journalists reported having been "held" <sup>713</sup>, against their will, in the Agora of the House of Culture where the indigenous leadership was in session. According to information received, a section of the indigenous leadership would have required several newspaper teams to broadcast live an act of "indigenous justice" against 8 police officers, also "held" in response to the death of protesters during protests<sup>714</sup>. In that context, the Office of the Special Rapporteur condemned the aggression against the journalist of *Teleamazonas*, Freddy Paredes<sup>715</sup>, when he was walking in the streets surrounding the House of Culture, who was brutally beaten with a stone, resulting in the fracture of his collarbone and a bruise with an open head wound. Paredes filed a complaint with the Prosecutor for attempted murder. The culprit, who would have been identified, is now a fugitive<sup>716</sup>. The indigenous people who escorted Paredes to the exit of the House of Culture cleared themselves of responsibility for the aggression.

<sup>700</sup> Defensoría del Pueblo del Ecuador. October 14, 2019. [La defensoría del pueblo presenta séptimo informe con resultados de la vulneración de derechos durante el estado de excepción](#). FUNDAMEDIOS Ecuador. October 9, 2019. [Socios de FUNDAMEDIOS condenan la violencia, piden que se busque una solución democrática y exigen protección para el trabajo de la prensa](#).

<sup>701</sup> Clip of a journalist being assaulted shown on [Twitter account of journalist Andrea Orbe](#)

<sup>702</sup> Metro Ecuador. October 9, 2019. [Un periodista fue alcanzado por un bomba lacrimógena en el paro nacional](#). Fundación El Churo. *Wambra* Medio Digital Comunitario. Informe Situación de los medios comunitarios, digitales y alternativos en el contexto de protesta de octubre, Paro Nacional Ecuador.

<sup>703</sup> *Journalist @jfbeltranr denounces that he was the victim of pepper gas thrown by members of the Police*. [@LaVozdeTomebamba](#). October 9, 2019. 3.34 PM.

<sup>704</sup> "Police officers attack two photojournalists from EL COMERCIO and a reporter from Primicias portal, when they were doing their job in downtown Quito". [@elcomercio.com](#) October 3, 2019. 11.55 AM.

<sup>705</sup> "Kicks, sticks, pepper gas to our faces, taking away our phones to step on them and break them. That is the work of today's @EcuadorPolice against a fully identified press". [@RougeHead](#) October 3, 2019. 12.03 PM.

<sup>706</sup> Knight Center. October 7, 2019. [In Ecuador, journalists are attacked during coverage of protests against rising fuel prices](#)

<sup>707</sup> Defensoría del Pueblo del Ecuador. October 14, 2019. [La defensoría del pueblo presenta séptimo informe con resultados de la vulneración de derechos durante el estado de excepción](#).

<sup>708</sup> Reporters Without Borders. October 9, 2019. [Media targeted in Ecuador's deepening crisis](#).

<sup>709</sup> Radio Canela FM Macas. October 7, 2019. [Manifestantes vinculados a Elvis Nantip, seguidor de Rafael Correa, gritaron insultos a periodistas y medios en marcha realizada en Macas](#)

<sup>710</sup> "We have just been at km 1 of the Pan American Highway North, we were going to record a report of the closure there. They forced us out, they took my cellphone and deleted all the videos, hit us with sticks. They cornered me and threatened me. They took my microphone". [@AndreaOrbe5](#) October 7, 2019. 8.28 AM.

<sup>711</sup> In this way a group of protesters assaulted journalist Mauricio Ceballos of TC and his fellow cameraman. It happened this morning on the road to Saint Lucia. Total rejection to this type of reaction". [@CarlosSacoto](#) October 7, 2019. 2.17 PM.

<sup>712</sup> "@RELE\_CIDH warns that more than 80 journalists have been assaulted or their equipment destroyed by both state agents and protesters in #Ecuador. We call on state agents and protesters to guarantee and respect the work of the press that is reporting in the protests." [@CIDH](#) October 10, 2019. 6.11 PM.

<sup>713</sup> EFE. October 11, 2019. [Los indígenas liberan a los agentes retenidos tras escenificar el funeral de uno de sus dirigentes](#)

<sup>714</sup> FUNDAMEDIOS. October 10, 2019. [FUNDAMEDIOS condena con firmeza la retención arbitraria e ilegal de más de 30 periodistas, así como la vigilancia a reporteros extranjeros](#)

<sup>715</sup> FUNDAMEDIOS. October 10, 2019. [Condena la agresión al periodista Freddy Paredes y rechaza la violencia hacia toda la prensa durante el paro nacional](#)

<sup>716</sup> El Comercio. October 11, 2019. [El periodista Freddy Paredes presentó una denuncia por tentativa de asesinato](#)

501. During the on-site visit to Ecuador to establish the facts, the social movements involved recognized the situation of tension, but indicated that the journalists would not have been held against their will and that they could have made live broadcasts from the place. They also denounced permanent outages in internet access by the telephone platforms of the companies Claro and Movistar<sup>717</sup>.

502. Attacks were also reported against journalists, community communicators, and coverage workers from different areas of the country, such as *Ediasa* reporter in Manabi, Jose Diego Delgado, who was attacked with stones by protesters, who destroyed his tripod, also against the correspondent of *Teleamazonas* in Mora Santiago, Elvis Nantip, who reported blows and the destruction of his camera.

503. The Office of the Special Rapporteur also recorded the arbitrary detention of a group of journalists in a parking lot in the San Blas area of Quito, who denounced that protesters did not let them out for at least two hours<sup>718</sup>.

504. The obstruction in coverage<sup>719</sup> and the lack of guarantees<sup>720</sup> for journalistic work prevailed during the days of the conflict. On October 7, Ecuadorian security forces evicted journalists from the Presidential Palace<sup>721</sup> after President Moreno moved from the capital to Guayaquil, where journalists would have been left unprotected from the protest coming to the Palace. In the midst of this situation, several journalists were attacked, such as *Teleamazonas* reporter, Fausto Yepez, cameraman Alexander Herrera, and assistant Dario Zapata, who denounced live hostilities against the press and attacks against the *Noticias Caracol*<sup>722</sup> team of Colombia, who would have been insulted and accused of misinforming. The vehicle in which the journalist Paúl Romero<sup>723</sup> was transported from the *Ecuavisa* media was stoned by the protesters, leaving serious damage to his equipment. According to public information, CONAIE and other social organizations denounced that strangers would have joined the protest to commit vandalism and attack the press<sup>724</sup>.

505. Finally, on October 12, there were serious and coordinated attacks against facilities of various media outlets in Quito. A mob would have thrown Molotov bombs, set an antenna on fire, and two vehicles in the *Teleamazonas* television channel building where 25 workers were hiding in the security room<sup>725</sup>. Outside they threw stones and sticks and tried to prevent the passage of firefighters who were going to put out the fire. Police arrived and rescued the workers, although the transmission had to be interrupted. In *El Comercio* newspaper, something similar happened: "They are getting into the newspaper, here we are some colleagues working," said one of their reporters in a voice note registered in a group chat of press workers, her colleagues would have asked for help from the ministries of Government and Defense and the ECU911<sup>726</sup>.

506. The State has the obligation to provide security for journalists and communicators who are carrying out their informative work within the framework of a public demonstration, as well as guarantee that they are not detained, threatened, attacked, or limited in any way in their rights for exercising their profession. Attacks against journalists and the destruction or confiscation of equipment of those who cover these situations violate freedom of expression, both in their individual and collective dimension.

507. The Office of the Special Rapporteur urged the authorities, through a statement issued on October 9<sup>727</sup>, to promptly and thoroughly investigate any allegations of violence and establish the corresponding sanctions, both for the allegations of excessive use of force committed by the agents of the police and security forces, as for the acts of aggression and looting by the population.

#### **D. Detentions y subsequent liabilities during the protests**

508. Also in the context of the protests, information was received on the detention of eight communicators<sup>728</sup> and the sentence of five days in prison against the communicator of the Confederation of Indigenous Nationalities of Ecuador [*Confederación de Nacionalidades Indígenas del Ecuador*] (CONAIE), Camila Martínez, convicted of a second-class offense, contemplated in article 394 of the Integral Criminal Code (COIP) of Ecuador.

<sup>717</sup> Fundación El Churo. Wambra Medio Digital Comunitario. Informe Situación de los medios comunitarios, digitales y alternativos en el contexto de protesta de octubre, Paro Nacional Ecuador. Available at: Archive of Special Rapporteur for Freedom of Expression.

<sup>718</sup> Ecuavisa. October 9, 2019. [Periodistas de distintos medios intentan salir por el parqueadero de San Blas para precautelar por su seguridad Quito.](#)

<sup>719</sup> Ecuavisa. October 7, 2019. [Twitter account of journalist Jackeline Rodas.](#)

<sup>720</sup> Primicias Ecuador. October 7, 2019. [Twitter account of journalist Wilmer Torres.](#)

<sup>721</sup> DW Español. "Military forces evict journalists from the presidential palace". [@dw\\_espanol](#). October 7, 2019. 10:33 P.M.

<sup>722</sup> Twitter account of journalist Carolina Cuenca. October 8, 2019. "Protestors don't want any media to cover the events" [@carocuencaE](#).

<sup>723</sup> Twitter account of journalist Paul Romero. October 8, 2019. "Crossing through El Ejido Park, they threw stones at us and destroyed our vehicle". [@mromerorivera](#)

<sup>724</sup> El Telégrafo. October 8, 2019. [La Conaie y Roldán rechazan vandalismo en manifestaciones.](#) CNN Internacional. October 16, 2019. [Investigan a seguidores de Correa detenidos durante protestas en Ecuador.](#)

<sup>725</sup> Consejo de Prensa Peruana. October 15, 2019. [Atacan medios de comunicación en Ecuador.](#)

<sup>726</sup> GK City. October 14, 2019. [La prensa herida.](#) IACHR. Visit in loco to Ecuador. October 29, 2019. Unión Nacional de Periodistas del Ecuador (UNP). Available at: Archive Office of the Special Rapporteur for Freedom of Expression.

<sup>727</sup> IACHR. [Press Release 252/19. IACHR and its Special Rapporteurship Concerned about Excessive Use of Police Force against Demonstrators and Attacks on Journalists during Protests in Ecuador.](#) October 9, 2019.

<sup>728</sup> EFE. October 10, 2019. [La SIP condena agresiones y detenciones a periodistas en Ecuador.](#)

This provision sanctions with prison those who mistreat, insult, or assault the agents who guard public order. In addition, seven other journalists were arrested without due process, to be subsequently released.<sup>729</sup>

509. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest and violates the right to freedom of expression<sup>730</sup>. Also, in the face of the arrests made, the IACHR recalls the importance of the follow-up by the Ombudsman's Office to verify the status of the detained persons; in addition, the importance that the rights to security, integrity, and due process are guaranteed.

### **E. Suspension and censorship of the media during protests**

510. On Wednesday, October 9, the *Pichincha Universal* radio station received the order, from the Ministry of Communication of the Presidency, to adhere to the public radio signal -indefinitely-, a measure that was later replaced by a judicial request of suspension of the broadcast filed by the Telecommunications Regulation and Control Agency [*Agencia de Regulación y Control de las Telecomunicaciones*] (ARCOTEL) through investigation No. 170101819100814 as a provisional precautionary measure. This Office was also informed about the raid of the *Pichincha Universal* radio installations, for the alleged crime of “incitement to discord among citizens”<sup>731</sup>.

511. With reference to the suspension of the *Universal Pichincha* Radio signal, a constitutional guarantee judge accepted the protection action presented by their defense and granted a precautionary measure in favor of the media that was out of the air for 16 days<sup>732</sup>. The Radio denounced a campaign of judicial harassment by the government of Ecuador, because the State Attorney General's Office through the Prosecutor Luis Sandoval of the Office of Organized, Transnational, and International Crime, requested<sup>733</sup> information on the staff working in said Radio. In addition, the radio web portal would have been reported for alleged copyright violations of the photographs.

512. Along the same lines, according to public knowledge information, the cable and satellite television signal of the *TeleSUR* network was removed from the air in Ecuador for three days<sup>734</sup>. The President of the chain, Patricia Villegas said the cut was made without any justification, and was restored the next day.

513. Through a public statement<sup>735</sup>, different alternative media that covered the demonstrations in Ecuador denounced the government for technological and digital censorship and indicated that they would have been intervened and their rights violated.

514. According to information reported by different media, radios and channels that emit a signal in Modulated Frequency (FM) from the provinces of Tungurahua, Cotopaxi, and Chimborazo<sup>736</sup> would also have been taken off the air, this fact was reported after the indigenous movement took back Pilisurco hill where the antennas are located.

515. The IACHR recalls that, in accordance with article 13 of the Convention, the right to freedom of expression “may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

516. The Declaration of Principles on Freedom of Expression, adopted by the IACHR in 2000, provides in principle 5 that, “[p]rior censorship, direct or indirect interference in, or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

<sup>729</sup> FUNDAMEDIOS. October 8, 2019. [Comunicadora de CONAIE sentenciada a prisión y 7 periodistas fueron detenidos en protestas](#).

<sup>730</sup> IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015

<sup>731</sup> ARCOTEL. Memorando ARCOTEL- CCON-2019-1309-M.

<sup>732</sup> Pichincha Universa. October 25, 2019. [Pichincha Universal vuelve al aire](#).

<sup>733</sup> Fiscalía General del Estado de Ecuador. Oficio No. FPP-FEDOT19-4168-2019-003702-0.

<sup>734</sup> *Without any justification at this time our signal has been removed from satellite 722 and cable 626 channels in Ecuador. We denounce this and call upon our users in this country to demand operators the immediate restitution of teleSUR*. [@pvillegas\\_tSUR](#) October 12, 2019. 6.11 P.M.

<sup>735</sup> Pichincha Comunicaciones. Convergencia de Comunicadores y Medios Independientes, Alternativos, Populares, Indígenas, Comunitarios y Digitales del Ecuador. [Medios alternativos denuncian persecución e intentos de censura por parte del Gobierno Nacional](#). October 16, 2019.

<sup>736</sup> El Comercio. October 7, 2019. [Las radios y canales de televisión no emiten su señal desde las antenas del Pilishurco en Tungurahua](#).

## F. Situation of the Community Media in the protests

517. Different community, digital, and alternative media in Ecuador denounced violations of their right to exercise freedom of expression and access to information, in addition to physical attacks and impediment of coverage such as those occurred on October 3 against journalists Luisa Aguilar and José Mosquera, both from *Wambra Digital*. In the city of Cuenca, they reported that *Radio Kimsakocha* journalist Diana Narváez would have been hit on her right heel by a tear grenade<sup>737</sup>.

518. The *Wambra* community digital media also denounced that the head of Communication of the Ministry of Interior and its head María Paula Romo would have referred to the medium as "important for spreading fake news", after having claimed that such fake news had part of the responsibility for the violence during the national strike<sup>738</sup>.

519. In the same vein, according to information provided to this Office during the work visit to Ecuador by the mission of the IACHR, the Convergence of Alternative, Community, Indigenous, and Independent Mediums [*Convergencia de Medios Alternativos, Comunitarios, Indígenas e Independientes*] created by 23 media as a result of the national strike in Ecuador denounced different violations to the exercise of freedom of expression such as prior censorship through a technological attack with the blocking of telephone and internet signal in the vicinity of El Arbolito Park and the House of Culture in Quito, as well as various attacks on community radio official accounts. It also reported excessive use of violence by the security forces and denounced political persecution by the Minister of the Interior, María Paula Romo, who said that the media "transmitted false information" accusing those present of being part of them<sup>739</sup>.

## G. Internet and Freedom Expression during protests

520. According to information provided by the NetBlocks organization, from October 9 to 12, severe cuts in the Internet would have been recorded at different times and for several hours<sup>740</sup>, coinciding with the highest peaks of repression and violence of protests and demonstrations in Ecuador<sup>741</sup>.

521. According to different organizations, multiple media outlets would have reported difficulties in their communications and Internet connection during the mobilizations which would not have been related to a slowdown or collapse due to the intensity of network use<sup>742</sup>. During eleven days of mobilization, signal inhibitors would have been found, since as journalists approached areas of conflict, or clashes between protesters and police, the cell phone signal declined, so that no calls could be made or SMS or online messages sent, preventing coverage. However, when moving away from the conflict zone, the signal was restored and returned to normal<sup>743</sup>.

522. Along the same lines, the Office of the Special Rapporteur received information about a DDO attack on the *Wambra* Community Digital Media website<sup>744</sup>, which would have prevented access to emails, to publish new information, and to transmit the daily information about the National Strike, through of their platform. As reported, the attack would have occurred hours after an interview to the brother of Marco Otto was published, one of the young men who died after falling from the bridge of the Quito neighborhood of San Roque, in the context of the dispersion of demonstrations by of cops.

523. This Office also received complaints about deliberate disinformation campaigns aimed at exacerbating the spirits of the population immersed in the conflict as documented by several civil society organizations<sup>745</sup>.

524. The Office of the Special Rapporteur recalls that human rights and, in particular, the right to freedom of expression, find on the Internet a unique instrument to display their enormous potential in broad sectors of the population. The relevance of the Internet as a platform for the enjoyment and exercise of human rights is directly

<sup>737</sup> IACHR. Visit in loco to Ecuador. Available at: Archive of Special Rapporteur for Freedom of Expression.

<sup>738</sup> IACHR. Visit in loco to Ecuador. Available at: Archive of Special Rapporteur for Freedom of Expression.

<sup>739</sup> IACHR. Special Rapporteur for Freedom of Expression. October 2019. *Convergencia de Medios Alternativos, Comunitarios, Indígenas e Independientes*. Report on communication and information workers during the National Strike; Digital Sevilla. October 15, 2019. [El Gobierno del Ecuador carga contra los medios internacionales por informar sobre las protestas](#)

<sup>740</sup> NetBlocks Mapping Net Freedoms. October 13, 2019. [Mobile internet disrupted in Quito as Ecuador political crisis escalates](#).

<sup>741</sup> El Espectador. October 11, 2019. [Ecuador restringe redes sociales durante las protestas de esta semana](#).

<sup>742</sup> LaLibre.net. October 2019. Contribution to the observation mission to Ecuador by the Special Rapporteur for Freedom of Expression, Edison Lanza, and Commissioner Luis Ernesto Vargas of the IACHR. USUARIOS DIGITAL. October 2019. *Protestas en Ecuador de Octubre 2019. Observaciones sobre el ámbito digital*.

<sup>743</sup> Fundación El Churo. *Wambra Medio Digital Comunitario. Informe Situación de los medios comunitarios, digitales y alternativos en el contexto de protesta de octubre, Paro Nacional Ecuador*.

<sup>744</sup> Fundación El Churo. *Wambra Medio Digital Comunitario. Informe Situación de los medios comunitarios, digitales y alternativos en el contexto de protesta de octubre, Paro Nacional Ecuador*. Available at: Archive Office of the Special Rapporteur for Freedom of Expression.

<sup>745</sup> Visión 360. October 21, 2019. Youtube channel. [Desinformación durante el paro nacional, Hospitales en espera](#). "During 11 days of #NationalStrikeEc the information of @ECUADORCHEQUEA never stopped... We posted more than 140 messages and denied more than 60 "fake news" so you #Nevertakebull from anybody... ever. We invite you to take a look at this short summary of our work". Twitter account of Ecuador Chequea @EcuadorChequea. [October 15, 2019. 10:40 A.M.](#) USUARIOS DIGITAL. October 2019. *Protestas en Ecuador de Octubre 2019. Observaciones sobre el ámbito digital*.



linked to the architecture of the network and the principles that govern it, including the principle of openness, decentralization, and neutrality.<sup>746</sup>

525. In the 2011 Joint Declaration on Freedom of Expression and the Internet<sup>747</sup>, the Office of the Special Rapporteur indicated that freedom of expression is applied to the Internet in the same way as to all media, so that the restrictions and mandatory blocking of entire websites, IP addresses, ports, network protocols, or certain types of uses (such as social networks) is an extreme measure — analogous to the prohibition of a newspaper or a radio or television station. Such blockages or restrictions cannot be justified, even for reasons of public order or national security, and cannot be used as censorship measures or as mechanisms to prevent access to information for the population. In addition, given the rights-enabling nature of freedom of expression, these restrictions also affect the exercise of other rights and have an important impact on the economy<sup>748</sup>.

526. The Office of the Special Rapporteur has argued that “net neutrality is a necessary condition for exercising freedom of expression [...]. What this principle pursues is that the freedom of access and choice of users to use, send, receive, or offer any content, application, or lawful service through the Internet is not conditioned, addressed or restricted, by means of blocking, filtering, or interference”.

## H. Attacks, threats, and intimidation against journalists and the media

527. During 2019, in Ecuador the pattern of attacks against journalists and press personnel by authorities and public officials has persisted. This has been manifested by the promotion of violence against journalists through stigmatizing speeches and legal processes, among other practices contrary to inter-American standards regarding the creation of an autonomous and democratic civic space.

528. On February 27, a mob of protesters attacked and would have damaged the work equipment of the cameraman and reporter of the *UCSG Televisión* channel in Guayaquil during a press conference by lawmaker Ronny Aleaga<sup>749</sup>. The journalist of the newspaper *La Hora*, Andrea Grijalva, denounced<sup>750</sup> the verbal aggression of several supporters of former President Rafael Correa against several journalists when they were covering the statements of politician Fernando Balda at the State Attorney General's Office (FGE), in Quito, on March 11.

529. Also, on March 24, blogger Tayisiya Teplyuk<sup>751</sup> of San Vicente, Manabí province, denounced death threats after publishing and questioning the results of the sectional elections in her city. Among the insults uttered are several derogatory expressions about her origin and her gender.

530. On June 1, sports journalist of radio *Súper* in Riobamba (Chimborazo), Joaquín Yaulema, reported being insulted and assaulted (blows to the face) by the president of the Association of Non-Amateur Football of Chimborazo [*Asociación de Fútbol No Aficionado de Chimborazo*] (AFNACH), Gustavo Torres while performing the live broadcast where he noted the poor state of the stadium in which a game was held. Along the same lines, days before, the journalist would have been intimidated, through an official statement<sup>752</sup> from the Olmedo Sports Center Club.

531. On July 28, the radio program 'Espacio La Voz' of radio *Guaranda*, conducted by Zamny Nájera Benavides, was interrupted by relatives of the governor of the province of Bolívar, León Ortiz, during an interview on mining in the area, the presence of Chinese companies, and the lack of prior consultation for the extraction of minerals<sup>753</sup>.

532. The Office of the Special Rapporteur also notes the attack on the facilities of the Center for Digital Autonomy [*Centro de Autonomía Digital*] (CAD), a non-profit organization created by the activist, Ola Bini, which according to public knowledge information<sup>754</sup>, was robbed on the night of July 31 and they would have stolen important electronic documents.

533. The journalist and director of the Fundación Mil Hojas, Martha Roldós, would have been intimidated by eight strangers who would have followed her and then were hanging around her home in Quito on August 8<sup>755</sup>. As a result, she filed a formal complaint with the Pichincha Prosecutor for intimidation.

<sup>746</sup> IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF.17/17. March 15, 2017.

<sup>747</sup> IACHR. United Nations. [Joint Declaration on Freedom of Expression and the Internet](#). June 1, 2011

<sup>748</sup> IACHR. [Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 466.

<sup>749</sup> El Comercio. February 27, 2019. [Disturbios en hotel antes de rueda de prensa de legislador Ronny Aleaga](#). La República. February 27, 2019. [Supuestos simpatizantes de Bucaram trataron de impedir a «huevoz» denuncias contra Moreno](#).

<sup>750</sup> “The level of verbal violence registered outside of @FiscaliaEcuador, against the press is regrettable. A group of correistas, in support of @ronnyaleaga, insult journalists. The debate must be elevated, criticism done with arguments, not with shouts and insults”. @Andreagijalva March 11, 2019. 11.19 A.M.

<sup>751</sup> FUNDAMEDIOS.Alertas. [Blogger es amenazada por cuestionar elecciones seccionales](#).

<sup>752</sup> Club Centro Deportivo Olmedo. [Comunicado Rechazamos este tipo de actuaciones que atentan el buen nombre del Ciclón de Los Andes](#). May 27, 2019.

<sup>753</sup> Facebook. June 30, 2019. [Video Sandy Nájera Jiménez](#).

<sup>754</sup> TeleSUR. August 1, 2019. [Roban centro informático donde trabaja Ola Bini en Ecuador](#).

<sup>755</sup> Plan V. September 1, 2019. [La emboscada nocturna que Martha Roldós sufrió en Quito](#).

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

### **I..Social Protest**

535. Beyond the social and political crisis that hatched in October in Ecuador, civil society had previously denounced the excessive use of force to suppress public protests. On July 11, at least 15 students from the University of the Arts of Guayaquil would have been violently evicted by the Police while they intended to perform a performance in defense of nature, outside the Anthropological Museum of Contemporary Art [*Museo Antropológico de Arte Contemporáneo*] (MAAC), where an event related to the 2030 Agenda for Sustainable Development was being held<sup>756</sup>. On this same line, on August 10, three young people who were skating and making a film for the magazine 'Tres Suces' were arbitrarily detained in the Plaza Colón, also in Guayaquil. According to the record to which this Office had access, members of the National Police pushed and beat the three athletes and 10 other skaters who were also there<sup>757</sup>.

536. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical political and social expression of the activities of the authorities. The Commission has pointed out that “it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly” and that “the exercise of the right of assembly to through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its realization.”<sup>758</sup>

### **J. Protection mechanisms**

537. In April of this year, the Ecuadorian government launched the Interinstitutional Committee for the Protection of Journalists and Communication Workers, as suggested by the IACHR and its Office of the Special Rapporteur in its recommendations after the country visit. However, sectors of civil society objected initially that the entity created would not have the necessary representativeness and ask for greater inclusion<sup>759</sup>. The inter-institutional coordination is made up of the Secretary of Communication, who chairs it, the Minister of the Interior, the Chancellor, the General Secretariat of the Presidency, and the President of the Information and Communication Council, who exercises the technical secretariat who have been in charge of developing the bases for a public policy of security for journalists.

538. According to information provided to this Office, the only moment of full operation of the Committee was in the framework of the protests last October, during the retention of some journalists in the House of Culture of Quito. During that episode, the Committee met under the direction of the Ministry of Interior and with the help of a mediating team of the United Nations to achieve the release of the journalists

539. On the other hand, civil society organizations have maintained their requests to the government to fully investigate the murder of the three journalists of *El Comercio* in March 2018 on the border with Colombia and that impunity does not prevail. According to information provided to this Office on June 14, the case passed to the Truth Commission of the Prosecutor's Office after 1 year and six months from when it was opened.

540. The Office of the Special Rapporteur recommends that the Government ensure the training of the personnel of each department involved in this committee on how to fulfill their obligations to protect journalists and that they fully understand the importance of the role of journalists in a democratic society. The Government must also provide sufficient resources to this program to ensure effective coordination between all authorities, and also to provide it with the possibility of acting in the different regions of the country in a sustainable manner.

541. It is also essential to strengthen coordination with the State Attorney General's Office so that it can fulfill its responsibility to identify and investigate the risks faced by journalists who receive attacks and threats. The investigation of attacks on the press should be perceived as an essential aspect of any protection program. It is also essential that the risk assessment methodologies include a differentiated approach that takes into account the specific risks that certain groups of journalists face, including women journalists and community or indigenous media journalists.

### **K. Stigmatizing statements**

542. In Ecuador, stigmatizing statements against the press inherited from the previous government persist, which would drive campaigns against communicators. On June 28, journalists from the population of Guayas in

<sup>756</sup> Voces del Sur Unidas. July 11, 2019. [Policía detiene a estudiantes que intentaban hacer un performance en un evento gubernamental.](#)

<sup>757</sup> David Holguin. Facebook. August 11, 2019. [Agresión en Plaza Colón](#)

<sup>758</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197. IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

<sup>759</sup> Knight Center. June 19, 2019. [Ecuador creates new state committee to protect journalists, but civil society demands more participation.](#)

Guayaquil were evicted with the use of violence by supporters of the priest and public official, José Tuárez, president of the Council for Citizen Participation and Social Control [*Consejo de Participación Ciudadana y Control Social*]. There, Tuárez called the present journalists "corrupt" and accused them of media lynching<sup>760</sup>.

543. According to public information, in May, former Presidential Councilor Santiago Cuesta, repeatedly reported that activist Fernando Villavicencio and journalist Christian Zurita would have mutilated names in a journalistic investigation that resulted in the criminal inquiry in the Arroz Verde case<sup>761</sup>.

544. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that with their statements they are not harming the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media, and human rights organizations; and must pay attention to the context in which they express themselves to ensure that their expressions do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who intend to contribute to public deliberation through the expression and diffusion of their thought."<sup>762</sup>

#### L. Subsequent Liabilities

545. On February 7, the journalist of the newspaper *El Telégrafo* Néstor Espinosa, along with its director, Fernando Larenas received a notification from the Northern 1 Criminal Judicial Unit, of Guayaquil, for a process initiated against them by a traffic agent accusing them of alleged crime of violation of privacy after the publication of the article "An agent of the CTE threatens with lies" in the "Crónica de a pie" section of the newspaper. The case is of special relevance since the complaints of the journalist in his chronicle relate a series of violations committed by the official during a detention. According to public information, on April 9, a Judge of the Multicompetent Court of the Canton Playas, Guayas province dismissed the accusation and confirmed the innocence of both journalists<sup>763</sup>.

546. On April 11, the Swedish human rights defender and computer activist, Ola Bini was arrested by officers of the Technological Crimes Investigation Unit of the National Police, at the Mariscal Sucre airport in Quito<sup>764</sup>, when he was about to travel to Japan. The arrest came a few hours after journalist Julian Assange was evicted from the Ecuadorian embassy in London. The activist was put under pre-trial detention for 70 days, for the alleged attack on the integrity of the State's computer systems. On June 20, a provincial court ordered his release after accepting a habeas corpus action. In its argument, after considering international human rights standards, the court recognized the illegality and arbitrariness of his detention.

547. The Office of the Special Rapporteur of the IACHR and the Rapporteur for Freedom of Opinion and Expression of the United Nations sent to the Ecuadorian state two Art. 41 letters<sup>765</sup> requesting information on the possible violation of the right to freedom of expression and due process of Ola Bini. Both offices thanked the government of Ecuador for their willingness to respond to the concerns of the Special Rapporteurs, but expressed their concern regarding the lack of clarity in the motivation of the opening of this process and of the pre-trial detention ordered.

548. The experts of the United Nations and the IACHR welcomed the release of Bini from prison and expressed concern about the ongoing investigations and criminal proceedings against him, given the lack of information as to the reasons that could support such procedures.

549. As indicated in the second Art. 41 letter, although the mentioned evidence could qualify for the pre-trial detention of Bini, under Ecuadorian domestic law, no response has been given regarding the legal or factual basis of the accusations against him, for which reason the experts reminded the State of Ecuador of its obligations under the International Covenant on Civil and Political Rights (ICCPR), Articles 9, 14, and 19, in addition to its simultaneous obligations under the American Convention on Human Rights (ACHR), Articles 7, 8, and 13.

550. They also recalled that Article 9 of the ICCPR states that any person arrested "shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Article 14 of the ICCPR establishes minimum guarantees that must be guaranteed for anyone facing criminal charges.

<sup>760</sup>El Universo. June 28, 2019. [José Carlos Tuárez, presidente del CPCCS, dice que no tiene nada que ocultar](#). Voces del Sur Unidas. July 5, 2019. [Funcionario llama "corrupta" a prensa local y la acusa de linchamiento mediático](#). GK. July 22, 2019. [Los frentes abiertos del cura Tuárez](#).

<sup>761</sup>El Universo. May 9, 2019. [Periodista Christian Zurita entregó información sobre caso 'Arroz Verde'](#). El Universo. May 13, 2019. [Consejero de Lenin Moreno dice que periodistas mutilaron publicación de caso 'Arroz Verde'](#). El Mercurio. June 23, 2019. ["El poder jamás va a tolerar al periodismo de investigación"](#).

<sup>762</sup>I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

<sup>763</sup>El Telégrafo. April 5, 2019. [Periodista denuncia nuevo caso de acoso judicial](#). Voces del Sur Unidas. April 2019. [Periodista y director de diario son demandados por agente de tránsito](#). Fundamedios. [Actualización: Juez ratifica inocencia de Néstor Espinosa](#).

<sup>764</sup>BBC Mundo. April 12, 2019. [Julian Assange: Ecuador arresta a un "colaborador cercano" de WikiLeaks](#). Plan V. August 24, 2019. [La Fiscalía apunta contra Ola Bini con la tesis del Pantallazo](#). CNN. August 16, 2019. [Fiscalía de Ecuador presentó nuevos hallazgos del celular de Ola Bini](#).

<sup>765</sup>IACHR/United Nations. The IACHR's Special Rapporteur for Freedom of Expression of the IACHR, Edison Lanza, and the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye. Information request. CIDH/RELE/Art.41/7-2019/39

Article 14 (a) guarantees the right of every person “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”. In addition, Article 19 of the ICCPR states that attacks, including criminal investigation and prosecution of individuals for their legitimate right to exercise their freedom of expression are incompatible with the Covenant. Likewise, Article 7 of the ACHR states that “Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him”. In addition, Article 8 of the ACHR defines minimum guarantees to which every person is entitled, without discrimination, when accused of criminal offenses. Finally, the Special Rapporteurs noted that the damages should not be presumed but be proven, and that States should not make assumptions that cannot be technically supported and that are based exclusively on the nature of the media or its comparison with others<sup>766</sup>.

551. According to public information on August 30, the newspaper team of the *La Posta* site was denounced by the general manager of Isidro Ayora Hospital, Humberto Navas, accusing the site of disclosing unauthorized public information and threatening the image and good name of the institution<sup>767</sup>. The director, Luis Vivanco and the journalists Ana Oquendo, Mónica Velásquez, and Jenny Navarro would have made their declarations at the Prosecutor's Office on September 2<sup>768</sup>.

552. On September 8, the communicator Henry Córdova was arrested outside his home located in Quinindé (Esmeraldas), accused of dishonoring the prefect of the province, Roberta Zambrano. The communicator was sentenced to 20 days in prison and a fine of US\$5,000 for a fourth class violation based on article 396 of the Comprehensive Organic Criminal Code<sup>769</sup>, whose numeral 1 sanctions with imprisonment of 15 to 30 days, the person who by any means utters expressions in discredit or dishonor against another.” This Office recalls that in June 2019, President Lenin Moreno sent to the National Assembly the reform of this article to eliminate prison for crimes against honor that would punish communicators with six months to a year.

553. On November 5, the prefect of the province of Pichincha, Paola Pabón, filed a civil lawsuit against the journalist Christian Zurita and the activist Fernando Villavicencio, for an alleged moral damage generated in a journalistic investigation note, in the digital media *La Fuente*. Pabón's lawsuit says she feels harmed by the article “¿Cómo se financió la campaña de Lenin y Glas?” Through the civil action the official seeks an economic reparation of \$66,000<sup>770</sup>.

554. The Inter-American Commission and the Inter-American Court determined that in a democratic society public offices must have a higher threshold of tolerance for criticism<sup>771</sup>, because “they have voluntarily exposed themselves to more demanding scrutiny and because they have an enormous capacity to dispute information through their public announcement reach”<sup>772</sup>. In this regard, the Inter-American Commission stated that “[t]he type of political debate that gives rise to the right to freedom of expression will inevitably generate certain critical or even offensive speeches for those who hold public office or are intimately linked to the formulation of public policy<sup>773</sup>”. Therefore, as stated in principle 10 of the 2000 Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission, “[t]he protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official”. That is, the use of criminal mechanisms to punish speech in matters of public interest, and especially related to public or political officials, does not respond to a pressing social need that justifies it, is unnecessary and disproportionate, and can be a means of indirect censorship, given its discouraging effect on the debate on matters of public interest.

<sup>766</sup> IACHR. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17 March 15, 2017. Para. 93.

<sup>767</sup> “Humberto Navas López, manager of Maternity wing at Isidro Ayora, filed a lawsuit against the #laPosta team. Navas wants to imprison us for reporting the hospital's irregularities”. Twitter account of La Posta. @LaPosta\_Ecu [August 20, 2019, 2:03 P.M.](#)

<sup>768</sup> La Hora de Quito. August 31, 2019. [Periodistas de La Posta, demandados por investigación](#). Fundamedios. September 2, 2019. [Actualización: Director de La Posta rindió declaraciones en Fiscalía tras denuncia por un reportaje](#).

<sup>769</sup> La Hora. November 14, 2018. [Periodista sentenciado a 20 días de cárcel y al pago de 5.000 dólares](#). Fundamedios.USA. September 18, 2019. [Detienen a periodista en Ecuador por “desacreditar la honra de la Prefecta”](#).

<sup>770</sup> Pichincha Universal. June 10, 2019. [Prefecta presentará demanda contra periodistas que la inculpan en caso “Majana”](#). El Universo. November 5, 2019. [Paola Pabón demanda civilmente por nota periodística](#)

<sup>771</sup> I/A Court H. R., *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177, para. 86-88; I/A Court H. R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135, para. 83-84; I/A Court H. R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R., *Case of IvcherBronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74, para. 152 and 155; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para 125 - 129; I/A Court H. R., *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87.

<sup>772</sup> I/A Court H. R., *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177, para. 86-88; I/A Court H. R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135, Para. 83; I/A Court H. R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R., *Case of IvcherBronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74, para. 152 and 155; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para. 125 - 129; I/A Court H. R., *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

<sup>773</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights](#). OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

555. The Inter-American Court has established, as regards the possible civil liability, that civil sentences regarding freedom of expression must be strictly proportioned so as not to cause a chilling effect on this freedom, since “the fear of a civil sanction, given the claim [...] of an extremely high civil reparation, can clearly be as or more intimidating and inhibiting for the exercise of freedom of expression as a criminal sanction, as long as it has the potential to compromise the personal and family life of who denounces a public official, with the obvious and disvaluable result of self-censorship, both for the affected individual and for other potential critics of the performance of a public servant.”<sup>774</sup>

556. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression<sup>775</sup>.

## M. Legal Reform

557. In 2018, the IACHR and its Office of the Special Rapporteur published a Special Report on the Situation of Freedom of Expression in Ecuador<sup>776</sup> that contains an analysis of the measures adopted by the current government as part of the process of normalization of the Ecuadorian State's relations with civil society, the media, journalists, and international human rights oversight bodies.

558. After the publication of said report, this Office has taken note of the reform of the Communications Law, eliminating the Superintendence of Information and Communication (SUPERCOM) on July 31<sup>777</sup>, which had been created in the previous government to control and administratively sanction the media. Likewise, the offense of media lynching, which banned the dissemination of information that repeatedly is published through the media to discredit a person, was also eliminated. Other codes and standards were also abolished such as the subsequent liability of the media and administrative sanctions.

559. Along the same lines, on June 20, the President of Ecuador, Lenín Moreno, presented the amendment to article 396 of the Comprehensive Criminal Code (COIP) that stipulates a prison sentence of fifteen to thirty days to the person who, through any medium, “utter expressions in disrepute or dishonor against another.” Instead, there is a figure called contravention against honor, which eliminates the penalty of imprisonment, but sanctions with community work of up to 80 hours or a fine of three to six unified basic salaries, despite being considered progress, the same continues to sanction expressions of public interest, since the contravention is not eliminated, only the penalty is modified.

560. This Office has also taken note of the proposed law presented to the Senate of Ecuador on February 26 to regulate the use of social networks, which in its text it establishes twelve articles that would seek to control the contents published on these platforms<sup>778</sup>.

## N. Censorship of journalistic material / Prior or indirect censorship

561. According to information provided to this Office, on June 4 journalists from *Ecuador TV*, *Ecuavisa*, *Primicias*, *RTS*, the Catholic University channel, among others, would have been prevented from accessing a press conference organized by the Anti-Corruption Secretariat and the Secretariat of Real Estate Management of the Public Sector in Samborondón (Guayaquil) on the Petroecuador corruption case<sup>779</sup>.

562. On August 15, journalists from the *La Posta* site, Luis Vivanco and Anderson Boscán, were evicted from the National Electoral Council, being prevented from covering the takeover by the Yasunidos collective, who demanded that a referendum be carried on oil exploitation in that area<sup>780</sup>.

563. The Office of the Special Rapporteur recalls that Article 13. 2 of the American Convention states that the exercise of freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability.” In the same vein, principle 5 of the Declaration of Principles provides that, “prior censorship, direct or indirect interference in, or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited

<sup>774</sup> I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para.129.

<sup>775</sup> IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

<sup>776</sup> IACHR. The Special Rapporteur for Freedom of Expression of the IACHR, Edison Lanza, and the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye. [Informe Especial sobre la Situación de la Libertad de Expresión en Ecuador](#). June 2019.

<sup>777</sup> El Comercio. July 31, 2019. [La Supercom deja de existir este miércoles 31 de julio del 2019](#).

<sup>778</sup> Ecuavisa. February 27, 2019. [Daniel Mendoza propone ley para regular redes sociales](#). Voces del Sur Unidas. February 27, 2019. [Rechazo a proyecto de ley para regular redes sociales](#).

<sup>779</sup> Voces del Sur Unidas. 4 de junio de 2019. [Impiden ingreso a medios a rueda de prensa sobre Petroecuador](#).

<sup>780</sup> Voces del Sur Unidas. August 15, 2019. [Desalojan a periodistas del CNE cuando intentaba cubrir protesta pacífica de Yasunidos](#).

by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

## O. Access to public information

564. The Office of the Special Rapporteur has taken note of the preparation and presentation on December 11 of the preliminary draft of the Organic Law on Transparency and Access to Public Information, following the Model Law 2.0 of the Organization of American States (OAS) which was carried out in coordination between the Anticorruption Secretariat of the Presidency of Ecuador, the Ombudsman's Office, Fundamedios, and the Citizenship and Development Foundation. According to information provided to this Office, the initiative arose as a result of the lack of citizen empowerment regarding the control of public acts that the same Constitution in force in the country recognizes.

## P. Internet and freedom of expression

565. Throughout 2019, cyber-attacks, cyber threats, and violations related to copyright and hacking have been reported in Ecuador. Among them it should be noted that on July 11 the digital portal *La Fuente* was suspended by order of the Moreno Presidency arguing that the media violated copyright and author rights when using graphic material without authorization in various journalistic reports<sup>781</sup>.

566. Another media that would have denounced the shutdown of its website is *Wambra* who denounced that on August 29 that after the publication of an article on safe abortion in Ecuador its web portal would have been suspended until the morning of September 2. They also denounced that they would have been targeted by trolls' attacks by conservative groups that do activism against abortion and sex education<sup>782</sup>.

567. Along these lines, the Office of the Special Rapporteur expresses its concern regarding the information that arises from the transparency report of the Twitter platform, which highlighted Ecuador as a case study due to the more than 200 requests to take down content due to copyright made by the Presidency through the Digital Millennium Copyright Act (DMCA)<sup>783</sup>.

568. The Office of the Special Rapporteur has stated that “net neutrality is a necessary condition for exercising freedom of expression [...]. What this principle pursues is that the freedom of access and choice of users to use, send, receive, or offer any content, application or lawful service through the Internet is not conditioned, addressed, or restricted by means of blocking, filtering, or interference”.

## Q. Diversity and pluralism

569. The Office of the Special Rapporteur has taken note of the new process for the assignment of radio and television frequencies available in Ecuador. On August 28, the executive director of the Telecommunications Regulation and Control Agency (ARCOTEL), Ricardo Freire, said that the call for tender for television signals will be in October and for broadcasting stations in Modular Frequency, in December. According to public knowledge information, prior to the start of the tender, a comprehensive reform of the regulation would have been carried out, which included public consultations in April for 302 frequencies available in the provinces of Santa Elena, Loja, Morona Santiago, and Galapagos. In accordance with the Organic Law of Communication, the qualifying title for the operation of frequencies will last for a period of 15 years. The distribution of the radio spectrum also had reforms<sup>784</sup>, it was established that 56% of the radio spectrum will be for private media, 34% for community, and 10% for public.

570. On April 4, *Radio Pichincha Universal* reported the decision to turn off the radio equipment, which operates within its facilities in Quito, for alleged non-payment of rent. According to public information, the *Gamavisión* channel cut off the electricity supply to the *Pichincha* radio transmission equipment because the equipment worked from the technical range of the *Gamavisión* channel that was being liquidated<sup>785</sup>.

571. On March 20, the *Radio Yumbo* station in Quinindé (Esmeraldas Quinindé) reported the power outage in the radio studios. The events would have occurred since the end of February and would have been repeated when the station's opinion program, *La Comunidad Informa*, is on the air. The radio management said the Mayor of the province is responsible for the outages due to criticism made by the station<sup>786</sup>.

572. On April 23, the *Ecuador Inmediato* portal denounced the closure of its platform after an alleged claim by the Presidency of the Republic to its Web server in Canada, dated April 1, for copyright infringement on

<sup>781</sup> Voces del Sur Unidas. July 11, 2019. [Web de La Fuente es dado de baja por denuncia de la Presidencia de la República](#). Fundamedios. July 25, 2019. [Twitter cierra nuevamente la cuenta de portal digital investigativo](#).

<sup>782</sup> Fundamedios. September 2, 2019. [Sitio web del medio Wambra está fuera del aire](#).

<sup>783</sup> Twitter. October 2019. [DMCA takedown and counter-notices](#).

<sup>784</sup> GK. September 5, 2019. [¿Cuáles son las reformas a la Ley Orgánica de Comunicación?](#).

<sup>785</sup> El Comercio. April 5, 2019. [Señal de radio Pichincha Universal fue cortada por mora, según Gamavisión](#).

<sup>786</sup> Fundamedios. March 20, 2019. [Director de Radio denuncia agresiones a emisora por parte del Alcalde \(e\) de Quinindé](#).

photographs and news of their property<sup>787</sup>. The management of *Ecuador Inmediato* made the corresponding disclaimers alleging persecution based on falsehoods through 25 complaints to the Presidency of Lenin Moreno, which were not answered until the closing of this Annual Report<sup>788</sup>.

573. The Office of the Special Rapporteur recalls that the allocation of radio and television licenses must be guided by democratic criteria and pre-established, public, and transparent procedures that serve as a brake on the possible arbitrariness of the State and that guarantee conditions of equal opportunities for all persons and sectors interested. In this regard, principle 12 of the Declaration of Principles has emphasized that “[t]he concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals”.

574. It also reiterates the need to maintain the spectrum reserve for the community sector and indigenous peoples, with the incorporation into the law of a strict definition of community medium – this is means at the service of a given community – as well as equitable conditions of access to licenses that differentiate realities other than non-commercial private media. In this regard, the State informed that the Organic Law of Telecommunications (LOT), created the Arcotel, as “[t]he entity responsible for the administration, regulation, and control of telecommunications and the radio spectrum and its management, as well as the technical aspects of the management of social media that use radio frequency, or frequencies that install and operate networks”. Likewise, it noted that “the equitable distribution of frequencies does not refer to a minimum floor. Article 106 of the current Organic Law of Communication establishes the following equitable distribution of frequencies: Article 106.- The frequencies of the radio spectrum destined for the operation of radio and television stations of open signal will be distributed equally in three parts, reserving 33% of these frequencies for the operation of public media, 33% for the operation of private media, and 34% for the operation of community media. This distribution will be achieved progressively.”

<sup>787</sup> Ecuador Inmediato. April 24, 2019. [Según A. Michelena, tenemos otras 25 denuncias de Presidencia de la República por supuesto "fotomentaje"](#)

<sup>788</sup>IACHR. Visit in loco to Ecuador. Available at: Archive of Special Rapporteur for Freedom of Expression.

## 15. EL SALVADOR

575. During 2019, the aggressions, threats, and lack of guarantees for journalistic work in El Salvador continued. The country had presidential elections on February 3 marked by some obstructions in voting centers and limitations on access to information. The Office of the Special Rapporteur has followed up on different stigmatizing statements made by public authorities against press and media workers. In addition, other incidents were recorded, such as restrictions on questions from all media during press conferences, obstructions in journalistic coverage, defamation campaigns on social networks against communicators, and intolerance of criticism by authorities of the different political powers, all of which are indicators contrary to the creation of an environment conducive to the normal development of the journalistic exercise.

576. This office was informed that the Attorney General's Office of El Salvador subpoenaed seven journalists from *Factum* magazine to testify as witnesses, as they would have uncovered, through an article, a corruption case involving former government authorities.

### A. Progress

577. According to public information, civil society organizations put together the Center for Monitoring Aggressions against Journalists in the 2019 electoral elections held in El Salvador to guarantee freedom of expression through the registration, verification, and monitoring of cases, and thus ensure the right of people to be informed from various approaches. This Office notes that the Supreme Electoral Tribunal (TSE) incorporated in its 2019 report instructions by the Vote Receiving Boards [*Juntas Receptoras de Votos*] (JRV) and a section on the right of journalists to provide coverage within the voting centers.<sup>789</sup>

### B. Impunity

578. The Office of the Special Rapporteur recalls that in El Salvador there are two cases of impunity, that of Roxana Contreras, journalist and presenter of *Canal 29* of Apopa, and Samuel Rivas, cameraman of *Canal 21*, both murdered in 2017. Likewise, this Office has received information on the request of the Government of the Netherlands for Colonel Mario Reyes Mena, among others, to be brought to justice in El Salvador for human rights violations during the war in 1982 after the commission concluded that Dutch journalists Jan Kuiper, KoosKoster, Hans terLaag, and Joop Willemsen were murdered in an ambush<sup>790</sup>.

579. The IACHR has reiterated that the murder of journalists constitutes the most extreme form of censorship and States have a positive obligation to identify and punish the perpetrators of these crimes. For the Commission, it is essential that the State of El Salvador fully and effectively investigates the murders of journalists and clarifies their motives and judicially determines the relationship they may have to journalistic activity and freedom of expression.

### C. Attacks, threats, and intimidation against journalists and the media

580. During 2019, the Office of the Special Rapporteur received information on the persistence of acts of harassment, intimidation, and threats to the media and journalists in El Salvador. According to public knowledge information, about 20 attacks were recorded. On May 12, two cameramen from *Televisión Oriental* (TVO)<sup>791</sup> were attacked by police officers while they were doing a coverage in the department of San Miguel. A similar situation was reported in the same month by another journalist from the eastern area, who was threatened with the confiscation of his work equipment. In the same vein, this Office was informed about attacks by security agents who retained a photojournalist from *El Diario de Hoy* on June 1 during President Bukele's inauguration and erased the material he had recorded about an incident between an elderly woman and security forces<sup>792</sup>. On May 19, the United Community Association for Water and Agriculture [*Asociación Comunitaria Unida por el Agua y la Agricultura*] (ACUA) reported an attack on *Radio Bálsamo*, a member of the Participatory Broadcasting Association of El Salvador [*Radiodifusión Participativa de El Salvador*] (ARPAS), which was robbed of equipment for transmission and production<sup>793</sup>.

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

<sup>789</sup> APES. January 28, 2019. [APES anunció el Centro de Monitoreo de Agresiones contra Periodistas para Electorales 2019](#)

<sup>790</sup> AP. March 25, 2019. [Buscan justicia para holandeses muertos en El Salvador](#). Aljazeera. March 29, 2019. [El Salvador: Justice demanded for 1982 killing of Dutch reporters](#).

<sup>791</sup> El Mundo. May 13, 2019. [Agentes agreden a periodistas mientras cubrían escena homicidio en San Miguel](#).

<sup>792</sup> El Salvador. June 1, 2019. [Batallón Presidencial retiene y amenaza a fotoperiodista de El Diario de Hoy](#).

<sup>793</sup> ARPAS. May 19, 2019. [Nuevo atentado contra Radio Bálsamo](#)



## D. Protection Mechanisms

582. The Bureau of Protection of Journalists and Media Workers Related to Information reported to this Office that they are still waiting for the approval of the Special Law for Integral Protection draft bill presented on October 23, 2018. In addition, this Office took note of the requests for speediness in the approval of this law that was drafted with different sectors of civil society.<sup>794</sup>

583. On March 22, civil society organizations together with the Salvadoran Institute for the Development of Women [*Instituto Salvadoreño para el Desarrollo de la Mujer*] (ISDEMU) presented a decalogue of coverage on violence against women journalists as part of a much broader project that seeks to develop a gender institutional policy in El Salvador<sup>795</sup>. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for protection mechanisms to be effective. For example, to emphasize: 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 prosecution; 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.

## E. Stigmatizing Statements

584. The Office of the Special Rapporteur has given special follow-up to different stigmatizing statements made by public authorities against the press and media workers, particularly the statements made by the President, Bukele on his Twitter account<sup>796</sup>, according to public knowledge information they have been increasing<sup>797</sup>. This Office has taken note of different smear campaigns, online harassment, and threats unleashed against journalists, communicators, and press personnel following the stigmatizing statements of President Bukele<sup>798</sup>.

585. The statements made to journalists are of relevance<sup>799</sup>, for example, against *Factum Magazine*: “*Today FACTUM graduated on Fake News, "interpreting" tweets with things that have NOTHING TO DO. Journalistic method? Where? @FitoSalume you should tell your employee @HsilvAvalos to stop being a journalistic hitman. From what I understand this is a thing of the owner of the circus*”; or those against the site *Datos y Opinión*, among others.

586. In the same vein, according to public knowledge information, the Association of Municipal Workers [*Asociación de Trabajadores Municipales*] (ASTRAM) accused the journalist of *Factum* magazine, Fernando Romero, of being a “journalist hitman”, after he questioned a trip by a government authority. “*Salvadoran people, identify this individual, he is one of the "journalists" HITMAN paid by the flour man. He and others are after an official,*” the union wrote on social networks.<sup>800</sup>

587. The attacks and threats via Social Networks towards women journalists are especially relevant for the Office of the Special Rapporteur, as is the case of *El Faro* journalist, Valeria Guzmán, after the publication on October 4 of the report titled “*The bridge built on Twitter does not yet exist in Torola*”<sup>801</sup>. There are also threats, misogynistic insults, and discrediting of work against *Foco TV* journalist Karen Fernández<sup>802</sup>, after the president re-tweeted one of the phrases with which the communicator argued in the program *República SC* on *Canal 33* on the use of political communication in the Territorial Control Plan<sup>803</sup>. Among the insults poured by Bukele's supporters are: “*I would like for your mother to be raped and killed to see if you would think the same thing ... moron*”, “*Corrupt old lady. Wait until you are raped and then I want to hear your opinion*”, and “*I hope she is raped by criminals to see if she keeps talking so much shit*”, among others.

<sup>794</sup> El Mundo, October 23, 2018. [Presentan ante la Asamblea proyecto de ley de protección a periodistas](#); Asociación de Periodistas de El Salvador (APES), April 25, 2019, [Reportaje: Ley de protección a periodistas es urgente](#)

<sup>795</sup> La Palabra Universitaria, March 22, 2019, [ISDEMU presentó el decálogo para la cobertura de sucesos de violencia contra las mujeres](#).

<sup>796</sup> “*About those media that presented themselves as "independent", now coming out with a clear and totally subjective agenda, should scare no one. It is clear the media cannot live on air, they have sponsors and their agendas must yield to them*”. Twitter account of President Nayib Bukele. [April 20, 2019. 7.45 P.M.](#)

<sup>797</sup> Twitter account of President Nayib Bukele, [April 20](#), [April 30](#), and [June 3](#), 2019. El País, España. May 12, 2019. [Los exabruptos en Twitter de Nayib Bukele, el presidente 'millennial'](#). Press release by Revista Factum, [May 2, 2019, Aclaración](#). Periódico El Salvador, July 3, 2019. [APES condena acoso a periodistas por sus opiniones en Twitter](#). Revista Séptimo Sentido, June 30, 2019, [O conmigo o contra mi](#).

<sup>798</sup> El Liberal. July 14, 2019. [Denuncian nuevo caso de ciberacoso de parte de seguidores del presidente Bukele contra periodista](#). El Mundo. September 11, 2019. [Registran cuatro expresiones de odio contra periodistas en gobierno Bukele](#).

<sup>799</sup> El Salvador. July 19, 2019. [Fusades exige cesar acoso digital a las voces críticas al gobierno](#).

<sup>800</sup> El Mundo, June 16, 2019, [Astram lanza graves acusaciones y pone en riesgo a periodista de Factum](#).

<sup>801</sup> APES. October 9, 2019. [Periodista de El Faro es amenazada por Twitter](#). Knight Center. September 6, 2019. [Salvadoran journalists warn about lack of access to official sources and little tolerance for criticism from the new government](#).

<sup>802</sup> El Liberal. July 14, 2019. [Denuncian nuevo caso de ciberacoso de parte de seguidores del presidente Bukele contra periodista](#).

<sup>803</sup> “*The president RT one of those phrases, one that did not represent my full analysis. Hundreds of his followers responded with threats of sexual violence and discrediting my work*”. Twitter account of journalist Karen Fernández @KarenAlessaF [July 14, 2019](#). 10.46 AM.

588. In addition, attacks were registered against the editor of *La PrensaGráfica* and broadcaster of Morning Club, Mariana Belloso<sup>804</sup>, who posted a phrase about Bukele's press conference on her Twitter account which earned her the reaction of the president who indicated: "*A half-truth is worse than a thousand lies (...) I am becoming more and more convinced, that there are journalists who want our security plan to fail and that our people continue to suffer. I can't find another explanation for this misinformation*". After the publication of these tweets, Belloso began to receive a series of threats and attacks. In addition, Belloso's Twitter account was reported and blocked a few days after the event<sup>805</sup>. According to information reported to this Office, this type of reaction is encouraging the self-censorship of many journalists on social networks for fear of reprisals. The cyberbullying of President Bukele's followers has become common in social networks against people who question or disagree with the decisions of his government.

589. As the Office of the Special Rapporteur has indicated in its report on Women Journalists and Freedom of Expression, online violence has a self-censorship effect on the exercise of freedom of expression<sup>806</sup>. In particular, "while there are countless women journalists who decide to continue publishing information in the face of violence, threats, or harassment, others resort to self-censorship, close their digital accounts, or leave the profession." In the opinion of the Secretary General of the United Nations, "[t]he attacks can also have a deterrent effect on other women journalists. The result is the lack of female perspectives and voices in the media in relation to a wide range of issues, which has serious consequences for freedom and plurality in the media." This exclusion strengthens discrimination and inequality<sup>807</sup>.

590. The existence of a context of marked confrontation, in which there are constant disqualifications and stigmatization, creates a climate that prevents a reasonable and plural deliberation on all public affairs. While it is true that the tension between the press and governments is a normal phenomenon that derives from the natural function of the press and that occurs in many States, it is also true that an acute polarization closes the spaces for calm debate, and it does not help neither the authorities nor the press to better fulfill their role in a vigorous, deliberative, and open democracy. In these cases, it is the State's task, given its national and international responsibilities, to contribute to a climate of greater tolerance and respect for the ideas of others, even when they are offensive or disturbing<sup>808</sup>.

591. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that with their statements they are not damaging the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media, and human rights defenders organizations, and must take into account the context in which they express themselves to ensure that their expressions do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who intend to contribute to public deliberation through the expression and diffusion of their thought."<sup>809</sup>

## F. Social Protest

592. According to public information, at the end of 2018, clashes between street vendors and police officers in Santa Tecla took place. The conflict arose due to differences between the Mayor's Office with suppliers regarding the relocation of the street vendors. More than 20 people were injured by stones, bullets, and sharp objects, a person who was shot in the head died in the hospital. Journalists Oscar Machón and Ricardo Chicas Segura were also injured in the demonstration.<sup>810</sup>

593. As part of a series of protests made since 2018 in favor of the nationalization of water in El Salvador, on March 20, incidents were reported between the Maintenance of Order Unit [*Unidad de Mantenimiento del Orden*] (UMO) and protesters, with a balance of two arrests and intimidation actions, in addition to excessive use of force and shooting with rubber bullets at a group of journalists.<sup>811</sup>

<sup>804</sup> ""President @nayibbuke asks the population to stop paying gangs. Follow the press conference on Radio Nacional 96.9 fm" Twitter account of journalist Mariana Barroso @Beiioso June 30, 2019, 8.03 P.M. InformatTVX. July 19, 2019. [¿Cómo surgieron las campañas de desprestigio y amenazas contra periodistas y defensoras de DD.HH.?](#) El Liberal. July 15, 2019. [Hermano del presidente Bukele justifica ciberacoso a periodistas y analistas: "No la vieron venir"](#)

<sup>805</sup> Periódico Digital 503. July 12, 2019. [Cuenta de periodista Mariana Belloso desaparece de Twitter](#)

<sup>806</sup> IACHR. [Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV Silenced zones: Highly dangerous areas for the exercise of freedom of expression. OEA/Ser.L/V/II.Doc. 22/17. March 15, 2017. Para. 68.

<sup>807</sup> UN General Assembly. [Safety of Journalists and the Issue of Impunity. Report by the Secretary General](#). A/72/290. August 4, 2017. Para. 12. See also: Fundación Karisma, [Misoginia en internet: bombardeo a campo abierto contra las periodistas](#), February 24, 2016.

<sup>808</sup> IACHR. [Annual Report 2014](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 65.

<sup>809</sup> I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

<sup>810</sup> *La Prensa Gráfica*, November 8, 2018, [Gobierno condena violencia con que se reprimió protesta de vendedores en Santa Tecla](#); El Salvador, November 8, 2018, [Tensión en Santa Tecla: más de 50 lesionados tras enfrentamiento entre vendedores informales con agentes del CAM](#).

<sup>811</sup> El Salvador, March 20, 2019, [VIDEO: Disturbios y dos detenidos en marcha "en defensa del agua" en la Asamblea Legislativa](#); *La Prensa Gráfica*, March 20, 2019, ["Marcha por la defensa del agua": Dos detenidos y daños en edificio de CSJ durante confrontación con UMO](#).

594. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the political and social critical expression of the activities of the authorities<sup>812</sup>. Likewise, the 2013 Joint Declaration on violence against journalists in the framework of social demonstrations indicates that the rights of assembly and freedom of expression “are fundamental and their guarantee is a necessary condition for existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations in order to ensure their peaceful development or disperse those that become violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, dispersing a demonstration must be justified by the duty to protect people, and the safest and least harmful measures for protesters should be taken. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances in accordance with internationally recognized principles”<sup>813</sup>.

### G. Source Confidentiality

595. This Office was also informed that on February 17, the Attorney General's Office (FGR) summoned seven journalists from *Factum* magazine to testify as witnesses in a corruption case that the media had uncovered in its article, “Audios reveal that former president Funes paid to buy congress deputies.” Said subpoena indicates that arrest would apply if the journalists did not appear when they are required.<sup>814</sup>

596. The Office of the Special Rapporteur recalls that any measure tending to confiscate journalistic material, which requires revealing sources or citing journalists as witnesses, has a restrictive effect on freedom of expression. According to Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR, “every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

### H. Legal Reforms

597. The Office of the Special Rapporteur has taken note of the amendment of the Special Law on Computer and Related Crimes that would seek to criminalize the use of false profiles in social networks, newspapers, and digital magazines through the incorporation into the body of law of article 24-A. If approved, the rule would punish those who take over profiles to challenge or criticize public officials and political parties with four to eight years in prison<sup>815</sup>. Until the closing of this report, the amendment process was still in the congress of El Salvador.

598. This Office was informed about the Territorial Control Plan in El Salvador, announced on June 18. According to the government it aims to deal with criminal groups<sup>816</sup> with the incorporation of 2,000 soldiers, which would represent the intervention of the Army in the public security forces. Different civil society organizations and the United Nations (UN) asked to reconsider the measure because the professionalization and modernization of the National Civil Police (PNC) should be prioritized.

599. This Office has referred on multiple occasions to the fact that restrictions on freedom of expression, including those affecting expression on the Internet, must be established clearly and precisely by law, proportional to the legitimate objectives sought and based on a judicial determination of contradictory procedures.

600. In accordance with principles 10 and 11 of the Declaration of Principles on Freedom of Expression of the IACHR, this Office recalls that “the protection of a person's reputation should only be guaranteed through civil sanctions”, particularly “in 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” because officials are subject to greater scrutiny by society.” In addition, the IACHR has repeatedly stated that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest and violates the right to freedom of expression<sup>817</sup>.

### I. Censorship of journalistic material / Prior or indirect censorship

601. The Office of the Special Rapporteur has been informed about the impediment of coverage and the prohibition of entry to a press conference by the Presidency of El Salvador to the journalists of *El Faro*, Gabriel Labrador and the cameraman Víctor Peña and another journalist of the *Factum* Magazine, Fernando Romero, on September 6 when the Presidency was about to launch the International Commission against Corruption and

<sup>812</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. 139

<sup>813</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>814</sup> Periódico Equilibrium, February 21, 2019, [FGR cita a periodistas de Revista Factum como testigos, pese a limitantes legales](#). Press release by Factum magazine, [February 19, 2019](#).

<sup>815</sup> El Mundo. June 11, 2019. [Desisten de dar cárcel por uso de perfiles falsos](#)

<sup>816</sup> Forbes. 19 de Junio de 2019 [¿En qué consiste el plan de seguridad de Nayib Bukele?](#)

<sup>817</sup> CIDH. Informe Anual 2015. Informe de la Relatoría Especial para la Libertad de Expresión. Capítulo V (Conclusiones y Recomendaciones). OEA/Ser. L/V/II. Doc. 48. 31 de diciembre de 2015.

Impunity of El Salvador [*Comisión Internacional contra la Corrupción y la Impunidad de El Salvador*] (CICIES), which has the technical support of the Organization of American States (OAS)<sup>818</sup>. According to a statement made by the Secretariat of Communications, it informed that the decision to restrict access to these two media is due to alleged misconduct by their journalists in previous conferences. According to the Secretariat, the order would remain firm "until there is no serious commitment on the part of the restricted media on this day to respect the work of other journalists and the institution"<sup>819</sup>. The journalists involved explained that they respect the development of the conferences, but that as a result of the organizers' refusal to give them space for direct questions (round of questions), they raised their voices to be heard by the authorities present. Although the ban on journalists was lifted on September 12, there are still several complaints<sup>820</sup> against the Secretary of Communication for the obstruction of questions. Another fact is that, after this series of statements by government authorities against the press, the journalists involved reported having been subjected to harassment and intimidation via social networks,<sup>821</sup> even by President Bukele through his Twitter account<sup>822</sup>.

602. Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. Additionally, principle 5 of the Declaration of Principles on Freedom of Expression enshrines that "[p]rior censorship, direct or indirect interference in, or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information, and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

603. In addition, the Inter-American Court indicated that, "with regard to accreditations or authorizations to the press media for participation in official events, which imply a possible restriction on the exercise of the freedom to seek, receive, and disseminate information and ideas of all kinds, it must be demonstrated that its application is legal, pursues a legitimate objective, and is necessary and proportional in relation to the objective it intends in a democratic society. Accreditation requirements must be concrete, objective, and reasonable, and its application transparent. It is up to the State to demonstrate that it has complied with the above requirements when establishing restrictions on access to information under its control".<sup>823</sup>

## J. Freedom of expression in electoral contexts

604. El Salvador had presidential elections on February 3. According to public information, incidents were recorded regarding the limitation of the journalistic exercise and access to information during the elections, the most recurring being the obstruction of voting centers, a physical aggression, and a digital attack. The main complaints were against the Municipal Electoral Boards and Vote Receiving Boards, the National Civil Police, partisan militants, political party leaders, and security teams, such as the Minister of Defense, who pushed away a journalist who tried to interview him in a voting center.<sup>824</sup>

605. On the other hand, the leader of the *Gran Alianza por la Unidad* (GANA), Andrés Rovira, responded with hostility when he was questioned about his party's participation in the Bukele government cabinet. Before the elections, the secretary general of the *Nuevas Ideas* party, Federico Anliker, also had hostile responses when asked if the ballot boxers would be appointed by their political group or by GANA, the party Bukele participated in<sup>825</sup>.

606. The electoral campaign prior to the elections in El Salvador was marked by the lack of open debate with Civil Society on proposals. In addition, this Office was informed of the refusal of interviews by the presidential candidates, including the president-elect, Bukele, who avoided interviews or public debates and privileged unidirectional communication, through his Twitter account.<sup>826</sup>

607. In electoral contexts, freedom of expression is directly linked to political rights and their exercise, and both types of rights are mutually reinforcing. A healthy democratic debate demands that there be the highest level of circulation of ideas, opinions, and information regarding the candidates, their parties, and their proposals during the period preceding the elections, mainly through the media, the candidates, and of those who wish to express themselves. It is necessary that everyone can question and inquire about the capacity and

<sup>818</sup> El Faro. September 6, 2019. [Presidencia bloquea acceso a El Faro y Revista Factum a conferencia de prensa.](#)

<sup>819</sup> El Mundo. September 6, 2019. [Presidencia veta a periodistas de El Faro y Factum por "mal comportamiento."](#)

<sup>820</sup> APES. September 17, 2019. [Mesa de Protección a Periodistas pide a presidente Bukele garantizar el ejercicio periodístico en su gobierno.](#)

<sup>821</sup> CNN. September 11, 2019. [Casa Presidencial de El Salvador prohíbe de nuevo el acceso a periodista de revista Factum.](#)

<sup>822</sup> "Those at Factum and El Faro are acting as "victims", but this is the reality". Twitter account of Nayib Bukele. [September 6, 2019, 11:57 P.M.](#)

<sup>823</sup> I/A Court H. R., Case of Claude Reyes et al v. Chile. Judgment of September 19, 2006. Serie C No. 151, para. 93; I/A Court H. R., Case of Ríos et al v. Venezuela. Judgment of January 28, 2009. Serie C No. 194, para. 375; I/A Court H. R., Case of Perozo et al v. Venezuela. Judgment of January 28, 2009. Serie C No. 195, para. 346.

<sup>824</sup> Asociación de Periodistas de El Salvador, February 5, 2019. [Resultado del monitoreo de agresiones contra periodistas durante Elecciones 2019.](#)

<sup>825</sup> El Mundo, February 6, 2019, [Presidente de Gana a periodista: "Yo no soy hijo suyo para que me hable así!";](#) El Salvador, February 7, 2019, [VIDEO: Rovira se enfurece tras preguntas de periodistas por situación de GANA en el nuevo Gobierno.](#) El Diario de Hoy, March 30, 2019, [El Salvador alerta sobre los ataques digitales a medios.](#)

<sup>826</sup> Revista Factum, April 25, 2019, [El día en que Nayib no tuiteó: habló.](#)

suitability of the candidates, dissent and confront their proposals, ideas, and opinions, so that voters can form their criteria to vote<sup>827</sup>. As the IACHR has highlighted, free speech and political debate are essential for the consolidation of the democratic life of societies, and therefore have an imperative social interest<sup>828</sup>.

### K. Access to Public Information

608. During 2019, the IACHR repeatedly expressed its concern regarding the lack of access to the files of the Ministry of Defense to investigate crimes committed during the armed conflict. This Office was informed about the willingness of the new government to eliminate some secretaries, including that of Transparency, also eliminating the secretaries of transparency of some institutions of the Executive branch which, as reported by the APES, would delay the processes of access to public information for journalists and the media.<sup>829</sup>

609. Regarding transitional justice, different civil society organizations have denounced the obstruction in access to archives on the armed conflict through the denial of permits or the lack of official data from the time of the armed conflict.

610. The Office of the Special Rapporteur has taken note of the creation of an ad hoc Commission to study the implications of the ruling that invalidated the General Amnesty Law for the Consolidation of Peace<sup>830</sup>, which would help to fulfill the obligations emanating from the sentence<sup>831</sup> for the access to information by victims, their representatives, and other sectors of society interested<sup>832</sup>.

611. Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[a]ccess to information held by the State is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

### L. Internet and Freedom of Expression

612. This Office was informed that on January 29, the feminist organization "Las 17" suffered an attack on its website, which would have been temporarily closed. On February 7, defenders Andrea Ayala and Bárbara Romero from the Salvadoran Lesbian Women for Diversity Space [*Espacio de Mujeres Lesbianas salvadoreñas por la Diversidad*] (ESMULES) were victims of a slander and smear campaign.

613. The Office of the Special Rapporteur stated on several occasions that online violence has a self-censorship effect on the exercise of freedom of expression. In particular, "while there are countless women journalists who decide to continue publishing information in the face of violence, threats, or harassment, others resort to self-censorship, close their digital accounts, or leave the profession." In the opinion of the Secretary General of the United Nations, "[t]he attacks can also have a deterrent effect on other women journalists. The result is the lack of female perspectives and voices in the media in relation to a wide range of issues, which has serious consequences for freedom and plurality in the media." This exclusion strengthens discrimination and inequality.<sup>833</sup>

### M. Diversity and Pluralism

614. This Office has received information on the suspension of all official advertising assigned to *El Diario de Hoy* for denouncing the blockade against journalists from *El Faro* and *Factum*<sup>834</sup>.

615. According to information received by the Office of the Special Rapporteur, the Ministry of Labor in El Salvador would be carrying out selective labor inspections<sup>835</sup> after the Bureau of Protection of Journalists and Media Workers Related to Information asked that unit to pay attention to the precariousness towards press workers due to the increase of labor violations<sup>836</sup>. Along these lines, according to a statement issued by the

<sup>827</sup> I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Merits, reparations and costs. Judgment of August 31, 2004. Serie C No. 111, Para. 90.

<sup>828</sup> IACHR. Allegations before the Inter-American Court in the case of Canese v. Paraguay. Transcribed in: I /A Court H.R. *Case of Canese Vs. Paraguay*.

<sup>829</sup> Twitter account of President Nayib Bukele, [June 2, 2019](#). El Salvador, June 5, 2019, [Supresión de secretarías de la Presidencia genera incertidumbre y tensión en empleados](#).

<sup>830</sup> IACHR. 173d Period of Sessions. October, 2019. It shall be noted that this IACHR has expressed concern about the integration of said commission; see: IACHR. [Annex to Press Release 220/18: Summaries of Hearings 169th Period of Sessions in Boulder, Colorado](#) October 19, 2018.

<sup>831</sup> *Supra* note 12. Part IV.2.F.

<sup>832</sup> *Supra* note 12. Item 1 of the decision.

<sup>833</sup> UN General Assembly. [Safety of Journalists and the Issue of Impunity. Report by the Secretary General](#). A/72/290. August 4, 2017. Para. 12. See also: Fundación Karisma, [Misoginia en internet: bombardeo a campo abierto contra las periodistas](#), February 24, 2016.

<sup>834</sup> IAPA. [Report to the 75th General Assembly of the IAPA, El Salvador](#), October 3, 2019; El Salvador. September 28, 2019. [Abogados explican vías legales ante violación a la libertad de expresión](#).

<sup>835</sup> ARPAS. October 11, 2019. [Preocupa a Relator CIDH denuncia de «selectividad» en inspecciones a medios de El Salvador](#). El Mundo. October 11, 2019. [Relator de libertad de expresión de CIDH tilda de «preocupante» denuncia en El Salvador](#). La Vanguardia. October 9, 2019. [Periódico de El Salvador pide a Bukele «no violentar» la libertad de prensa](#).

<sup>836</sup> APES. August 30, 2019. [Mesa de protección a periodistas pide al ministerio de trabajo verificar garantías laborales en medios informativos](#).

Protection Bureau, the media selected<sup>837</sup> for the inspections would have been chosen for political reasons, they also denounced that said selection would have been made on a discretionary basis. It should be noted that many of these inspections went viral on Social Networks, including the Twitter account of President Bukele<sup>838</sup>: “But I know @fe\_valencia and although I cannot help him as an official, I can as a person. For which I offer a donation from my family, to pay the 3 months he owes of labor and employer fees to @issv\_gob\_sv”.

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<sup>837</sup> Ministerio de Trabajo El Salvador/ Facebook. August 22, 2019. [Un equipo de inspección de nuestro Ministerio se desplazó a las instalaciones de Radio Maya Visión con el objetivo de verificar las condiciones laborales del personal.](#)

<sup>838</sup> “This is the statement of Co Latino denouncing that the Ministry of @LaborSV came to make an inspection, is full of accusations of alleged political motivations. Now read numeral 4 of the same statement. Now explain to me what the State is supposed to do”. [Twitter account of NayibBukele. October 8, 2019. 8.21 P.M](#)

## 16. UNITED STATES

616. There is still a climate of hostility toward journalism and the free functioning of the media in the United States. A constant remarks disparaging the press as a “dishonest,” “corrupt,” “enemy of the people” that spreads “fake news,” and his comments on “virtual acts of treason,” undermine the role of the press. This environment has paved the way for government supporters to attack and harass journalists and media outlets as well. There have also been attacks on the press during protests and demonstrations; in particular, two journalists were injured by rubber bullets during protests demanding the resignation of former Governor in Puerto Rico.

617. Likewise, the Espionage Act continues to be enforced, and journalists have been ordered by the courts to reveal their sources or to appear as witnesses to events they have reported or investigated. In particular, the Office of the Special Rapporteur is concerned about the charges brought under the Espionage Act against Julian Assange for publishing “government secrets,” and the search of a journalist’s home in San Francisco to ascertain his sources. Nevertheless, the Office of the Special Rapporteur highlights progress on the judicial and legislative fronts, both at the federal and state levels, which have issued favorable decisions that protect freedom of expression, as well as legislative initiatives intended to protect and guarantee this right.

### A. Progress

618. Both the House of Representatives and the Senate have passed and/or introduced a number of resolutions and legislative initiatives to protect the practice of journalism and access to public information, as well as to ensure the existence of a free press.

619. On July 15, 2019 the House of Representatives passed a resolution acknowledging the vital importance of a free and independent press to democracy, human rights, and good governance. The resolution also condemns the increase in threats to press freedom and reaffirms it as a priority for the United States.<sup>839</sup>

620. In addition, a bill was introduced to require the President, or a designee of the President, to brief the members of the press assigned to report on the White House on the official business of the President at least twice a week, which information shall also be transmitted to the public.<sup>840</sup> In another resolution, the House of Representatives stressed the importance of freedom of expression for democracy and opposed the “fake news” and inaccurate facts it considers to be issued by President Donald Trump, and considers that “alternative or inaccurate facts” should be retracted immediately.<sup>841</sup>

621. In the judicial sphere, the Office of the Special Rapporteur emphasizes that there have been some court judgments upholding the right of access to public information and freedom of expression.

622. On February 22, 2019 the U.S. District Court for the Western District of Washington at Tacoma found a state law on cyberbullying unconstitutional. The court granted the motion filed by Richard Rynearson—an online activist who regularly wrote about civil liberties issues related to public figures and government officials—to find the law unconstitutional, on the grounds that it was overly broad and criminalized free speech protected by the First Amendment. The court found that the law focused on communications that had “intent to harass, intimidate, torment, or embarrass any other person [...] anonymously or repeatedly,” and therefore was overbroad, could have a chilling effect, and did not protect anonymity, which allows individuals to express themselves freely without fear of retaliation or social ostracism. The court reiterated that emotionally distressing or outrageous speech is protected speech, especially when it touches on issues of public, religious, or political interest.<sup>842</sup>

623. In addition, on July 9, 2019, the United States Court of Appeals for the Second Circuit affirmed the decision of the 2018 United States Southern District Court of New York in the case of *Knight Institute v. Trump*, ruling that President Trump violated the First Amendment by blocking the plaintiffs on his Twitter account (@realDonaldTrump) because they posted tweets that criticized him or his policies. The Court of Appeals found that the account was used for official purposes and was a public forum, and therefore could not be considered a personal account, and that blocking the plaintiffs was a government restriction on free speech. The Court found that Twitter’s interactive features (reply, retweet, like) are forms of expression that allow people to

<sup>839</sup> United States. Congress (House of Representatives). [H.RES. 345- Responding to widening threats to freedoms of the press and expression around the world, reaffirming the centrality of a free and independent press to the health of democracy, and reaffirming free dom of the press as a priority of the United States in promoting democracy, human rights, and good governance on World Press Freedom Day.](#) July 15, 2019.

<sup>840</sup> United States. Congress (House of Representatives). [HR. 2641-Free Press Act of 2019.](#) May 9, 2019. Also, on April 18, 2019, [resolution H.RES. 325](#) was introduced in the House of Representatives, through which the House considers that all briefings held by the President or Federal agencies should be made available to the press, except for under circumstances that are consistent with Federal law. Both proposals have not been passed yet.

<sup>841</sup> United States. Congress (House of Representatives). [H.RES. 284-Opposing fake news and alternative facts.](#) April 2, 2019. The proposal has not been passed yet.

<sup>842</sup> United States District Court, W.D. Washington, Tacoma. [Rynearson Vs. Ferguson, 355 F.Supp.3d 964 \(2019\).](#) February 22, 2019

communicate with the President and thousands of others, and highlighted the danger of government suppression of views considered unfavorable.<sup>843</sup>

624. Finally, on August 6, 2019, in the case of *Open Society Justice Initiative (OSJI) v. Central Intelligence Agency, et al.*, the United States District Court for the Southern District of New York, ruled that neither the Department of State nor the Department of Defense could delay the release of documents related to the murder of Jamal Khashoggi, a Saudi journalist and columnist for the Washington Post, who was killed in October 2018. The court ordered that, because of the public interest in the case, and the importance of processing requested information in a timely manner, the agencies should process the information at a faster rate.<sup>844</sup>

## B. Attacks, threats, and intimidation of journalists and the media

625. According to public information, there were a number of attacks on journalists during the year for reasons related to their professional work. These include cases of direct threats to reporters providing coverage, threats via social media, physical assaults during attempts to report, and verbal abuse by political partisans.

626. The Office of the Special Rapporteur has learned of several attacks and the lack of security measures for reporters covering President Trump's political rallies. For example, on February 11, 2019 a group of reporters, including a BBC (British Broadcasting Corporation) camera operator, were attacked by a man participating in the political event while they were covering a presidential speech delivered at a rally in El Paso, Texas. They were attacked after anti-media epithets were heard.<sup>845</sup> In addition, the Office of the Special Rapporteur received information that several journalists from *BuzzFeed* and *Huffpost* were the victims of harassment, bullying, and homophobic messages on social media after they announced that they had been fired.<sup>846</sup> In addition, a picture of two lynching victims, hanging from a tree, was sent to *Huffpost* reporter Nick Wing, with the caption, "Just kill them. Make America great again."<sup>847</sup> In October 2019, a group called "American Priority," consisting of supporters of President Trump, showed a "video meme" during a three-day event at a Trump-owned resort in Miami, Florida. The video showed the president stabbing, shooting, and brutally attacking journalists from different media outlets (PBS, NPR, Politico, The Washington Post, NBC and Vice News, and MSNBC) and political opponents inside a church, called "The Church of Fake News."<sup>848</sup> The White House Correspondents' Association condemned the video.<sup>849</sup>

627. A survey by the Committee to Protect Journalists (CPJ) showed that women journalists in the United States are exposed to various risks due to the practice of their profession, including risks that follow them home, given that the respondents highlighted online harassment as one of the biggest threats. A large percentage of the journalists interviewed said they had experienced security problems, threats, verbal harassment, unsolicited sexual advances, or threatening voice mails, and spoke of the mental health implications of dealing with such attacks, particularly when reporting and investigating alone.<sup>850</sup>

628. The Office of the Special Rapporteur is equally concerned over the pattern of hostility toward the press on the part of the Customs and Border Protection (CBP). According to civil society organizations, at least 12 journalists were held for prolonged periods at points of entry and at the Mexican border, subjected to closer scrutiny by CBP border officials, subjected to secondary screening and/or more rigorous checks than others, questioned about their coverage of migration issues, and had their electronic devices inspected. In some cases, they were even asked to hand over their passwords, and/or to show photographs and notes collected in the course of their professional work.<sup>851</sup> This situation led the American Civil Liberties Union (ACLU) and the New York Civil Liberties Union (NYCLU) to file a lawsuit against President Donald Trump's administration because of the hostile treatment of journalists on the U.S.-Mexico border.<sup>852</sup> Similarly, according to information known to

<sup>843</sup> United States Court of Appeals for the Second Circuit, New York. *Knight First Amendment Institute, et al v. Donald J. Trump, et al. No. 18-1691-cv.* July 9, 2019.

<sup>844</sup> United States District Court. Southern District of New York. *Open Society Justice Initiative (OSJI) v. Central Intelligence Agency, et al.* Cas No. 1:19-cv-00234-PAE. August 6, 2019.

<sup>845</sup> CPJ. June 12, 2019. *CPJ concerned about journalists' safety at Trump's rallies.* U.S. Press Freedom Tracker. February 22, 2019. *Cameras, other reporters attacked at Trump rally.*

<sup>846</sup> Reporters Without Borders (RSF). Weekly Address, January 21-27, 2019. *BuzzFeed and HuffPost journalists harassed online following mass layoffs.* NBC News. January 25, 2019. *Achan trolls flood laid off HuffPost, BuzzFeed reporters with death threats.*

<sup>847</sup> Twitter account of Nick Wing @nickpwing. *January 24, 2019.*

<sup>848</sup> NBC News. 14 de octubre de 2019. *Report: Internet meme showing Trump shooting media, political opponents shown at president's resort.* Reporteros Sin Fronteras (RSF). 15 de octubre de 2019. *US - Trump should condemn video depicting violence against journalists.*

<sup>849</sup> Politico. October 14, 2019. *Press organization condemns fake massacre by Trump depicted at pro-Trump event.*

<sup>850</sup> Committee to Protect Journalists (CPJ). September 4, 2019. *'The threats follow us home': Survey details risks for female journalists in U.S., Canada, and Why going solo is a risk for female reporters in the US and Canada.*

<sup>851</sup> Reporters Without Borders (RSF). *US Weekly Address, February 4-10, 2019. Journalists facing harassment while reporting from southern border.* Committee to Protect Journalists (CPJ). February 11, 2019. *Several journalists say US border agents questioned them about migrant coverage.* U.S. Press Freedom Tracker. No date. Available at: [https://pressfreedomtracker.us/border-stop/?categories=5&date\\_lower=2019-01-01&date\\_upper=2019-12-17](https://pressfreedomtracker.us/border-stop/?categories=5&date_lower=2019-01-01&date_upper=2019-12-17). See also, First Amendment Watch at New York University. November 22, 2019. *ACLU Sues Trump Administration over Hostile Treatment of Journalists at Border.*

<sup>852</sup> *Huffpost.* November 20, 2019. *ACLU Sues Trump Administration for Detaining Journalists at Border.* First Amendment Watch at New York University. November 22, 2019. *ACLU Sues Trump Administration over Hostile Treatment of Journalists at Border.*



this office, the Department of Homeland Security has created a database of people who report on conditions at the U.S.-Mexico border.<sup>853</sup>The Office of the Special Rapporteur also learned of other cases in which CBP officers at other U.S. points of entry harassed journalists, accused them of belonging to the “fake news media,” and writing “propaganda.” These incidents were condemned by acting CBP Commissioner Mark Morgan.<sup>854</sup>

629. In addition, President Donald Trump instructed federal agencies not to renew subscriptions to the New York Times and the Washington Post, which he has called “fake news,” after he said the newspapers were providing unfair coverage. According to reports, the White House cancelled the print subscription to both newspapers, although the online subscriptions will reportedly be maintained until the instruction is implemented.<sup>855</sup>

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

631. With respect to violence against women journalists, the Office of the Special Rapporteur has emphasized that, “Women journalists [...] disproportionately and routinely face gender-based violence in the workplace and in the field,”<sup>856</sup> and differentiated forms of violence from State and non-State actors,<sup>857</sup> as well as a lack of protection and obstacles to access to justice that are differentiated from their male counterparts. The Office of the Special Rapporteur has emphasized the importance of integrating a gender perspective to ensure that women journalists are adequately protected and can exercise their right to freedom of expression without undue restrictions.<sup>858</sup>

632. In addition, and in relation to the indirect restrictions on freedom of expression noted in this section, Principle 13 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “The exercise of power and the use of public funds by the state, [...] among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

### C. Social protest

633. The Office of the Special Rapporteur observes that at least three journalists were arrested while covering protests during 2019. Three journalists were detained in Sacramento, California, while covering a protest held in response to the prosecutor’s decision not to file criminal charges against the officers who shot and killed Stephon Clark, 22-year-old African-American man. A journalist was also handcuffed and detained for 30 minutes by police in Connecticut while covering a demonstration commemorating the death of a teenager named Jayson Negrón at the hands of the police. In another incident, a photojournalist was arrested in New York City while covering a protest held to call for a more aggressive approach to climate change.<sup>859</sup>

634. The July protests in Puerto Rico began after the Puerto Rican Center for Investigative Journalism leaked hundreds of misogynistic, homophobic, and violent text messages between then-Governor Ricardo Rosselló and members of his cabinet in a private Telegram chat. Thousands of Puerto Ricans took to the streets with the slogan “¡Ricky Renuncia!” [Resign, Ricky!], due to the allegations of corruption and the information provided from that chat. Based on information brought to the attention of this office by various civil society organizations, and according to public information, the Office of the Special Rapporteur notes that there were a number of attacks

<sup>853</sup> NBC San Diego. March 6, 2019. [Source: Leaked Documents Show the U.S. Government Tracking Journalists and Immigration Advocates Through a Secret Database](#). Reporters Without Borders (RSF). [Weekly Address, March 4-10, Leaked database reveals US government secretly tracking journalists at US-Mexico border](#).

<sup>854</sup> Reporters Without Borders (RSF). October 9, 2019. [Border agents must stop harassing journalists at US ports of entry](#), and [Weekly Address, August 19-25, 2019. CBP harasses journalist, suggesting troubling trend](#). U.S. Press Freedom Tracker. No date. Available at: [https://pressfreedomtracker.us/border-stop/?categories=5&date\\_lower=2019-01-01&date\\_upper=2019-12-17](https://pressfreedomtracker.us/border-stop/?categories=5&date_lower=2019-01-01&date_upper=2019-12-17).

<sup>855</sup> The Wall Street Journal. October 24, 2019. [Trump to Tell Federal Agencies to Cut New York Times, Washington Post Subscriptions](#). The Guardian. October 24, 2019. [White House to federal agencies: cancel New York Times and Washington Post subscriptions](#). First Amendment Watch at New York University. October 25, 2019. [Frustrated by Their Coverage, Trump says He will Unsubscribe from The New York Times and The Washington Post](#).

<sup>856</sup> IACHR. [Women Journalists and Freedom of Expression](#). OEA/Ser. L/V/II. CIDH/RELE/INF.20/18. October 31, 2018. Para. 5. UN General Assembly. [Safety of Journalists and the Issue of Impunity. Report by the Secretary General](#). A/72/290. August 4, 2017. Para. 8.

<sup>857</sup> IACHR. [Women Journalists and Freedom of Expression](#). OEA/Ser. L/V/II. CIDH/RELE/INF.20/18. October 31, 2018. Para. 3. IACHR. [IACHR Calls on States to Recognize and Protect the Work of Women Human Rights Defenders](#). November 29, 2017. See also: IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 283.

<sup>858</sup> IACHR. [Women Journalists and Freedom of Expression](#). OEA/Ser. L/V/II. CIDH/RELE/INF.20/18. October 31, 2018. Para. 76. Párr. 76.

<sup>859</sup> U.S. Press Freedom Tracker. March 13, 2019. [Three journalists arrested while covering Stephon Clark protest in Sacramento](#). May 13, 2019. [Connecticut reporter arrested and briefly detained while covering demonstration](#). July 9, 2019. [Photojournalist arrested while covering climate demonstration, equipment seized](#).

on journalists during the coverage of the marches and protests. For example, WAPA-TV broadcast journalist Orlando Rivera Martinez was hit by a rubber bullet while covering the protests on July 15. Joe Raedle, a photojournalist with Getty Images, was hit by a rubber bullet while covering protests in San Juan outside La Fortaleza, the official residence of Governor Ricardo Rosselló, on July 17, 2019. Telemundo cameraman Jorge Figueroa was injured that same night, as police began firing tear gas to disperse the protesters, and in the midst of the chaos he was pushed and fell to the ground. In addition, documentary filmmaker Ricardo Olivero was shot with “crowd control ammunition” while filming police dispersing protesters in San Juan on July 23, 2019, despite being clearly identified with credentials.<sup>860</sup>

635. There were also several reports of violence and repression during these protests, in which the police reportedly used excessive force against the demonstrators. According to reports, “The State’s response to these demonstrations was repressive, with an overreaching and abusive use of force. [...] The Puerto Rico Police deployed a large number of officers, forming a perimeter around the Fortaleza (Governor’s residence), with anti-riot equipment, taking an intimidating stance. That night the Puerto Rico Police fired an excessive amount of tear gas, pepper gas, and rubber bullets, acting completely irresponsibly, without following any of the protocols on the use of force and without the demonstrators having caused any violent incidents.”<sup>861</sup>

636. The IACHR has reiterated that social protest is a fundamental tool for the work of defending human rights, and essential for the political and social criticism of government authorities’ activities. The Commission has stated that, in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly<sup>862</sup> and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”<sup>863</sup>

637. The Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights to freedom of expression and assembly “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>864</sup> This declaration also establishes 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.”

#### D. Stigmatizing statements

638. Senior public officials continued to make stigmatizing statements about various media and journalists at official events, political rallies, and on social media during 2019. Through his Twitter account, President Trump frequently referred to different media outlets critical of his government as “dishonest” and “corrupt” “fakenews media,”<sup>865</sup> claiming that “there has never been a time like this in American history,” and describing them as “enemies of the people” and of the State.<sup>866</sup>

639. According to information known to the Office of the Special Rapporteur, at the G20 Summit, President Trump “joked” with Russian President Vladimir Putin about “getting rid of journalists” and said that Russia did

<sup>860</sup> U.S. Press Freedom Tracker. July 26, 2019. [Photojournalist struck in the head by rubber bullet while covering Puerto Rico protests](#). July 31, 2019. [Documentary filmmaker shot with ‘crowd control ammunition’ while filming protests in Puerto Rico](#).

<sup>861</sup> Letter requesting the IACHR to condemn police violence against protesters in Puerto Rico and any other remedies they deem pertinent. Letter presented by the Human Rights Clinic of the Faculty of Law of the Universidad Interamericana de Puerto Rico, Instituto Caribeño de Derechos Humanos (ICADH), Comité de América Latina y el Caribe para la Defensa de los Derechos Humanos de PR (CLADEM –PR) and Kilómetro Cero. July 19, 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. See also, The New York Times. July 27, 2019. [Did Puerto Rican Police Go Too Far During Protests? What the Video Shows](#).

<sup>862</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>863</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. 139.

<sup>864</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>865</sup> “The rigged and corrupt media is the enemy of the people”. Twitter account of Donald J. Trump @realDonaldTrump. February 17, 2019.

<sup>866</sup> Twitter account of Donald J. Trump @realDonaldTrump. February, March, July 2019. “Fake News equals the enemy of the people”. “The Mainstream Media is out of control. They constantly lie and cheat in order to get their Radical Left Democrat views out there for all to see. It has never been this bad. They have gone bonkers, & no longer care what is right or wrong. This large scale false reporting is sick!” Twitter account of Donald J. Trump @realDonaldTrump. July 22, 2019. See also, The Hill. March 19, 2019. [Trump blasts ‘fake news media’ as ‘absolute enemy’ in the latest attack on media](#). PressTV. March 19, 2019. [Fake news media is ‘absolute enemy’ of people: Trump](#).

not have the same problem as the United States with “fake news.” The Russian president contradicted this assertion, saying that they did have that problem.<sup>867</sup>

640. Similarly, in February 2019, the president called CNN and NBC “fake news”<sup>868</sup>. He also claimed that Saturday Night Live was working in collusion with the Democrats and Russia and that should be examined by the Federal Election Commission or the Federal Communications Commission, for being “fake news.”<sup>869</sup> Those statements were made after the program aired a parody of the president’s announcement of a state of emergency<sup>870</sup>, and subsequently, in March 2019, retransmitted the sketch entitled “It’s a Wonderful Life,” which parodied what Donald Trump’s life would have been like if Hillary Clinton had won the election.

641. Following the publication of the summary of Special Counsel Robert Mueller’s report (“Mueller Report”), which concluded that there was insufficient evidence of coordination by the Trump campaign with Russia to influence the 2016 elections (collusion), the President again described certain media outlets as “enemies of the people” and as “the real opposition party.” According to the President, the media had provided biased coverage of the investigation into the alleged collusion. He indicated that “For two years they pushed the Russian Collusion Delusion when they always knew there was No Collusion.”<sup>871</sup> In addition, President Trump and former New York City Mayor Rudolph Giuliani demanded an apology from Chris Cuomo and CNN for their behavior and biased coverage of the alleged collusion. According to the information available, Cuomo refused to apologize because it was the job of journalists to investigate the possible existence of such facts.<sup>872</sup>

642. The Office of the Special Rapporteur is also concerned about other statements made by President Trump, who accused the New York Times of a “virtual act of treason,” after the newspaper reported, based on information provided through various interviews with former and current officials, on the increase in cyberattacks on Russia’s power grid as a warning and deterrent mechanism for its cyber operations. According to information known to the Office of the Special Rapporteur, the newspaper cleared the article beforehand with various national security officials, who reportedly stated that it did not raise any potential national security concerns.<sup>873</sup>

643. Against this backdrop of stigmatizing statements, President Trump’s supporters have also been hostile to the media he publicly disparages, particularly against CNN. On June 18, 2019, during the rally to launch President Donald Trump’s re-election campaign in Orlando, Florida, he reportedly encouraged the crowd, which began to shout “CNN sucks!” The President once again said, “There is a lot of fake news there in the back,” pointing at the members of the press covering the event. After six minutes of coverage, and after the anti-CNN chants, the network cut away from the rally and began to analyze the event and report other news.<sup>874</sup>

644. In a joint press release, the UN and IACHR Special Rapporteurs “urged [President Trump] and his administration to cease efforts to undermine the media’s role of holding government accountable, honest and transparent,” asserting that “these attacks run counter to the country’s obligations to respect press freedom and international human rights law.”<sup>875</sup>

645. It is legitimate for politicians and public officials to criticize, correct, or object to specific media reporting, but when doing so they should always be careful to ensure that their comments are accurate, avoid

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<sup>867</sup> Trump stated: “Get rid of them. Fake news is a great term, isn’t it? You don’t have this problem in Russia but we do,” Trump said. Putin replied in English: “We also have. It’s the same.” The Guardian. June 28, 2019. [Trump jokes to Putin they should ‘get rid’ of journalists](#). Global News. June 28, 2019. [Trump joked to Putin about getting ‘rid of’ journalists- a look at how they treat media](#).

<sup>868</sup> Real Clear Politics. July 13, 2018. [Trump Refuses Question From CNN’s Jim Acosta: ‘CNN Is Fake News’](#)

<sup>869</sup> “It’s truly incredible that shows like Saturday Night Live, not funny/no talent, can spend all of their time knocking the same person (me), over & over, without so much of a mention of ‘the other side,’” “Like an advertisement without consequences. Same with Late Night Shows .....” Trump then suggested that the Federal Election Commission or Federal Communications Commission “look into this.”

“There must be Collusion with the Democrats and, of course, Russia! Such one-sided media coverage, most of it Fake News”. Cuenta Oficial de Twitter de Donald J. Trump @realDonaldTrump. 17 de marzo de 2019. CNN. 17 de marzo de 2019. [Trump’s ‘SNL’ attack crosses the line](#).

<sup>870</sup> “Nothing funny about tired Saturday Night Live on Fake News NBC! Question is, how do the Networks get away with these total Republican hit jobs without retribution? Likewise, for many other shows? Very unfair and should be looked into,” Trump wrote. “This is the real Collusion!” Twitter account of Donald J. Trump @realDonaldTrump. February 17, 2019. New York Post. March 17, 2019. [Trump rages against SNL-despite it being a rerun](#). The Hill. March 17, 2019. [Trump criticizes ‘Saturday Night Live’ after show airs rerun](#).

<sup>871</sup> Cuenta Oficial de Twitter de Donald J. Trump @realDonaldTrump. 26 de marzo de 2019. Fox News. 26 de marzo de 2019. [‘Trump turns up heat on media after Mueller report, renews ‘Enemy of the People’ label’](#). Politico. 26 de marzo de 2019. [Trump: Media disgraced ‘all over the world’ following Mueller revelations](#).

<sup>872</sup> Newsmax. March 25, 2019. [‘Giuliani demand for apology rejected by CNN’s Chris Cuomo’](#). Foxnews. March 25, 2019. [Giuliani blasts CNN during heated interview: ‘This network should apologize’](#). AP News. March 25, 2019. [‘Media takes heat following Mueller conclusions’](#).

<sup>873</sup> Twitter account of Donald J. Trump @realDonaldTrump. June 15, 2019. See also, The Week. June 16, 2019. [Trump calls report on U.S. cyber attacks a ‘virtual act of treason’](#). NBC News. June 16, 2019. [New York Times slams Trump: ‘Accusing the press of treason is dangerous’](#). Washington Examiner. June 20, 2019. [Trump ‘crossed a dangerous line’ accusing the New York Times of treason, Publisher says](#).

<sup>874</sup> The Hill. June 18, 2019. [CNN cuts away from Trump rally after crowd chants ‘CNN sucks’](#). The Daily Beast. June 18, 2019. [CNN cuts away from Trump rally after ‘CNN sucks’ chant breaks out](#).

<sup>875</sup> IACHR. August 2, 2018. Joint Press Release 170/18. [Trump attacks on the media violate basic norms of press freedom, human rights experts say](#).

stigmatizing and discrediting the media, and not threaten journalists or undermine respect for the independence of the media.<sup>876</sup>

### E. Subsequent liability

<sup>646</sup> The Office of the Special Rapporteur has received information about a number of civil lawsuits against journalists or media outlets seeking substantial amounts of civil damages. For instance, Representative Devin Nunes sued Twitter and three of the platform's users for \$250 million, alleging that Twitter has allowed attacks by various platform users that amount to a coordinated defamation campaign against him; the tweets in question included criticism of the congressman and accusations of criminal conduct.<sup>877</sup> Representative Nunes also filed a \$435 million defamation lawsuit against CNN on December 3, 2019, alleging that the network falsely reported that he had travelled to Vienna in 2018 to "dig up dirt on former Vice President Joseph Biden."<sup>878</sup> A senior Trump staffer also sued Politico for \$25 million over the publication of two public interest articles on the president's interaction with Ukraine, which the official said disparaged his honesty and integrity.<sup>879</sup> In addition, lawyers for President Trump and his presidential re-election campaign threatened in a letter to sue CNN for its allegedly unfair coverage of Trump; however, no lawsuit was filed. Similarly, in August 2019, the U.S. Court of Appeals for the Second Circuit allowed former Republican candidate Sarah Palin to sue the New York Post over an editorial linking one of her political action committee ads to a mass shooting in 2011 that seriously injured then-Arizona Congresswoman Gabby Giffords. The newspaper quickly issued a correction acknowledging that no link had been established between Palin's ad and the shooting.<sup>880</sup>

<sup>647</sup> The IACHR and its Office of the Special Rapporteur have established that while civil proceedings as a mechanism for subsequent liability constitute measures less restrictive of freedom of expression to redress alleged harm, they must meet the strict conditions derived from Article 13.2 of the American Convention.<sup>881</sup> It must also be recalled that the fear of a disproportionate civil penalty may be equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to compromise the personal and family life of an individual who accuses a public official, with the clear and very negative result of self-censorship, both of the affected party and of other potential critics of the actions of a public official.<sup>882</sup>

### F. Publication of classified information and whistleblowers

<sup>648</sup> The Office of the Special Rapporteur notes that allegations against whistleblowers under the Espionage Act and other laws continued throughout 2019. An employee of the Internal Revenue Service (IRS) was accused of leaking confidential government reports to a lawyer and a reporter, which allegedly described financial transactions made by former President Trump's personal attorney, Michael Cohen, according to court documents released on February 21, 2019.<sup>883</sup> On May 9, 2019, an indictment was unsealed against former intelligence analyst Daniel Everette Hale, who was arrested for allegedly leaking classified information to a journalist about drones and other anti-terrorism measures. He was accused of printing a number of highly classified documents related to anti-terrorist operations while working as a contractor for the National Geospatial Intelligence Agency, or NGA.<sup>884</sup> Similarly, on October 9, 2019, anti-terrorism analyst Henry Kyle Freses was arrested for allegedly leaking classified information about a foreign country's weapons systems to two journalists. The analyst was charged under the Espionage Act with two counts of willful transmission of national defense information.<sup>885</sup>

<sup>649</sup> On April 11, 2019, Julian Assange was arrested by the Metropolitan Police in London, UK, pursuant to a warrant issued for his arrest for violating his bond conditions when he entered the Ecuadorian embassy in London to avoid extradition to Sweden in 2012 on charges of sexual assault and rape; as well as a U.S. extradition request initially filed for the charge of conspiracy to commit computer intrusion in connection with the release

<sup>876</sup> Office of the Special Rapporteur for Freedom of Expression. May 2, 2018. [Joint Declaration on Media Independence and Diversity in the Digital Age](#).

<sup>877</sup> PEN America. March 21, 2019. [Lawsuit filed by Representative Devin Nunes \(R-CA\) suing Twitter for defamation is an attempt to silence criticism, restrict online speech](#). First Amendment Watch at New York University. March 20, 2019. CA Rep. [Devin Nunes Sues Twitter and Three Users for \\$250 Million Over Defamation, Negligence and Conspiracy](#).

<sup>878</sup> The Washington Times. December 3, 2019. [Devin Nunes slaps CNN with \\$435 million defamation lawsuit](#).

<sup>879</sup> First Amendment Watch at New York University. November 19, 2019. [Trump Staffer Files \\$25 Million Defamation Lawsuit Against Politico](#).

<sup>880</sup> The Hollywood Reporter. August 6, 2019. [Sarah Palin Defamation Lawsuit against N.Y. Times Revived by Appeals Court](#).

<sup>881</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Annual Report 2009. Chapter III \(Inter-American Legal Framework of the Right to Freedom of Expression\)](#). OEA/Ser.L/V/II Doc. 51. December 30, 2009. Para. 110.

<sup>882</sup> I/A Court H. R. *Case of Tristán Donoso v. Panama*, *supra*. Para. 129, and *Case of Fontevecchia and D'Amico v. Argentina*, *supra*. Para. 74.

<sup>883</sup> The United States Department of Justice. February 21, 2019. [IRS Employee Charged with Unlawful Disclosure Of Suspicious Activity Reports](#). The Washington Post. February 21, 2019. [IRS analyst charged with leaking financial documents on Michael Cohen](#).

<sup>884</sup> The United States Department of Justice. May 9, 2019. [Former Intelligence Analyst Charged with Disclosing Classified Information](#). NPR. May 9, 2019. [U.S. Charges Former Intelligence Analyst With Leaking Classified Data To Reporter](#).

<sup>885</sup> The United States Department of Justice. October 9, 2019. [Defense Intelligence Agency Employee Arrested for Leaking Classified Information to Journalists](#). The Wall Street Journal. October 9, 2019. [Counterterrorism Analyst Arrested for Leaking to Two Journalists](#).

of classified military information obtained by whistleblower Chelsea Manning. Julian Assange, who is the founder of Wikileaks, had been residing in the Ecuadorian embassy in London since June 2012. He was arrested after Ecuador withdrew the diplomatic asylum granted to him in August 2012.<sup>886</sup>

650. On May 1, 2019, the Wikileaks founder was sentenced by a British court to 50 weeks in prison for violating the terms of his bail and failing to voluntarily surrendering to the authorities.<sup>887</sup> Also, as mentioned earlier, the first charge brought by the United States concerned the conspiracy to crack a password hash stored on Department of Defense computers connected to a United States government network used for classified documents and communications (Secret Internet Protocol Router Network (SIPRNet))<sup>888</sup>.

651. However, on May 23 the United States government filed a superseding indictment that included 17 additional charges under the Espionage Act. The new charges focus on the role the Wikileaks founder played in obtaining and publishing secret military and diplomatic documents in 2010, information obtained by former US Army intelligence analyst Chelsea Manning. According to the Justice Department statement, the charge against Assange alleges that he conspired with Manning to illegally obtain and then disclose classified documents related to national defense, conspired with her, aided and abetted her, and received and attempted to receive information with reason to believe that those materials would be obtained unlawfully. The charges contained in the indictment allege that Assange “solicited classified information” and “actively encouraged” Manning to provide more information. The Office of the Special Rapporteur notes that, while most of the new charges related to obtaining secret documents, some of the charges focused on the publication of certain documents that revealed the names of journalists, religious leaders, dissidents, and people in dangerous locations such as war zones who provided information to the United States.<sup>889</sup> The US government formally requested Assange's extradition in June 2019.<sup>890</sup> The United Kingdom's Home Secretary Sajid Javid approved the extradition request; however, the final decision rests with the British courts, who will hold a hearing on the matter in February 2020.<sup>891</sup>

652. Although the sexual assault charges were time-barred, the rape investigation against Julian Assange was reopened in May 2019, so the extradition order to Sweden was upheld.<sup>892</sup> However, in November 2019 the rape investigation was closed, as the prosecutor found that “the evidence ha[d] weakened considerably due to the long period of time that has elapsed since the events in question.”<sup>893</sup>

653. Based on the new charges under the Espionage Act, the Office of the Special Rapporteur expresses its concern over the precedent that this type of charge could set for the exercise of freedom of expression by journalists and persons engaged in journalistic activities, as well as for the search for information and its publication in investigations of public interest, particularly with regard to national security. The actions and activities that support the charges described refer to activities that are normally carried out in investigative journalism and by the traditional media, which seek and publish information even if it is secret or confidential, with the respective protection of their sources.

654. In a [2010 Joint Statement](#), the IACHR and UN Special Rapporteurs said that, “government ‘whistleblowers’ releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.” Other individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information,

<sup>886</sup> CNN. April 11, 2019. [Police arrest Julian Assange at Ecuadorian Embassy in London](#). The New York Times. April 11, 2019. [Julian Assange Arrested in London as U.S. Unseals Hacking Conspiracy Indictment](#). The Guardian. April 11, 2019. [Julian Assange faces US extradition after arrest at Ecuadorian embassy](#).

<sup>887</sup> Reuters. May 1, 2019. [Julian Assange sentenced to 50 weeks in British jail for skipping bail](#). CNN. May 1, 2019. [Julian Assange gets almost a year in UK prison for skipping bail](#).

<sup>888</sup> The New York Times. April 11, 2019. [Julian Assange Arrested in London as U.S. Unseals Hacking Conspiracy Indictment](#). The United States Department of Justice. April 11, 2019. [WikiLeaks Founder Charged in Computer Hacking Conspiracy](#).

<sup>889</sup> The United States Department of Justice. May 23, 2019. [WikiLeaks Founder Julian Assange Charged in 18-Count Superseding Indictment Charges Related to Illegally Obtaining, Receiving and Disclosing Classified Information](#).

Julian Assange 18-count indictment Available at: <https://www.justice.gov/opa/press-release/file/1165556/download>. See also, CNN. May 2, 2019. [WikiLeaks founder indicted on Espionage Act charges, raising issue of press freedoms](#). NBC News. May 23, 2019. [WikiLeaks co-founder Julian Assange indicted on 17 new charges under Espionage Act](#).

<sup>890</sup> El Comercio. [June 10, 2019. EE.UU. solicitó la extradición de Julian Assange](#). Reuters. June 11, 2019. [U.S. formally asks UK to extradite WikiLeaks' Assange](#).

<sup>891</sup> Reuters. June 14, 2019. [UK court sets Assange U.S. extradition hearing for February 2020](#). The Verge. June 14, 2019. [Julian Assange's extradition to the US will be decided by the UK courts in 2020](#).

<sup>892</sup> CNN. May 13, 2019. [Sweden re-opens Julian Assange rape investigation](#). BBC News. May 13, 2019. [Julian Assange: Sweden reopens rape investigation](#).

<sup>893</sup> CNN. November 19, 2019. [Sweden drops investigation into Julian Assange over rape allegation](#). BBC News. November 19, 2019. [Julian Assange: Sweden drops rape investigation](#).

regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information.<sup>894</sup>

### **G. Confidentiality of sources**

655. The Office of the Special Rapporteur observes with concern the various subpoenas issued to journalists and media outlets, given the implications for the protection and confidentiality of sources. According to the U.S. Press Freedom Tracker, at least 20 journalists have been subpoenaed or ordered to hand over their journalistic material.<sup>895</sup> For instance, a Nevada judge ordered an online journalist to reveal his sources on the grounds that he did not work for a print publication and therefore did not qualify as a journalist.<sup>896</sup> In addition, *BuzzFeed* received three subpoenas to “produce documents, information, or objects or to permit inspection of premises in a civil action,” in the defamation case brought by speleologist Vernon against Tesla CEO Elon Musk, alleging that the tech executive repeatedly labeled him a pedophile without evidence on Twitter and in communications with *BuzzFeed* senior tech journalist Ryan Mac, the latter of which were published by the outlet.<sup>897</sup>

656. The Office of the Special Rapporteur also is concerned about the raid on the home and office of journalist Bryan Carmody, as well as the seizure of electronic devices, equipment, and journalistic materials (notes and documents). According to public information, on May 10, 2019, San Francisco Police officers raided Bryan Carmody’s home, after using a sledgehammer to try to break down his front door. The journalist was arrested and handcuffed during the event. The officers seized phones, computers, tablets, and notebooks, searched his independent news organization, North Bay News, and confiscated a USB drive, CDs, and a police report on the death of San Francisco Public Defender Jeff Adachi.

657. The search and seizure was carried out because the freelance journalist had obtained a confidential police report that included information about the death of public defender Jeff Adachi in February of this year and refused to reveal his source to the authorities.<sup>898</sup> Although the police had a warrant, the Society of Professional Journalists of Northern California stressed that the statute governing search warrants expressly prohibits the police from seizing items protected by the “shield law,” which protects journalists from being held in contempt for refusing to reveal their sources.<sup>899</sup> Two days after the raid and initial statements by the San Francisco police chief implying that it was carried out to investigate the journalist’s alleged involvement in a criminal conspiracy to steal the confidential police report and sell it to local news stations, the police chief offered an apology. The journalist was also informed that the seized items would be returned to him.<sup>900</sup> On July 18, 2019, a San Francisco Superior Court Judge quashed the search warrant and held that it should never have been issued, as the journalist was protected under the “shield law.” He ordered the destruction of the evidence obtained and prohibited its use. The judge who had originally issued the search warrant noted that she had not been informed that Carmody was a journalist.<sup>901</sup>

658. The Office of the Special Rapporteur also notes, on the basis of publicly available information, that former U.S. Army intelligence analyst Chelsea Manning was reportedly deprived of her liberty after being held in civil contempt for refusing to testify before a grand jury and answer questions about the government’s investigation into the actions of Julian Assange and Wikileaks. The whistleblower, who provided confidential information to the founder of Wikileaks, was arrested in March and released in May 2019. However, she was again taken into custody for failing to comply with the newly issued subpoena and for refusing to answer questions about the information provided to Assange.<sup>902</sup>

<sup>894</sup> Office of the Special Rapporteur for Freedom of Expression. December 6, 2004. [Joint Declaration on Access to Information and on Secrecy Legislation](#). “Whistleblowers” are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy.

<sup>895</sup> U.S. Press Freedom Tracker. No date. Available at: [https://pressfreedomtracker.us/subpoena/?date\\_lower=2019-01-01&date\\_upper=2019-12-18](https://pressfreedomtracker.us/subpoena/?date_lower=2019-01-01&date_upper=2019-12-18)

<sup>896</sup> The Nevada Independent. March 6, 2019. [Shield law does not protect online publishers without press association membership, Nevada judge rules](#). Reno Gazette Journal. March 7, 2019. [Nevada judge rules online journalist must reveal sources, not protected by media shield law](#).

<sup>897</sup> U.S. Press Freedom Tracker. October 1, 2019. [BuzzFeed receives third subpoena in ongoing Unsworth-Musk defamation lawsuit](#).

<sup>898</sup> Los Angeles Times. May 13, 2019. [Raid on San Francisco reporter’s home condemned as an attack on 1st Amendment](#). CNN. May 27, 2019. [San Francisco police chief says raid on journalist’s home may have violated California shield law](#).

<sup>899</sup> The Society of Professional Journalists Northern California. May 12, 2019. [SPJ NORCAL condemns search of freelancer Bryan Carmody as attack on first amendment](#). CNN. May 27, 2019. [San Francisco police chief says raid on journalist’s home may have violated California shield law](#).

<sup>900</sup> CNN. May 27, 2019. [San Francisco police chief says raid on journalist’s home may have violated California shield law](#). Reporters Without Borders (RSF). Weekly Address, May 20-26, 2019. [San Francisco police union calls for department chief’s resignation over controversial raid on journalist’s home](#).

<sup>901</sup> San Francisco Examiner. July 18, 2019. [Judge quashes warrant to search SF journalist’s phone records](#). ABC 7 News. July 19, 2019. [Journalist Bryan Carmody has victory in court over San Francisco police in Jeff Adachi death investigation](#).

<sup>902</sup> The Guardian. April 22, 2019. [Chelsea Manning to remain in jail after appeals court denies bail request](#). WUSA9. May 10, 2019. [Chelsea Manning released from jail in Virginia after being held on contempt charge](#). The Washington Post. May 16, 2019. [Chelsea Manning ordered back to jail after again refusing to testify in Wikileaks case](#). Out. July 30, 2019. [Chelsea Manning Is Still In Jail](#). AP News. August 7, 2019. [Chelsea Manning gets credit for time served in contempt case](#). According to the latter, a judge decided that Manning cannot be detained for more than 18 months for civil disobedience.

659. The Office of the Special Rapporteur expresses its concern about these situations and recalls that any measure to seize journalistic material that requires revealing sources or subpoenaing journalists as witnesses has a restrictive impact on freedom of expression. According to Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

#### H. Censorship and revocation of press credentials

660. The Office of the Special Rapporteur has noted that in 2019 the White House established more stringent requirements for the granting of certain types of press credentials and has maintained restrictions on press coverage. The White House revoked the credentials of several members of the Washington D.C. press corps (known as "hard pass" credentials that allow the highest level of access to the White House) because they did not meet new requirements.<sup>903</sup> Several correspondents who had held such passes for years were unable to renew them, and had to apply for "exceptions" to access them or accept six-month passes, which allow more limited access.<sup>904</sup> The affected correspondents interpreted these measures as yet another way of limiting the press freedom of journalists who are critical of President Trump's administration.

661. Also, on August 2, CNN analyst Brian Karem's credentials were suspended due to an altercation with former Trump aide Sebastian Gorka in the White House Rose Garden around a social media event convened by the President and attended by his loyal supporters. However, in September, a federal judge ordered the White House and the Press Secretary to return the journalist's credentials. The Court found that although the credentials were suspended temporarily, doing so irreparably harmed the journalist's First Amendment rights.<sup>905</sup> The Department of Justice appealed the decision.<sup>906</sup>

662. In addition, Trump's campaign stated that it will not grant credentials to *Bloomberg News* journalists for demonstrations or other campaign events in connection with the official entry into the 2020 presidential race of the news organization's owner, Democrat Michael Bloomberg. This is because its editor-in-chief said that while *Bloomberg News* will continue to report on the 2020 campaign, it will "continue its tradition" of not "investigating" its owner, his family, or his foundation, and that it will extend the same policy to the other Democratic primary competitors. However, *Bloomberg News* noted that it will continue to investigate the current administration of President Trump.<sup>907</sup> The union representing Bloomberg journalists strongly opposed the decision and called for it to be rescinded,<sup>908</sup> while Democratic candidate and network owner Michael Bloomberg said his news organization's employees needed to accept certain "restrictions and responsibilities" when working for the organization.<sup>909</sup>

663. On September 17, 2019, the United States filed a civil lawsuit against Edward Snowden, a former Central Intelligence Agency (CIA) employee and National Security Agency (NSA) contractor and whistleblower, due to the publication of his memoir entitled *Permanent Record*. The lawsuit alleges that Snowden published his book without submitting it to the agencies for pre-publication review, in violation of the non-disclosure agreements that he signed. The Department of Justice said that the lawsuit did not seek to "stop or restrict the publication or distribution of *Permanent Record*. Rather, [...] the government [sought] to recover all proceeds earned by Snowden because of his failure to submit his publication for pre-publication review in violation of his alleged contractual and fiduciary obligations."<sup>910</sup> Edward Snowden formally responded to the lawsuit on November 20, 2019,<sup>911</sup> and reported on his Twitter page that the U.S. government also sued his book's publisher for failing to give the agencies in question an opportunity to review the book.<sup>912</sup> The Office of the Special Rapporteur learned that agencies like the CIA and the Office of the Director of National Intelligence have a "prepublication review system," whereby current and former agency employees as well as military personnel must submit any writings

<sup>903</sup> The new requirement to be able to access the *hard pass* is that journalists should have been present at the White House for at least 90 days within a 180 day period.

<sup>904</sup> Columbia Journalism Review. May 9, 2019. [White House revokes press passes for dozens of journalists](#); Huffpost. May 9, 2019. [White House rescinds some press passes as journalists slam new attack on media](#).

<sup>905</sup> The Guardian. August 17, 2019. [Trump suspends CNN analyst's credentials in another shot at the press](#); CNN Business. September 4, 2019. [Judge rules White House must give Playboy columnist Brian Karem his press pass back](#).

<sup>906</sup> Reporters Without Borders (RSF). Weekly Address, September 23-29, 2019. [Trump administration appeals decision in Brian Karem's press pass case](#). Deadline. September 27, 2019. [White House Appeals Judge's Decision To Restore Brian Karem's Hard Pass](#).

<sup>907</sup> CNN Business. November 26, 2019. ['Everybody's nightmare come true': Bloomberg reporters grapple with covering Bloomberg campaign](#). BBC News. December 2, 2019. [Trump campaign denies press credentials to Bloomberg News](#). The Guardian. December 2, 2019. [Trump campaign will deny press credentials to Bloomberg News](#).

<sup>908</sup> The Hill. November 25, 2019. [Bloomberg union calls on company to rescind decision to not investigate 2020 presidential candidates](#). National Review. November 26, 2019. [Bloomberg Journalists' Union demands management lift ban on investigating Dem 2020 candidates](#).

<sup>909</sup> AP News. December 6, 2019. [Bloomberg: His News reporters need to accept restrictions](#). Fox News. December 7, 2019. [Bloomberg dismisses complaints from his outlet's reporters on 2020 coverage: 'Your paychecks' come with 'restrictions and responsibilities'](#).

<sup>910</sup> The United States Department of Justice. September 17, 2019. [United States Files Civil Lawsuit against Edward Snowden for Publishing a Book in Violation of CIA and NSA Non-Disclosure Agreements](#). The Guardian. September 17, 2019. [US government files civil lawsuit against Snowden over publication of memoir](#).

<sup>911</sup> First Amendment Watch at New York University. December 2, 2019. [Snowden Responds to DOJ Lawsuit, Argues Government Selectively Enforces Prepublication Review Rules](#).

<sup>912</sup> Twitter account of Edward Snowden @Snowden. [September 18, 2019](#).

about their past work for agency review and approval prior to publication. These practices prompted the Knight First Amendment Institute at Columbia University and the ACLU to file a civil suit against those agencies, alleging that the above practice is unconstitutional because it violates the Fifth and the First Amendments to the Constitution, constituting prior censorship.<sup>913</sup>

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

665. The Special Rapporteurs of the UN and IACHR and the OSCE Representative stated in a 2003 Joint Declaration that, "Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and nondiscriminatory criteria published in advance."<sup>914</sup>

666. The Inter-American Court has also held that, "With regard to the accreditations or authorizations for the written media to participate in official events, which imply a possible restriction on the exercise of the freedom to seek, receive, and impart information and ideas of any nature, it must be proven that their application is legal, it seeks a legitimate objective, and it is necessary and proportional in relation to the objective sought within a democratic society. The requirements for the accreditation must be clear, objective, and reasonable, and their application must be transparent. It [is incumbent upon] the State to prove that it has complied with the aforementioned requirements upon establishing requirements to access the information under its control."<sup>915</sup>

667. Likewise, in electoral contexts, a healthy democratic debate requires the broadest possible circulation of ideas, opinions, and information about candidates, their parties and their platforms in the run-up to an election, primarily through the media, the candidates, and those who wish to speak out. Everyone must be allowed to question and investigate the competence and suitability of the candidates, and to disagree with and compare proposals, ideas and opinions, so that the electorate may form its opinion in order to vote.<sup>916</sup>

## I. Access to public information and restrictions on press coverage

668. The Office of the Special Rapporteur expresses its concern over the restrictions on access to public information derived from a recent judgment of the U.S. Supreme Court. On June 24, 2019, in *Food Marketing Institute v. Argus Leader Media*,<sup>917</sup> the Supreme Court decided, by a 6-3 vote, to expand the definition of the term "confidential," restricting access by journalists and the media to information held by the government, as documents considered confidential are exempted from disclosure under the Freedom of Information Act (FOIA).

669. A media outlet submitted a request for information to the United States Department of Agriculture (USDA), seeking the names and addresses of all stores participating in the federal Supplemental Nutrition Assistance Program (SNAP), as well as store-by-store data on annual SNAP food stamp redemption for fiscal years 2005-2010. The USDA denied the request, invoking FOIA Exemption 4, which protects against disclosure of "trade secrets and commercial or financial information obtained from a person and privileged or confidential," 5 U.S.C. 552(b)(4). The Supreme Court found that when commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is "confidential" and fits within Exemption 4. The Supreme Court therefore held that the definition of "confidential" should cover all information intended to be secret and departed from the previous definition, in force since a 1974 ruling, which included as confidential documents those that would cause "substantial harm" if made public.<sup>918</sup>

670. The Office of the Special Rapporteur also learned that the Baltimore City Circuit Court issued an order on April 24 of this year, denying journalists access to courtroom audio recordings. Independent journalist Justine Barron, who conducts investigations into the city's police department, requested—and was denied—access to recordings of a hearing, even though in Maryland anyone can obtain such audio recordings or transcripts.

<sup>913</sup> ACLU. April 2, 2019. [ACLU and Knight Institute challenge constitutionality of far-reaching government censorship system](#). First Amendment Watch at New York University. April 17, 2019. [Prepublication Review: An "Unconstitutional Censorship" of Former Intelligence Officials?](#)

<sup>914</sup> Office of the Special Rapporteur for Freedom of Expression. December 18, 2003. [Joint Declaration on Regulation of the Media, Restrictions on Journalists, and Investigating Corruption](#).

<sup>915</sup> I/A Court H. R., *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, para. 93; *Case of Ríos et al v. Venezuela*. Judgment of January 28, 2009. Serie C No. 194, para. 375; *Case of Perozo et al v. Venezuela*. Judgment of January 28, 2009. Serie C No. 195, para. 346.

<sup>916</sup> I/A Court H. R. *Case of Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Serie C No. 111. Para. 90. IACHR. Office of the Special Rapporteur for Freedom of Expression. May 15, 2009. [Joint Statement On The Media And Elections](#).

<sup>917</sup> Supreme Court of the United States. *Food Marketing Institute v. Argus Leader Media*. 588 U.S. (2019). June 24, 2019.

<sup>918</sup> CNN. June 24, 2019. [Supreme Court creates new limits to FOIA disclosure](#). USA Today. June 27, 2019. [The Supreme Court rewrote FOIA into the Freedom FROM Information Act](#).



According to the court's order, only the parties to the proceedings and/or their legal representatives would be allowed access to courtroom audio recordings, although the journalist would be able to listen to them at the courthouse. The administrative order was invalidated by the Court of Appeals, which found that the order conflicted with a Maryland rule that created a presumption of public access to copies of courtroom audio recordings.<sup>919</sup>

671. The Office of the Special Rapporteur also underscores its special concern over the case of professor, researcher, and human rights advocate Angelina Snodgrass Godoy of the University of Washington (a public university). As part of the work the professor is doing on U.S. immigration policy and the defense of migrants' rights through the university's Human Rights Center (UWCHR)—in particular, an academic investigation of public interest into the potential violation of various rights of migrant children—she reportedly made several requests for access to information contained in the records of Cowlitz County, in the State of Washington. The purpose of the request was to obtain accurate information on the number of minors detained in the county's juvenile facility, the length of their detention, and their complete files, among other documents. It was made noting that certain personal information of minors could be redacted to protect their privacy.

672. Even though Cowlitz county provided incomplete information, despite several requests, the county itself and the Youth Services Center filed a motion for declaratory judgment in state court against the University of Washington, and Professor Godoy personally, in order to obtain a declaratory judgment establishing that the county has no independent authority to release judicial records without clear statutory exemption or without express written authority from the Cowlitz County Superior Court, among other requests. ICE presented a motion to intervene in the Cowlitz County case and seek its removal to federal court. Because the juvenile facility is one of three in the county authorized to hold unaccompanied minors for more than 72 hours, and therefore has a contract with Immigration and Customs Enforcement (ICE), the professor filed a FOIA request directly with ICE. The agency replied that this information was confidential under federal law, despite state regulations to the contrary. This refusal to provide the information has hindered the professor's investigative work regarding a juvenile detention center that reportedly holds migrant children without any supervision and prompted ICE to file the aforementioned motion seeking to have the case heard by a federal court. The Office of the Special Rapporteur stresses the importance of academic freedom, which depends on the exercise of various rights, including the right to freedom of expression and access to information; these rights are essential for informing others about significant public interest issues such as those described.<sup>920</sup>

673. In addition, a number of media outlets in various parts of the country were kept from covering events.<sup>921</sup> For instance, on February 27, the White House barred four members of the U.S. press (reporters from the Associated Press, Reuters, Bloomberg News, and the Los Angeles Times) from covering a dinner between President Donald Trump and North Korean leader Kim Jong-un. The journalists are part of the White House press pool that traveled to cover the events held in connection with the meeting. Only photographers and news camera crews were allowed access, due to "sensitivities over shouted questions in the previous sprays," according to then White House Press Secretary, Sarah Huckabee Sanders. According to publicly available information, while the White House's practice has been to defend the rights to freedom of expression and access to information of journalists covering the President's events while traveling abroad, this administration has, by contrast, limited access.<sup>922</sup>

674. The Office of the Special Rapporteur has also learned of other cases such as the barring of reporters from asylum hearings held at the border;<sup>923</sup> the exclusion of a reporter who initially had been invited to a border tour by the Department of Homeland Security;<sup>924</sup> the barring of media by the Mayor's communications team from attending a public meeting in Newark, New Jersey, on the city's lead contamination crisis;<sup>925</sup> the removal of reporters from the Kansas Senate, who were also threatened with having their press credentials revoked after 9 people began a protest during a hearing on Medicaid expansion,<sup>926</sup> among others.

675. In addition, the Office of the Special Rapporteur notes and expresses its concern that daily press briefings at the White House have not occurred since March 11, 2019 and that, according to the White House

<sup>919</sup> U.S. Press Freedom Tracker. May 7, 2019. [Baltimore court denies reporters access to courtroom audio recordings](#). The Baltimore Sun. September 30, 2019. [Recordings of court hearings must be available to all who ask, appeals court rules](#). The Daily Record. October 1, 2019. [Baltimore judge's order restricting court recording access is invalidated](#).

<sup>920</sup> CNN. Anderson Cooper Full Circle. October 24, 2019. [Human rights expert discovers secretive ICE detention centers](#). Kiro 7. October 24, 2019. [UW professor demanding info from ICE about children held in Cowlitz County](#).

<sup>921</sup> Several cases of denial of access to coverage of events by the media have been brought to the attention of the Office of the Special Rapporteur. See <https://pressfreedomtracker.us/denial-access/>

<sup>922</sup> Reuters. February 27, 2019. [White House bars four reporters from Trump-Kim dinner](#). Público. February 27, 2019. [La Casa Blanca excluye a cuatro periodistas de la cobertura de una cena entre Trump y Kim Jong-un](#). U.S. Press Freedom Tracker. March 4, 2019. [White House bars four print reporters from covering dinner between U.S., North Korea leaders](#).

<sup>923</sup> U.S. Press Freedom Tracker. September 23, 2019. [Journalists barred from asylum hearings held in tent courts at border](#).

<sup>924</sup> U.S. Press Freedom Tracker. September 23, 2019. [BuzzFeed says its immigration reporter was excluded from DHS border tour](#).

<sup>925</sup> NJTV News. August 28, 2019. [In closing Newark meeting, Baraka administration crosses swords with media again](#). TAPinto. August 28, 2019. [Baraka Administration to Allow Press Access to Lead Water Meetings](#). U.S. Press Freedom Tracker. September 12, 2019. [Media barred from public lead water crisis meeting in New Jersey](#).

<sup>926</sup> U.S. Press Freedom Tracker. June 4, 2019. [Reporters removed from Kansas Senate floor, threatened with loss of press passes](#).

Press Secretary, there are no plans to reinstate them any time soon. The administration stopped holding regular press briefings after President Trump accused certain media outlets of unfair coverage.<sup>927</sup>

676. Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." In keeping with the principle of maximum disclosure, the law should ensure the broadest and most effective access to public information possible, and exceptions should not become the general rule in practice. Furthermore, exceptions should be interpreted narrowly and any doubts should be resolved in favor of transparency and access.

## **J. Internet and freedom of expression**

677. On May 20, 2019, the House of Representatives passed a bill establishing the importance of the right to Internet access for all the world's people in order to catalyze innovation, spur economic growth and job creation, reduce poverty and gender inequality, and guarantee human rights, in particular to promote free speech, democracy, and good governance. The purpose of the bill is to ensure the effective use of United States foreign assistance resources to encourage the efforts of developing countries to improve and secure mobile and fixed access to the Internet, with a differential focus on the most vulnerable groups who have the least access, including women.<sup>928</sup>

678. The Office of the Special Rapporteur has maintained that the principle of universal Internet access "refers to the need to guarantee connectivity and access to the Internet infrastructure and other ICT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State's territory."<sup>929</sup> In addition, the joint declaration Twentieth Anniversary of the Joint Declaration: Challenges to Freedom of Expression in the Next Decade, established that "the right to access and use the Internet [should be understood] as a human right [and] an essential condition for the exercise of the right to freedom of expression."<sup>930</sup>

679. According to publicly available information, on October 24, 2019 the United States Senate passed bipartisan legislation intended to help further understand the risks posed by "deepfake" videos, or those altered by artificial intelligence to change the meaning or reality of the video. The "Deepfake Report Act of 2019" (S. 2065)<sup>931</sup> was passed by the Senate and sent to the House of Representatives for consideration. The Act would require the Department of Homeland Security to publish an annual report on the use of deepfake technology that would be required to include an assessment of how both foreign governments and domestic groups are using deepfakes to harm national security.<sup>932</sup>

680. The discussion of deepfake videos grew exponentially after the release of a slowed-down video of Speaker of the House Nancy Pelosi speaking at a Center for American Progress event. The video portrayed the California Democrat as slurring her words, stuttering, in apparent drunkenness or poor health. The video went viral on social media, as it circulated on Facebook, YouTube, and Twitter and was shared by President Trump and Rudy Giuliani on Twitter. It was viewed more than 2 million times on the Facebook page of Politics WatchDog. YouTube removed the video from its platform, alleging that it violated its content policy, but Facebook and Twitter did not.<sup>933</sup> Facebook decided to allow the video to stay up, and said that it would only reduce its visibility on user news feeds with a link to a third-party fact checking site stating that the video was

<sup>927</sup> U.S. Press Freedom Tracker. January 23, 2019. [Trump stops regular press briefings, citing unfair media treatment](#). CNN. August 28, 2019. [The last 'daily' White House press briefing was 170 days ago](#). Politico. September 23, 2019. [White House press secretary says daily briefings aren't coming back any time soon](#).

<sup>928</sup> United States. Congress (House of Representatives). [H.R. 1359-Digital Global Access Policy Act of 2019 o Digital GAP Act](#). May 20, 2019. The proposal was passed by the House of Representatives and is currently pending Senate approval. ("This bill directs the Department of State to advance U.S. policy to promote public and private investments in secure Internet infrastructure and increase Internet access around the world. The U.S. Agency for International Development and the Peace Corps shall also make efforts to advance such policy. The President shall report to Congress about U.S. efforts to implement the policy, including government efforts to provide technical and regulatory assistance to developing countries and close the gender gap in Internet access").

<sup>929</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. P. 13.

<sup>930</sup> [Twentieth Anniversary of the Joint Declaration: Challenges to Freedom of Expression in the Next Decade](#). July 10, 2019. Adopted 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.

<sup>931</sup> United States. Congress (Senate). [S.2065 - Deepfake Report Act of 2019](#). October 24, 2019.

<sup>932</sup> The Hill. October 25, 2019. [Senate passes legislation to combat 'deepfake' videos](#). The Daily Sentinel. October 28, 2019. [U.S. Senate passes 'deep fake' video bill](#).

<sup>933</sup> The New York Times. May 24, 2019. [Distorted Videos of Nancy Pelosi Spread on Facebook and Twitter, Helped by Trump](#). PolitiFact. May 24, 2019. [Viral video of Nancy Pelosi slowed down her speech](#). Fox 11 News. May 28, 2019. [Pelosi video controversy raises concerns about social media and 2020 campaign](#).

misleading.<sup>934</sup>Nancy Pelosi expressed her disagreement with Facebook’s decision to keep the video despite knowing it was false and stated the following: “We have said all along, ‘poor Facebook, they were unwittingly exploited by the Russians.’I think wittingly, because right now they are putting up something that they know is false. I think it's wrong,” she said, “I can take it ... but [Facebook is] lying to the public.”Pelosi added: “I think they have proven — by not taking down something they know is false — that they were willing enablers of the Russian interference in our election.”<sup>935</sup>

681. The video of Nancy Pelosi sparked harsh criticism of social media’s role in “fake news” and renewed concerns about the role platforms should play in controlling fake content and what consequences—if any—technology companies should face.<sup>936</sup>However, according to the information available to the Office of the Special Rapporteur, only the enactment of the abovementioned legislation is currently under discussion. Also, under Section 230 of the Communications Decency Act-Title V of the Telecommunications Act of 1996, intermediaries are immune from liability for the publication of content posted by others, and there are currently no regulations requiring social networking platforms to remove content of any kind.<sup>937</sup>

682. The Special Rapporteurs of the IACHR, the UN, and the ACHPR and the OSCE Representative established in their 2011 Joint Declaration on Freedom of Expression and the Internet that, “No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so (‘mere conduit principle’).”<sup>938</sup>

683. With respect to intermediary liability, the Special Rapporteurs have said that, “States should not subject Internet intermediaries to mandatory orders to remove or otherwise restrict content except where the content is lawfully restricted in accordance with the standards outlined above. States should refrain from pressuring, punishing or rewarding intermediaries with the aim of restricting lawful content.<sup>939</sup> [...]At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression (which is the case with many of the ‘notice and takedown’ rules currently being applied).”<sup>940</sup>

<sup>934</sup> The Guardian. May 24, 2019. [Facebook refuses to delete fake Pelosi video spread by Trump supporters](#). Huffpost. May 24, 2019. [Facebook Refuses To Delete Fake Nancy Pelosi Video That Makes Her Seem Drunk](#).

<sup>935</sup> KQED News. May 29, 2019. [Nancy Pelosi: Doctored Videos Show Facebook 'Willing Enablers' of Russians in 2016](#). NBC News. May 29, 2019. [Pelosi slams Facebook for refusing to take down doctored videos](#). AP News. May 29, 2019. [Pelosi slams Facebook for not removing altered video](#).

<sup>936</sup> Fox 11 News. May 28, 2019. [Pelosi video controversy raises concerns about social media and 2020 campaign](#). Roll Call. May 28, 2019. [Altered Pelosi videos puts social media in congressional crosshairs](#).

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider” (47 U.S.C. § 230). Fox 11 News. May 28, 2019. [Pelosi video controversy raises concerns about social media and 2020 campaign](#).

<sup>938</sup>Office of the Special Rapporteur for Freedom of Expression. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

<sup>939</sup>Office of the Special Rapporteur for Freedom of Expression. May 4, 2016. [Joint Declaration on Freedom of Expression and Countering Violent Extremism](#).

<sup>940</sup>Office of the Special Rapporteur for Freedom of Expression. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

## 17. GRENADA

684. During 2019, cases of harassment and restrictions on the coverage of complaints made by communicators have been reported in Grenada. An example of this is the harassment by government authorities of journalists when asking questions at press conferences, including physical attacks and threats.

### A. Subsequent liability

685. The Minister of Legal Affairs, Kindra Maturine-Stewart, reportedly posted a statement on her personal Facebook page on May 4 saying that she would take legal action against the radio station Vibes FM and its owner, Kimberlain Mills, because of statements made on the show “Hard Talk Unfiltered” on May 2.<sup>941</sup>

686. Kimberlain Mills had reportedly claimed that the government of Grenada deposited EC\$100,000 (approximately US\$37,000) in Maturine-Stewart’s personal bank account in connection with certain projects on the islands of Carriacou and Petite Martinique. The Minister said that “These defamatory statements were no doubt actuated by spite and malice,” and that she had therefore asked her lawyers to take legal action against Kimberlain Mills and the radio station.

687. In 2018, High Court had already ordered that radio station and its owner to publicly apologize for its statements and pay Maturine-Stewart EC\$20,000 (approximately US\$ 7,000) in damages for the harm caused by a similar statement.<sup>942</sup>

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

689. Principle 11 additionally states: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘*desacato* laws,’ restrict freedom of expression and the right to information.”

690. With respect to potential civil liability, the Inter-American Court has held that civil judgments in the area of freedom of expression must be strictly proportionate so as not to have a chilling effect on this freedom, since “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”<sup>943</sup>

691. In addition, in its Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts, the Office of the Special Rapporteur has recommended that States “should not establish new criminal [offenses] to sanction the dissemination of misinformation or false news,” indicating that the introduction of such offenses “could lead the region back to a logic of criminalizing expressions about officials or people involved in matters of public interest and establishing a tool with a strong chilling effect on the dissemination of ideas, criticism, and information for fear of being [prosecuted], which would be particularly restrictive in the context of the electoral contest.” This Office has instead suggested responses that are “non-regulatory in nature” to address the phenomenon of disinformation, seeking to “strengthen the capacities of citizens to distinguish false information from true information.” It has said that, “State actions must be aimed at raising public awareness about the existence of the phenomenon, awakening a critical spirit in them when consuming and replicating that information, and developing the necessary resources to verify information of doubtful origin.”<sup>944</sup>

### B. Freedom of expression in electoral contexts

692. On February 6, the final report on the March 13, 2018 general elections in Grenada was presented to the Permanent Council of the OAS, recommending the drafting of “legislation and regulations to govern campaign financing.” It also suggested the amendment of the Representation of the People Act or the development of

<sup>941</sup> Facebook account of Kindra Maturine-Stewart. Available at: <https://www.facebook.com/kindramaturinestewart/>

<sup>942</sup> Antigua News Room. May 6, 2019. *Grenada – Government minister to lawsuit against radio station and owner*; Now Grenada. May 6, 2019. *Government minister filing defamatory action against radio station and its owner*.

<sup>943</sup> I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para.129.

<sup>944</sup> IACHR. *Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts*. October 17, 2019

regulations to “develop regulations to clearly establish the rules, procedures and criteria to follow in defining constituency and polling division boundaries.”<sup>945</sup>

693. Franka Bernardine, party leader of the National Democratic Congress (NDC), also issued remarks about the general elections, accusing the New National Party (NNP) of having received assistance from Cambridge Analytica in order to win.<sup>946</sup>

694. The Office of the Special Rapporteur recalls that, “Elections are tightly linked to freedom of expression and information as it is essential for citizens to have as much information as possible to make a decision in casting their votes. Accordingly, free circulation of facts, ideas, and opinions is crucial. Unquestionably, the most common way for citizens currently to inform themselves is through the media.”<sup>947</sup>

### C. Restrictions on press coverage

695. The Office of the Special Rapporteur has received information on several incidents of harassment and restrictions on press coverage in Grenada. According to information received, journalist Calistra Farrier asked Prime Minister Keith Mitchell about his marital status during a press conference after the August 20 cabinet meeting. He reportedly refused to answer the question, warning the journalist not to pry into his personal affairs.<sup>948</sup> Referring to this incident, Press Secretary Philomena Robertson stated that journalists should behave professionally and respectfully in the workplace. The Media Workers’ Association of Grenada (MWAG) considered this to be “an attack on press freedom and the reputation of media workers in Grenada.”<sup>949</sup>

696. In a September 11 post to her personal Facebook account, Calistra Farrier condemned the events that had taken place in the conference room following the September 10 cabinet meeting. According to the reporter’s account, she posed a question to MP Clarice Modeste-Curwen of the district of St. Mark about an incident that had occurred in that district, and Senator Winston Garraway had ordered Modeste-Curwen not to answer the question. At the end of the press conference, Farrier reportedly approached the MP to obtain remarks, but was blocked by Garraway. The journalist stated that she was pushed and fell to the ground. She also said that she was threatened and told not to report what had happened.<sup>950</sup> In a written statement, Government Senator Simon Stiel denied that there had been any “physical altercation” between Ms. Farrier and Minister of State Garraway, and maintained that the government was committed to freedom of the press.<sup>951</sup>

697. Based on these events, in a September 2 piece published in the newspaper *Now Grenada*, the National Democratic Congress accused the New National Party of controlling, manipulating, and intimidating the media.<sup>952</sup>

698. The Office of the Special Rapporteur recalls that “social constructions of gender and historical discrimination against women determine that the patterns of violence persisting in the region against the press have particular characteristics and/or a differentiated impact on female journalists and media workers.”<sup>953</sup> In his Report on the protection of journalists and media workers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated that, “a gender-sensitive approach should be taken when considering measures to address the safety of journalists.”<sup>954</sup> This Office reiterates that States have a heightened obligation to act with due diligence to prevent violence against women journalists.<sup>955</sup>

699. The Office of the Special Rapporteur further notes that public officials have a duty to ensure that their statements do not undermine the rights of those who contribute to the public discourse through the expression

<sup>945</sup>OAS. Electoral Mission. Final Report of the Electoral Experts Mission of The Organization Of American States In Grenada. March 13, 2018. Available at <http://www.oas.org/eomdatabase/GetFileA.aspx?id=403-1155-5-0>

<sup>946</sup> The New York CaribNews. November 7, 2019. [British firm affected election outcome says Grenada opposition leader](#); Now Grenada. November 4, 2019. [New NDC leader blames Cambridge Analytica for party defeat](#); Nation News. November 5, 2019. [British firm affected election outcome says Grenada opposition leader](#).

<sup>947</sup> IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI Freedom of Expression and the Electoral Process: The Case of Opinion Polls and Exit Polls. OEA/Ser.L/V/II.124 Doc. 77 February, 2006. Para. 2

<sup>948</sup>GrenadaBroadcast. [Attorney Hood tells PM Mitchell to answer the question](#); Now Grenada. August 28, 2019. [Former MWAG presidents concerned about Press Secretary’s statement](#).

<sup>949</sup>Now Grenada. August 30, 2019. [MWAG responds to Press Secretary’s statement](#); The Caribbean Post. August 30, 2019. [MWAG responds to Press Secretary’s statement](#); Trinidad Daily Express. September 10, 2019. [The search for clarity – a reporter’s duty](#).

<sup>950</sup>Facebook account of Calistra Farrier. Available at: <https://www.facebook.com/calistra.farrier>; Now Grenada. September 19, 2019. [Open letter to Hon. Clarice Modeste-Curwen](#); Now Grenada. September 18, 2019. [Government says “no physical altercation” between journalist and junior minister](#).

<sup>951</sup>Spiceislander. September 22, 2019. [Statement by Government Senator Simon Stiel](#); The Caribbean Post. September 19, 2019. [Government says “no physical altercation” between journalist and junior minister](#); Now Grenada. September 18, 2019. [Government says “no physical altercation” between journalist and junior minister](#).

<sup>952</sup>Now Grenada. September 22, 2019. [NDC Heartbeat: Mitchell’s attack on the Free Press](#).

<sup>953</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Women Journalists and Freedom of Expression](#). OEA/Ser. L/V/II. CIDH/RELE/INF.20/18. October 31, 2018. Para. 29.

<sup>954</sup> United Nations. General Assembly. [Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue](#). A/HRC/20/17. June 4, 2012. Para. 52

<sup>955</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Violence against journalists and media workers: InterAmerican standards and national practices on prevention, protection and prosecution of perpetrators](#). OEA/Ser.L/V/II.CIDH/RELE/INF. 12/13. December 31, 2013.

and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations, and should be sensitive to the context in which they speak, so as to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and [dissemination] of their thoughts.”<sup>956</sup>

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<sup>956</sup> I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

## 18. GUATEMALA

700. The media and journalists faced a hostile scenario during 2019, characterized by the persistence of stigmatization campaigns against the press by high authorities, especially against journalists investigating cases of corruption and abuse of power by partisans of sectors that opposed the permanence of CICIG in the country. This panorama deepened during the electoral context and unleashed different types of attacks against the press and political candidates that were articulated through social networks, hacking of accounts, defamation, hate speech, as well as discriminatory or sexist. The IACHR also noted with concern the state of emergency promoted by the government and the restriction on the right to protest, within which incidents were reported against the press.

701. On the other hand, the IACHR and its Special Rapporteurship are concerned about the lack of progress in relation to the implementation of protection mechanisms for the protection of communicators and media, as well as the institutional weakening of the Historical Archive of the police.

### A. Prosecution of justice

702. The IACHR and the Office of the Special Rapporteur observe that in Guatemala high rates of impunity persist with respect to crimes against journalists in the exercise of their professional work, which generates a strong chilling effect on the exercise of freedom of expression; and the consequences for democracy, which depends on a free, open, and dynamic exchange of ideas and information, are particularly serious<sup>957</sup>. More than 15 journalists were killed between 2015 and 2018 for reasons allegedly linked to journalistic work; there is little progress in the investigations and identification of those responsible<sup>958</sup>.

703. In the framework of the above mentioned, the IACHR identifies progress in relation to the murder of journalists Danilo López and Federico Salazar in 2015, who served as correspondents for *Prensa Libre* and *Radio Nuevo Mundo* in Mazatenango, department of Suchitepéquez. According to the information available, congressman Julio Antonio Juárez Ramírez was indicted as the intellectual author of the crime by the Attorney General's Office at the closing of the intermediate stage; he was sent to trial on June 4<sup>959</sup>. However, on September 17 it was reported in the media that the judges of the High-Risk Court "A" excused themselves from hearing the trial because they would have made previous statements on the case. At the close of this report, confirmation of this excuse and the decision on the structure of the court would be pending<sup>960</sup>.

704. According to the information available, according to the investigations of the Attorney General's Office, the congressman would have hired the hitmen in order to assassinate Danilo López following an article published about his problems with the tax administration that would have ignited the motive of the crime, which was to prevent the image of the politician before Congress from being damaged<sup>961</sup>. The court also analyzed other evidence elements, such as the motive of contradicting political opinions between the congressman and the journalist<sup>962</sup>. On July 22, the phase of presentation of evidence began<sup>963</sup>.

705. In May, Marco Tulio Cano Reyna, who was involved as the contact for hiring the hitmen, declared in a hearing "under partial reserve"<sup>964</sup>. According to the information available, on May 29 the High-Risk Court "B" decreed the dismissal in his favor for the crime of homicide<sup>965</sup>. Likewise, a hearing on the determination of measures of benefit established by a collaboration agreement to clarify the crime against the journalists would be pending<sup>966</sup>.

<sup>957</sup> IACHR. Special Rapporteurship for Freedom of Expression. *Violence against journalists and media workers: InterAmerican standards and national practices on prevention, protection and prosecution of perpetrators*. OEA/Ser.L/V/II.CIDH/RELE/INF. 12/13. December 31, 2013. Para. 287.

<sup>958</sup> IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.Doc. Doc. 48/15. December 31, 2015; IACHR. *Annual Report 2016. 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. Doc. 22/17. March 15, 2017; IACHR *Annual Report 2017* 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. 210/17. December 31, 2017; IACHR. *Annual Report 2018. 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. 30. March 17, 2019.

<sup>959</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). *Informe de Cierre. El Legado de justicia en Guatemala*. 2019; el Periódico. May 28, 2019. *Sindicado por asesinato de dos periodistas mazatecos declara en audiencia bajo reserva parcial*; Prensa Libre. June 4, 2019. *Exdiputado Julio Juárez es enviado a juicio por asesinato de periodista de Mazatenango*; Guatevisión. June 4, 2019. *Exdiputado Julio Juárez enfrentará juicio por muerte del periodista Danilo López*; La Hora. June 4, 2019. *Exdiputado Julio Juárez es enviado a juicio por crimen contra periodistas*.

<sup>960</sup> Prensa Libre. September 17, 2019. *Tribunal de Mayor Riesgo pide no conocer el juicio contra exdiputado Julio Juárez*.

<sup>961</sup> el Periódico. June 4, 2019. *Suspendido diputado Julio Juárez va a juicio por la muerte de un periodista de Suchitepéquez*; Soy505. June 4, 2019. *Diputado enfrentará juicio por asesinato de periodistas*.

<sup>962</sup> Prensa Libre. June 5, 2019. *Los argumentos por los cuales se envió a juicio al exdiputado Julio Juárez por el crimen del periodista Danilo López*; Soy505. June 4, 2019. *Diputado enfrentará juicio por asesinato de periodistas*.

<sup>963</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). *Informe de Cierre. El Legado de justicia en Guatemala*. 2019.

<sup>964</sup> el Periódico. May 28, 2019. *Sindicado por asesinato de dos periodistas mazatecos declara en audiencia bajo reserva parcial*.

<sup>965</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). *Informe de Cierre. El Legado de justicia en Guatemala*. 2019.

<sup>966</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). *Informe de Cierre. El Legado de justicia en Guatemala*. 2019.

706. Regarding the murder of journalist Álvaro Alfredo Aceituno López, perpetrated on June 26, 2016<sup>967</sup>, the IACHR received information on the arrest of Gilmar Alfonso Gramajo Arteaga, who would be identified as the alleged material author of the communicator's murder<sup>968</sup>.

707. Based on the inter-American doctrine and jurisprudence, the IACHR and its Office of the Special Rapporteur reiterate to the Guatemalan State, in relation to violence and attacks on journalists and the media, the importance of complying with the three positive obligations arising from the rights to the life, personal integrity, and freedom of expression, namely: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish those responsible for these crimes. It is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and prosecution. These obligations complement each other so that there is a free, robust, and unrestricted democratic debate<sup>969</sup>.

## B. Murders

708. According to information of public knowledge, Luis Vladimir Gutiérrez López, editor of the Magazine *Sin Censura* of San Benito de Mazatenango, Suchitepéquez, was murdered in said town allegedly by hitmen on June 21, 2019. However, determining the possible link between crime and journalistic work is still pending. As published, the Attorney General's Office initiated the corresponding investigation<sup>970</sup>.

709. The IACHR has reiterated that the murder of journalists constitutes the most extreme form of censorship and States have a positive obligation to identify and punish the perpetrators of these crimes. For the Inter-American Commission, it is essential that the Guatemalan State investigate, in a complete, effective, and impartial manner, the murders of journalists and clarify their motives and judicially determine the relationship they may have to journalistic activity and freedom of expression. The authorities should not rule out the exercise of journalism as a motive for murder and/or aggression before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions in the development of the processes in stages of indictment or trial<sup>971</sup>. Not having completely exhausted the logical lines of investigations favors, above all, that intellectual authors cannot be identified<sup>972</sup>.

## C. Attacks, threats, and intimidation against journalists and the media

710. The Office of the Special Rapporteur received a series of testimonies from journalists who had been victims of attacks and harassment for reasons related to their editorial positions and threats for their work. Likewise, it is of particular concern that journalists who investigate alleged acts of corruption or cover the work of the CICIG are considered "enemies of the country" or "guerrillas"<sup>973</sup>, which exposes them to a high risk for the exercise of their work.

711. Likewise, the Office of the Special Rapporteur learned of several information describing different episodes of attacks and threats<sup>974</sup> against journalists for reasons related to their work, which raises serious concerns to this Office due to the lack of adequate measures for the prevention and protection of communicators

<sup>967</sup> IACHR. Special Rapporteurship for Freedom of Expression. July 1, 2016. [Press Release R91/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#).

<sup>968</sup> TN23. September 11, 2019. [Capturan a supuesto asesino de periodistas](#).

<sup>969</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31.

<sup>970</sup> La hora. June 22, 2019. [MP investiga muerte de periodista en Suchitepéquez](#); Huehue Noticias. June 22, 2019. [Asesinan a periodista en Mazatenango](#); "#Suchitepequez • Hitmen shot to death Luis Vladimir Gutiérrez López, 32, the editor of "Sin Censura" magazine. The victim was riding his motorcycle with journalist Luis de León. The incident happened in the canton San Benito, Mazatenango. @FIP\_AL @FEPALC @APG\_1947". Twitter account of Periodistas Unidos. @FIPGUATEMALA01. [June 21, 2019](#).

<sup>971</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Special Study on the Status of Investigations into the Murders of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 116.

<sup>972</sup> *Ibidem*, para, 125-126; IACHR. Special Rapporteurship for Freedom of Expression. [Impunity, self-censorship and armed internal conflict: An analysis of the state of freedom of expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005, párrs. 65-66.

<sup>973</sup> Information shared by journalists in Guatemala with the Office of the Special Rapporteur for Freedom of Expression el May 20, 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>974</sup> Asociación de Periodistas de Guatemala (APG). February 1, 2019. [AGP condena amenazas de muerte y agresión contra periodistas](#). Available at: [https://twitock.com/APG\\_1947/tweet/1097940870203088896](https://twitock.com/APG_1947/tweet/1097940870203088896).



and the media. These attacks were focused on different locations, such as La Antigua Guatemala, and in the departments of Sacatepéquez<sup>975</sup>, Chimaltenango<sup>976</sup>, Santa Rosa<sup>977</sup>, among others<sup>978</sup>.

712. Of particular concern to this Office is information on the aggression, confiscation, and damage to work equipment by state security agents to journalists who were present to cover a fire that was occurring in La Antigua Guatemala in the first days of January<sup>979</sup>. The Office of the Special Rapporteur recalls that the State "must not prohibit or criminalize live broadcasts of events and must refrain from imposing measures that regulate or limit the free flow of information through the Internet and other communication platforms"<sup>980</sup>.

713. El principio 9 de la Declaración de Principios sobre la Libertad de Expresión de la CIDH, establece que: "El asesinato, secuestro, intimidación, amenaza a los comunicadores sociales, así como la destrucción material de los medios de comunicación, viola los derechos fundamentales de las personas y coarta severamente la libertad de expresión. Es deber de los Estados prevenir e investigar estos hechos, sancionar a sus autores y asegurar a las víctimas una reparación adecuada".

## D .Social Protest

714. The Office of the Special Rapporteur observed the development, throughout the current year, of numerous social protests in different regions of Guatemala in demand for measures taken by the Government on the termination of the CICIG mandate<sup>981</sup>, as well as protests in the context of the electoral context<sup>982</sup>. Protests were also registered for the agreement adopted with the United States Government on asylum<sup>983</sup>. The IACHR

<sup>975</sup> The Asociación de Periodistas de Guatemala issued a statement on March 18 condemning the attempted attack against Alex Cruz, a journalist for *el Periódico*, which occurred on the night of March 16 and which injured the media worker's son. The newspaper *el Periódico* also repudiated this attack and demanded the authorities clarify the facts. *el Periódico*. March 19, 2019. [Agresión contra periodista de el Periódico](#); *el Periódico*. March 18, 2019. [Comunicado: APG condena amenaza contra periodista de el Periódico y robo a director de C4](#).

<sup>976</sup> La Asociación de Periodistas de Guatemala (APG) issued a statement on March 27 repudiating an assault suffered by journalist Julio Bala, a correspondent for *el Periódico* in Chimaltenango, which according to reports took place on March 26, with the media worker suffering several blows and his working equipment destroyed while covering a demonstration. *el Periódico*. March 27, 2019. [Entidad gremial exige cese de agresiones, acoso y amenazas contra periodistas](#); *deguate.com*. March 26, 2019. [Comerciantes agreden a periodista de Nuestro Diario en Tecpán y quiebran su cámara](#); Asociación de Periodistas de Guatemala (APG). May 8, 2019. [APG condena ataque en contra de periodista Santiago Boton](#). Available at: [https://twitock.com/APG\\_1947/tweet/1125856468425760768](https://twitock.com/APG_1947/tweet/1125856468425760768).

<sup>977</sup> República de Guatemala. Procuraduría de los Derechos Humanos (PDH). September 3, 2019. [Verifican acciones del PNC y MP por agresión de dos periodistas israelíes](#); *el Escuintleco*. September 3, 2019. [Periodistas De Origen Israelí De National Geographic Agredidos Y Retenidos En Santa Rosa](#).

<sup>978</sup> According to the information the United Nations High Commissioner for Human Rights sent to the Office of the Special Rapporteur, between January 11 and October 31, 2018, at least 18 episodes of various violations of the right of freedom of expression occurred in the departments of Guatemala, Chimaltenango, Huehuetenango, Izabal, Quiché, Sololá, Suichitepequez. The media workers affected were as follows: José Ruben Zamora, director of newspaper *El Periódico*, was a victim of intimidation; Annabella Giraca, Antonio Mosquera Aguilar, Karin Slowing Umaña, Luis Eduardo Barreto Wittig, Manolo Estuardo Vela Castañeda, Marcela Geredallescás, Marcelo Colussi, Dina Fernandez and others, were alleged victims of defamation through a blog published anonymously; Martín Rodríguez Pellecer, Idivina Stalinova Hernández Batres, Byron Garoz, Marcia Mejía, Carmen Lucía Alvarado, Julio Serrano Benítez, were alleged victims of defamation online; Hedy Quino, reporter of *La Hora*, was an alleged victim of threats from Legislative Branch authorities; Julio Bala, was allegedly assaulted while covering a social protest; Julio García was allegedly threatened several times while covering an event with municipal authorities; Santiago Boton, a correspondent for *Telesur*, suffered the alleged theft of his working equipment, and in another episode he was allegedly assaulted while covering a social protest; Marvin del Cid, of Artículo 35 association, suffered the alleged theft of his working equipment; Blaz Arias, an *Estar* journalist, was reportedly threatened and also robbed of his work equipment; Elena Chiquibal, of Consorcio de Mujeres de la Cuenca del Lago de Atitlán, was allegedly the victim of surveillance; Francelia Solano, of *Nómada*, was reportedly intimidated with legal actions from then candidate Giammattei for the publication of an article; Abel Reina, reportedly received different threats; Francisco Simón Francisco, of *Prensa Comunitaria*, was reportedly assaulted and intimidated by unknown individuals; Baudilio Choc Mac, of *Prensa Comunitaria*, was reportedly intimidated by military personnel while taking photographs of an operative; Mynor Mérida was reportedly threatened by a Commissioner of the National Civilian Police; Carlos Choc, of *Prensa Comunitaria*, was reportedly subject to criminal proceedings in retaliation for his coverage in 2017. Office of the UN High Commissioner for Human Rights. *Ataques de Periodistas 2019*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Other documented cases in: *Publinews*. October 19, 2019. [APG pide al MP investigar agresiones a comunicadores en San Marcos](#); *Crónica*. October 23, 2019. [APG rechaza intimidaciones en contra de periodistas en Huehuetenango](#); *el Periódico*. October 24, 2019. [Miembros del Sindicato de Trabajadores por la Educación agreden a periodistas en San Marcos](#); Asociación de Periodistas de Guatemala. October 22, 2019. [Atentados contra periodistas en Huehuetenango](#). Available at: [https://twitock.com/APG\\_1947/tweet/1186778992168361984](https://twitock.com/APG_1947/tweet/1186778992168361984).

<sup>979</sup> Canal Antigua. January 2, 2019. [Esto sucedió con el periodista capturado durante incendio en Antigua Guatemala](#); *el Periódico*. January 3, 2019. [Inicia el año con agresión a periodistas](#); *el Escuintleco*. January 3, 2019. [Jorge Arriola, Lejos De Reducir Desastres, Ha Incendiado Un Problema Entre Periodistas Y Policías En Antigua](#).

<sup>980</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>981</sup> *el Periódico*. January 12, 2019. [Decisiones de Morales generan manifestaciones](#); *el Periódico*. January 15, 2019. [Manifestaciones rechazan decisiones contra la CICIG](#); CNN en español. January 12, 2019. [Guatemala: protestas masivas ante la crisis de inconstitucionalidad del país](#); *TelesurTv*. January 14, 2019. [Protestan en Guatemala contra presidente Jimmy Morales](#).

<sup>982</sup> *TelesurTv*. August 8, 2019. [Claves de la situación política y económica de Guatemala de cara a las elecciones](#); Resumen Latinoamericano. June 16, 2019. Guatemala. [Protestas por posible fraude en elecciones generales](#); *El Universo/AP*. August 6, 2019. [Campesinos se toman las calles de Guatemala para protestar contra el gobierno](#).

<sup>983</sup> *El Salvador/EFE*. July 30, 2019. [Protestas en Guatemala por pacto de asilo con Estados Unidos](#); *telesurTv*. August 6, 2019. [Protestas en Guatemala por pacto migratorio y fraude electoral](#)

also expressed concern about the excessive use of force in a post-march celebration of the LGBTI Pride in Guatemala on July 21<sup>984</sup>.

715. At the beginning of the year, Guatemala continued to experience a climate of tension due to the numerous protests in different parts of the country in favor and against the decision of President Jimmy Morales to terminate the mandate of the CICIG and the decision of the Constitutional Court to suspend government measures in that area. Against this backdrop, the United Nations High Commissioner for Human Rights, Michelle Bachelet, called on the Government to guarantee the rights to protest and freedom of expression<sup>985</sup>.

716. On the other hand, within the context of the state of exception decreed by the Government in September in northwestern regions of Guatemala, the IACHR observes that the rights of assembly and protest were restricted for a period of 30 days<sup>986</sup>. The Office of the Special Rapporteur received information that soldiers from the Guatemalan army had assaulted two journalists from El Estor, in Izabal. In this regard, the Attorney General's Office for Human Rights would have requested "the Guatemalan Army to instruct soldiers so that their action protocols are developed within the framework of respect for human rights and the exercise of journalistic work"<sup>987</sup>. Likewise, the Office of the Special Rapporteur expresses its concern about the raid of the Xyaab 'Tzuultaq'a community radio station by the Attorney General's Office, police, and military personnel of El Estor, Izabal, where the State of Siege is still in force, and confiscated its equipment<sup>988</sup>. Also, in October President Jimmy Morales presented a motion to Congress to extend the State of Siege for 30 days, which was finally ratified for 22 municipalities on October 10<sup>989</sup>.

717. The IACHR urges the State to guarantee and protect the right to freedom of expression and peaceful protests for all persons living in the country, as well as to facilitate these rights being exercised in accordance with the principles of a democratic society.

718. The IACHR has reiterated that social protest is a fundamental tool to defend human rights and it is essential for political and social critical expression of authorities' activities. The Commission has pointed out that "it is inadmissible, in principle, the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right to assembly"<sup>990</sup> and that "the exercise of the right to assembly through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder carrying it out"<sup>991</sup>.

719. Likewise, the Joint declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles"<sup>992</sup>.

## E. Protection mechanisms

720. The IACHR and its Office of the Special Rapporteur observe as one of its main concerns the lack of progress in the completion of a protection mechanism for the prevention and protection of communicators and media, through the articulation of mechanisms that allow a safe environment for journalism. The Office of the Special Rapporteur has also followed up with special concern the lack of support to the Prosecutor Unit for Crimes against journalists of the Attorney General's Office, who is responsible for investigating several murders of journalists<sup>993</sup>.

<sup>984</sup> IACHR. August 7, 2019. [Press Release 196/19 IACHR Concerned about Excessive Use of Force by Police against LGBTI Persons in Guatemala](#).

<sup>985</sup> Noticias ONU. January 14, 2019. [Bachelet exhorta al Gobierno de Guatemala a garantizar las libertades democráticas](#).

<sup>986</sup> TelesurTv. September 5, 2019. [Guatemala decreta estado de sitio por asesinato de militares](#); Prensa Libre. September 4, 2019. [Qué significa estado de Sitio en Guatemala](#).

<sup>987</sup> PublineWS. September 11, 2019. [Periodistas denuncian agresiones de soldados durante estado de Sitio](#).

<sup>988</sup> El Periódico. September 30, 2019. [Relator de la CIDH condena allanamiento a radio comunitaria Izabal](#).

<sup>989</sup> el Periódico. October 8, 2019. [Gobierno insiste en instaurar Estado de Sitio en 20 municipios del país](#); Sonora/EFE. October 10, 2019. [El Congreso de Guatemala ratifica el estado de sitio al nororiente del país](#).

<sup>990</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>991</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. 139.

<sup>992</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>993</sup> Asociación de Periodistas de Guatemala. July 13, 2019. [Retrosceso en el Ministerio Público, MP, en las investigaciones de delitos contra periodistas](#). Available at: [https://twitock.com/APG\\_1947/tweet/1154774871001436160](https://twitock.com/APG_1947/tweet/1154774871001436160); Asociación de Periodistas de Guatemala. September 18, 2019. [La Asociación de Periodistas de Guatemala APG y su Comisión de Libertad de Prensa ante los inusitados cambios en la](#)

721. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for the protection mechanisms to be effective. For example, it 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 prosecution; 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>994</sup>.

## F. Stigmatizing statements

722. The Office of the Special Rapporteur identifies in Guatemala a tendency to stigmatize journalists and critical media against the Government that stems from the highest authorities<sup>995</sup>, which puts at risk the free exercise of journalistic work and undermines the obligation to "adopt a public speech that contributes to the prevention of violence against journalists"<sup>996</sup>. Of particular concern to this Office is the disqualification by President Jimmy Morales against the director of *La Hora*, Oscar Clemente Marroquín, expressing that his activity and that of his family is "unfair", "cowardly", and "illegal", and that he would attack the media in the same way the media has attacked his government, by "telling lies"<sup>997</sup>. Likewise, the president has spoken against *Guatevisión*, *Prensa Libre*, and *Emisoras Unidos*, calling them "liars, cowards, and ridiculous"<sup>998</sup>.

723. On April 12, during a speech given in Chimaltenango in the context of supervising a public construction, President Jimmy Morales said, "... I want to thank the Congress of the Republic. Look, making a road today is not like in Ubico's time. I would like to have the laws of Ubico to be able to do the construction work, of course, we will not have them because today we are a democratic country, a country where we have a beautiful freedom, but freedom must be taken care of. Freedom should not be abused. Some are shielded by the free expression of thought to tell lies, raise slander, and the worst thing is that they do it under the great name of journalism and the defense of human rights, cowards. And I do admire the true journalists and I do admire those who have the courage to tell the truth, to seem wrong even when they are told otherwise. I admire those, but those who make political booklets telling all kinds of lies, not caring even about breaking and destroying homes, as they have no family, as they do not value family, as they do not know what it is to educate a child through example, maybe they can take out those frustrations"<sup>999</sup>.

724. The existence of a context of marked confrontation, in which there are constant disqualifications and stigmatization, creates a climate that prevents a reasonable and plural deliberation on all public affairs. While it is true that the tension between the press and governments is a normal phenomenon that derives from the natural function of the press, which happens in many States, it is also true that an acute polarization closes the spaces for calm debates and it does not help neither the authorities nor the press to better fulfill their role in a vigorous, deliberative, and open democracy. In these cases, it is the State's task, given its national and international responsibilities, to contribute to a climate of greater tolerance and respect for the ideas of others, even when they are offensive or disturbing<sup>1000</sup>.

725. Likewise, the Office of the Special Rapporteur recalls that public officials have a duty to ensure that with their statements they are not damaging the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media, and human rights defenders organizations, and must pay attention to the context in which they express themselves to ensure that their

*Fiscalía de Derechos Humanos del Ministerio Público (MP), especialmente en la Unidad Fiscal de Delitos contra la Prensa.* Available at: [https://twitter.com/APG\\_1947/tweet/1171855607000948736](https://twitter.com/APG_1947/tweet/1171855607000948736)

<sup>994</sup> IACHR. *Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression.* Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81; IACHR. *Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression.* Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 712.

<sup>995</sup> Asociación de Periodistas de Guatemala (APG). *Estado de Situación de Libertad de Expresión.* January - March 2019. Available at: [https://twitter.com/APG\\_1947/tweet/1124397305380122624](https://twitter.com/APG_1947/tweet/1124397305380122624); La Hora. July 3, 2019. *Cabrera arremete contra la prensa por compra de aviones*; *elEconomista*. April 24, 2019. *El vicepresidente de Guatemala arremete contra la prensa por las críticas al Gobierno*; *El Universo*. September 2, 2019. *El presidente de Guatemala, Jimmy Morales, arremete contra periodistas*; La Hora. June 5, 2019. *Con Criterio denuncia al MP campaña de difamación.*

<sup>996</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>997</sup> La Hora. July 18, 2019. *Morales ataca de nuevo a La Hora; vamos a arremeter con mentiras, dice*; La Hora. July 19, 2019. *PDH y Samayoa: Declaraciones de Morales contra La Hora podrían constituir delito.*

<sup>998</sup> Crónica. September 2, 2019. *De nuevo, Jimmy Morales se muestra molesto con la prensa por información que publica*; La Hora. September 2, 2019. *Morales critica a los medios, arranca con "La Hora" y llama cobarde a su Presidente.*

<sup>999</sup> *Guatevisión*/YouTube account. April 12, 2019. *Jimmy Morales arremete contra la prensa y dice que anhela tener las leyes de Ubico.* [1:47].

<sup>1000</sup> IACHR. *Annual Report 2014.* Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 65.

expressions do not constitute, in the words of the Court, “forms of direct or indirect interference or injurious pressure on the rights of those who intend to contribute to public debate through the expression and diffusion of their thoughts”<sup>1001</sup>.

### G. Subsequent liabilities

726. Of particular concern to the Office of the Special Rapporteur is the criminal complaint filed by President Jimmy Morales in 2018 against a person who published a video on social networks in that year in which he personally confronted the President at the time when passing through the corridor of a hotel in the Capital, and expressed himself with offensive words and hard questions. According to the information, the case continued during 2019 and would have been dismissed in the first instance on March 21 by the Twelfth Criminal Judgment Court<sup>1002</sup>; However, this decision would have been appealed by the Attorney General's Office and on May 30 the president appeared in court to continue with the complaint<sup>1003</sup>. Said court would have declared itself incompetent and would have sent the case to Criminal Management for it to indicate the competent court<sup>1004</sup>. On June 12, a court had reportedly been appointed to hear the case<sup>1005</sup>. This Office notes that this judicial action, aimed at setting a precedent to inhibit any offensive criticism on the Internet, is incompatible with the exercise of freedom of expression.

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

728. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information”. In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest and violates the right to freedom of expression<sup>1006</sup>.

### H. Legal reforms

729. Under the climate of growing tension in Guatemala over measures taken by the Government and complaints by human rights organizations in a context of persecution and lack of protection, the Office of the Special Rapporteur received information on an initiative in February that aims reform the Law of Non-Governmental Organizations. According to the information, it would be sought to increase the responsibilities of the members in relation to the obligations of the association, which would represent a potential economic asphyxiation and the dismantling of incentives to create associations<sup>1007</sup>. It establishes, as well, excessively formal requirements for registration and recognition of organizations<sup>1008</sup>. According to public information, the initiative went through a first debate on May 2 and a second debate on May 3. At the close of this report, a third debate for the approval of the law would be pending<sup>1009</sup>.

### I. Freedom of expression in electoral context

730. In the context of the presidential elections in Guatemala, which took two rounds of elections, the first on June 16 and the second on August 11, 2019 in which President Alejandro Giammattei was elected, the Office

<sup>1001</sup> I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

<sup>1002</sup> Publinews. March 21, 2019. [Desestiman denuncia de Jimmy Morales contra un hombre que lo insultó](#); Panorama. March 22, 2019. [Desestiman denuncia presentada contra hombre que ofendió a Jimmy Morales](#).

<sup>1003</sup> Publinews. March 21, 2019. [Desestiman denuncia de Jimmy Morales contra un hombre que lo insultó](#); Panorama. March 22, 2019. [Desestiman denuncia presentada contra hombre que ofendió a Jimmy Morales](#); Soy505/YouTube account. May 30, 2019. [Jimmy Morales y el caso contra el hombre que lo insultó](#). [6:23].

<sup>1004</sup> Prensa Libre. May 30, 2019. [Jimmy Morales insiste en demanda contra ciudadano que lo habría insultado](#); Nómada. May 30, 2019. [Resumen del día: Jimmy quiere respeto \[y enjuiciar a un activista\]](#).

<sup>1005</sup> Publinews. June 12, 2019. [Designan Juzgado para conocer denuncia del presidente Morales contra un ciudadano](#); CRN Noticias. June 13, 2019. [Gestión Penal designa juzgado para conocer denuncia presidencial](#)

<sup>1006</sup> IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

<sup>1007</sup> el Periódico. February 13, 2019. [Adversan reformas previstas para Ley de ONG](#); FIDH. February 13, 2019. [GUATEMALA: No a la aprobación de la iniciativa 5257 por amenazar la libertad de asociación](#).

<sup>1008</sup> Noticias ONU. March 6, 2019. [Guatemala: Alta Comisionada preocupada por un proyecto de ley que acotaría a las ONG](#); FIDH. February 13, 2019. [GUATEMALA: No a la aprobación de la iniciativa 5257 por amenazar la libertad de asociación](#).

<sup>1009</sup> República de Guatemala. Congreso. [Iniciativa 5257](#). March 14, 2017.

of the Special Rapporteur issued a press release on June 12 whereby the Office of the Special Rapporteur for Freedom of Expression and the Office of the United Nations High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) expressed concern about attacks against the media and independent journalists, a situation that had increased as the June 16 elections approached<sup>1010</sup>.

731. Through the statement, both offices called on the State of Guatemala to guarantee freedom of expression and access to information so that people can exercise their right to participate in the electoral process. Likewise, it was observed that in accordance with the mandate of the OHCHR-Guatemala, cases of stigmatization, defamation, hacking of accounts, and even criminalization of journalists were documented, both in social networks and in statements of the candidates<sup>1011</sup>.

732. Likewise, the Office of the Special Rapporteur and OHCHR-Guatemala condemned the use of discriminatory, sexist, or hate speech against people or groups, including against candidates, journalists, and the media, as well as messages that incite violence, which seriously affect freedom of expression and participation in the electoral process<sup>1012</sup>.

733. Likewise, the Office of the Special Rapporteur documented worrying situations such as the initiative of the Supreme Electoral Court [*Tribunal Supremo Electoral*] (TSE) to regulate the content of interviews with candidates in programs or events of mass visualization, through a "Regulation for the organization of debates, interviews, and public forums between candidates in the electoral process" published on March 5<sup>1013</sup>. However, the aforementioned document was repealed on March 12 by Agreement No. 115-2019 of the same Court<sup>1014</sup>.

734. Likewise, the Office of the Special Rapporteur learned of the legal action presented in May by the then candidate Sandra Torres against a group of publishers of *el Periódico* under the Law against Femicide, seeking that the media stop publishing about her. Although the conviction was rejected in the first instance, an appeal court granted the claim. Subsequently, the candidate would have withdrawn the action. In July, an investigation against the judges who supported the measure would have been initiated<sup>1015</sup>.

735. Also, this Office was informed about a complaint by the media *Relato* in which it indicated that a series of articles published on social networks about candidates were taken down due to complaints about alleged defamatory content of the publications<sup>1016</sup>.

736. The Association of Journalists of Guatemala [*Asociación de Periodistas de Guatemala*] (AGP) published a statement on the context of attacks on journalists monitored during the electoral period, emphasizing that "the days before and during the elections were the dates when more assaults against communicators occurred" with 23 attacks three days before the first round of elections and 72 hours later<sup>1017</sup>. In the first round report, aggressions such as obstruction of sources, intimidation, defamation, censorship, cyber-attacks, and verbal aggression, were recorded; and those responsible were identified as politicians, settlers, political parties, security forces, authorities, and unknown individuals<sup>1018</sup>.

737. Finally, the Office of the Special Rapporteur takes note of a decision by the Constitutional Court in which it decided that the electoral polls can be published 36 hours before the elections<sup>1019</sup>.

738. The Office of the Special Rapporteur recalls that "[e]lectoral processes are closely linked to freedom of expression and information, since in order for citizens to carry out their decisions at the time of voting it is essential that they have as much information as possible. For this, it is crucial facts, ideas, and opinions circulate freely. Without a doubt, the most common way for citizens to inform themselves today is through mass media"<sup>1020</sup>.

<sup>1010</sup> IACHR. Special Rapporteurship for Freedom of Expression. June 12, 2019. [Press Release R147/19 Guatemala: Freedom of expression and the media's role are crucial to guaranteeing free and transparent elections this June 16.](#)

<sup>1011</sup> IACHR. Special Rapporteurship for Freedom of Expression. June 12, 2019. [Press Release R147/19 Guatemala: Freedom of expression and the media's role are crucial to guaranteeing free and transparent elections this June 16.](#)

<sup>1012</sup> IACHR. Special Rapporteurship for Freedom of Expression. June 12, 2019. [Press Release R147/19 Guatemala: Freedom of expression and the media's role are crucial to guaranteeing free and transparent elections this June 16.](#)

<sup>1013</sup> Acuerdo 99-2019 of the Tribunal Supremo Electoral. March 5, 2019. Available at: <https://www.relato.gt/acuerdo-99-2019.pdf>

<sup>1014</sup> Acuerdo N° 115-2019 of the Tribunal Supremo Electoral. March 12, 2019. Available at: <http://ojs.uc.cl/index.php/bjur/article/download/891/1813/>

<sup>1015</sup> Prensa Libre. May 9, 2019. [Sandra Torres denuncia por femicidio a 6 editores de "el Periódico"](#). Impacto. May 10, 2019. [Sandra Torres logra frenar publicaciones en su contra argumentando femicidio](#); Perspectiva. May 14, 2019. [#No nos callarás ¿El #No te toca de Sandra Torres?](#); Soy505. May 19, 2019. [Sandra Torres habla y justifica sus acciones contra el Periódico](#); Prensa Libre. July 27, 2019. [Presentan antejuicio contra magistrados que avalaron restricciones a "el Periódico" a favor de Sandra Torres.](#)

<sup>1016</sup> Relato. [Partido Humanista de Mulet intenta silenciar investigaciones de sus candidatos.](#)

<sup>1017</sup> Asociación de Periodistas de Guatemala (AGP). [Agresiones a Periodistas durante elecciones 2019 \(Informe final del Centro de Monitoreo Electoral de la Asociación de Periodistas de Guatemala\)](#). Available at: [https://twitter.com/APG\\_1947/tweet/1171855338104078337](https://twitter.com/APG_1947/tweet/1171855338104078337)

<sup>1018</sup> Asociación de Periodistas de Guatemala (AGP). Report by the Centro de Monitoreo Electoral of the Asociación de Periodistas de Guatemala APG. First Electoral Round – June 16, 2019. Available at: <https://drive.google.com/file/d/1di7wRmxTOBHV34MgGq3-KHjDer1wld4z/view>

<sup>1019</sup> Publinews. April 25, 2019. [Encuestas electorales podrán ser publicadas 36 horas antes de las votaciones](#);

<sup>1020</sup> IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI Freedom of Expression and the Electoral Process: The Case of Opinion Polls and Exit Polls. OEA/Ser.L/V/II.124 Doc. 77 February, 2006. Para. 2.

## J. Access to public information

739. According to the information sent by the International Coalition of Sites of Conscience [*Coalición Internacional de Sitios de Conciencia*] to the Office of the Special Rapporteur, a series of worrisome decisions that affect the operation and mission of the Historical Archive of the National Police of Guatemala [*Archivo Histórico de la Policía Nacional de Guatemala*] (AHPN) are noted, particularly due to potential threats related to the maintenance of the infrastructure of the Archive, announcements of reforms that would seek to limit access to information for “reasons of national security”, and possible institutional direction by the Police, as well as threats to initiate criminal actions for alleged illegalities carried out<sup>1021</sup>.

740. Related to this context, the Office of the Special Rapporteur learned of a statement issued on May 28 by the Ombudsman Office in which the importance of access to information to historical archives linked to human rights is pointed out, and indicates that said files “should not be classified as sensitive, nor can be restricted, [since] they are at the service of individuals and families seeking justice”<sup>1022</sup>.

741. Likewise, in the context of the government’s decision on the role of the General Archive of Central America [*Archivo General de Centroamérica*] (AGCA), the IACHR and its Office of the Special Rapporteur learned of the dismissal of the director of AGCA, Anna Carla Ericastilla Samayoa, and the initiation of an action criminal for alleged embezzlement and administrative irregularities against her. According to the information available, the dismissal would have occurred because the former director granted permission for a series of digitized documents from the National Police Historical Archive (AHPN) to be sent outside the country<sup>1023</sup>.

742. During the on-site visit in 2017, the IACHR went to the facilities of the National Civil Police Archive, and expressed the importance that it has in the reactivation and clarification of some criminal proceedings for serious human rights violations related to the internal armed conflict and its contribution to the recovery of historical memory. During this visit, the IACHR learned that the Archive depends solely on international cooperation. The IACHR urged the State to allocate resources and support this measure for memory, truth, and justice<sup>1024</sup>.

743. With regards to cases of refusals by authorities to deliver information, the Office of the Special Rapporteur documented a criminal complaint and the beginning of a process in May, against the mayor of Todos Santos Cuchumatán, Andrés Mendoza Calmo, for not providing information requested by civil society<sup>1025</sup>.

744. Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Taking into account the principle of maximum disclosure, the law must guarantee the most effective and widest possible access to public information, and exceptions should not become the general rule in practice. In addition, the exceptions regime must be interpreted restrictively, and any doubt must be resolved by transparency and access.

## K. Internet and freedom of expression

745. In its annual report of 2018, the Office of the Special Rapporteur learned about the so-called “netcenters” that would operate in Guatemala. This term seeks to describe contexts where people are hired for the dissemination of false news and the creation of profiles on social networks that seek to attack and disseminate distorted information<sup>1026</sup>.

746. The IACHR expresses special concern about the content of the “Bots, Netcenter, and Fight against Impunity” report prepared by CICIG, which describes the use of social networks to attack civil society leaders, journalists, prosecutors of the Attorney General’s Office, and members of the International Commission against Impunity in Guatemala with the objective of discrediting these individuals and investigations related to acts of corruption.

747. In this sense, the report concludes about a series of challenges “regarding the regulation of dissemination of content on social networks and, especially, on the dissemination of false news” in the face of

<sup>1021</sup> Letter from the International Coalition of Sites of Conscience addressed to the IACHR and the Office of the Special Rapporteur. June 4, 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1022</sup> República de Guatemala. Procuraduría de los Derechos Humanos. May 28, 2019. [Press release 49/19](#).

<sup>1023</sup> el Periódico. July 10, 2019. [Cultura destituye a directora del Archivo General de Centro América](#); Prensa Libre/EFE. July 11, 2019. [Tras su destitución, exjefa del Archivo General de Centroamérica teme por futuro de acervo policial](#); Sonora. July 7, 2019. [Gobierno de Guatemala destituye a jefa del Archivo General de Centroamérica](#).

<sup>1024</sup> IACHR. [Situation of Human Rights in Guatemala](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 137..

<sup>1025</sup> República. May 23, 2019. [Alcalde será investigado por no cumplir Ley de Acceso a la Información](#). Prensa Libre. April 9, 2019. [Alcalde de Todos Santos Cuchumatán en el banquillo por negar información pública](#); Impacto. May 23, 2019. [Alcalde de Todos Santos Cuchumatán es ligado a proceso penal](#).

<sup>1026</sup> IACHR. [Annual Report 2018. 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. 30. March 17, 2019. Para. 638

"evidence [of] a process of artificial legitimization of accounts that without belonging to real people, that begins to build instances of public opinion that do not faithfully represent the population"<sup>1027</sup>.

#### **L. Diversity and pluralism**

<sup>748</sup>. As part of the visit by the Office of the Special Rapporteur in May, this office noted a series of complaints that point to acts by state agents that would seek to initiate administrative and criminal proceedings, and other types of harassment, in cases of alleged illegal use of frequencies<sup>1028</sup>.

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<sup>1027</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). Informe Bots, Netcenter y Combate a la Impunidad. Caso Guatemala. May 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1028</sup> Information shared by community radios and journalists with the Office of the Special Rapporteur for Freedom of Expression on May 21, 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

## 19. GUYANA

749. The government of Guyana announced in 2018 that it would work to reduce penalties for the crime of defamation still in force in the legal system. However, during 2019, multiple complaints would have been filed for this figure. In this context, the Minister of Public Telecommunications sued the news site *Stabroek News* and its columnist Anand Goolsarran, for alleged defamation regarding an investigation into conflicts of interest and corruption. The top lawyer of the government of Guyana also used the defamation figure to sue the *Kaieteur News* newspaper regarding allegedly wrong information that would have been rectified. According to information received by this office, the government of Guyana would be using the allocation of government advertising as a tool to reward and punish the media according to its editorial line.

### A. Subsequent liability

750. Although the government of Guyana announced in 2018 that it would work to decrease the penalties for defamation, there is no indication that it has done so to date. On the contrary, during 2019 there have been multiple complaints alleging defamation.

751. On April 17, Public Telecommunications Minister Catherine Hughes filed a defamation suit against the news site *Stabroek News* and its columnist Anand Goolsarran. The legal action was based on a publication in which the columnist wrote that Hughes had allegedly violated the Integrity Commission Act due to the fact that her company had received a contract from the Energy Department.<sup>1029</sup> According to reports, Minister Hughes also sent a letter on April 16 to opposition leader Whip Gail Teixeira, threatening to take legal action against her over statements she had made concerning the same issue.<sup>1030</sup>

752. In addition, newly appointed Senior Counsel Rajendra Nath Poonai sued the newspaper *Kaieteur News* for defamation, based on a May 23 article reporting that the attorney had been convicted of fraud in Canada. The paper published an apology the next day, because it had confused the attorney with someone else.<sup>1031</sup> According to available information, Judge Fidela Corbin-Lincoln ruled in Poonai's favor, ordering *Kaieteur News* to retract the publication and abstain from disseminating that information in the future. The judge also scheduled a hearing to assess damages for October 10.<sup>1032</sup> However, as of the date of this report, there is no publicly available information about that hearing.

753. The Office of the Special Rapporteur recalls that, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression, "The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

754. With respect to potential civil liability, the Inter-American Court has held that civil judgments in the area of freedom of expression must be strictly proportionate so as not to have a chilling effect on this freedom, since "the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official."<sup>1033</sup>

### B. Government advertising

755. According to the information gathered by this Office of the Special Rapporteur, the government of Guyana is using the allocation of official government advertising as a political tool. For instance, it has been reported that in recent months the Guyanese government has markedly reduced the number of advertisements taken out in *Stabroek News* as compared to other newspapers in the country.<sup>1034</sup>

<sup>1029</sup> *Stabroek News*. April 18, 2019. [Minister Hughes sues Stabroek News, Goolsarran](#); *Stabroek News*. May 5, 2019. ["Don't shoot the messenger"](#); *Stabroek News*. April 23, 2019. [Guyana courts, CCJ likely to uphold progressive view of fair comment on public interest matter – Ramkarran](#).

<sup>1030</sup> *News Guyana*. April 18, 2019. [Minister Hughes threatens legal act against Teixeira](#); *Stabroek News*. April 23, 2019. [Guyana courts, CCJ likely to uphold progressive view of fair comment on public interest matter – Ramkarran](#); *Kaieteur News*. April 19, 2019. [Minister Cathy Hughes is asking Gail Teixeira to apologize](#).

<sup>1031</sup> *Stabroek News*. June 1, 2019. [Senior Counsel files \\$45M lawsuit over erroneous Kaieteur News report](#); *Demerara Waves*. May 30, 2019. [Senior Counsel Poonai files GYD\\$45m libel suit against Kaieteur News](#).

<sup>1032</sup> *Stabroek News*. September 18, 2019. [Senior Counsel wins judgment against Kaieteur News in libel suit](#); *Guyana Chronicle*. September 18, 2019. [Court awards judgement against KN](#).

<sup>1033</sup> I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para.129.

<sup>1034</sup> *Stabroek News*. November 1, 2019. [Gov't press freedom assault on SN continuing](#); *Caribbean Life News*. November 21, 2019. [Guyana ads dispute spills into Barbados paper](#).



756. President David Granger accounted for this situation in a November 1 interview with radio station *Kaitaur*, maintaining that advertising should be “directed to the media houses based on their willingness to disseminate news fairly.”<sup>1035</sup>

757. Different media outlets in the region including *Trinidad Express* and *Barbados Nation* have considered this “an attack on press freedom,” contending that it is “government retaliation against independent journalism.” They also asked the Granger administration to reconsider its actions and “demonstrate its commitment to press freedom.”<sup>1036</sup>

758. The government, through a statement by Director of Public Information Imran Khan, accused *Stabroek News* of becoming a political supporter and party mouthpiece of A New and United Guyana. It also said that the information published by the newspapers *Trinidad Express* and *Barbados Nation* was false, stressing that during the month of October 23 different ministries, departments, and government agencies had placed 171 ads in *Stabroek News*.<sup>1037</sup>

759. This Office of the Special Rapporteur has established that, “Advertising funds must never be distributed with discrimination—whether positive or negative—based on the editorial slant of the media outlet.”<sup>1038</sup> It has clarified that, “Although the media have no intrinsic right to receive advertising funds (...) when a state allocates such funds in discriminatory ways the right to freedom of expression is infringed.”<sup>1039</sup>

760. In addition, Principle 13 of the Declaration of Principles on Freedom of Expression states that, “the arbitrary and discriminatory placement of official advertising (...) with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

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<sup>1035</sup> *Stabroek News*. November 2, 2019. [Granger says media houses should get state ads based on “fairness” of reportage](#); *Stabroek News*. November 8, 2019. [Ministry complains about SN editorial](#).

<sup>1036</sup> *Trinidad Daily Express*. November 14, 2019. [President Granger’s threat to press freedom](#); *Stabroek News*. November 18, 2019. [Trinidad Express, Barbados Nation rap Granger administration for press freedom attack on SN](#); *Trinidad Daily Express*. November 10, 2019. [The president and “fairness” in the press](#).

<sup>1037</sup> *Stabroek News*. November 19, 2019. [Gov’t criticises editorial in Trinidad Express, Barbados Nation on ads withdrawal](#); *Trinidad Daily Express*. November 19, 2019. [A political agenda](#).

<sup>1038</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter V Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights. OEA/Ser.L/V/II.Doc. 5. March 7, 2011. Para. 47

<sup>1039</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter V Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights. OEA/Ser.L/V/II.Doc. 5. March 7, 2011. Para. 49.

## 20. HAITI

761. The Special Rapporteur noted with concern the murder of journalists Petion Rospide and Nehemie Joseph and the lack of identification and punishment of the perpetrators. Attacks against media and journalists were also reported during 2019, which has raised doubts regarding the protection for the exercise of the freedom to express expression in Haiti. Likewise, the Office of the special Rapporteur has registered the excessive use of force at the moment of repressing and dispersing the protests that erupted due to the political crisis and the corruption events linked to Petrocaribe, as well as the lack of statistics on deaths and detentions in this context.

### A. Impunity

762. The Office of the Special Rapporteur expresses its concern<sup>1040</sup> about the disappearance of journalist Vladjimir Legagneur, who disappeared on March 14, 2018, when documenting clashes between police and gangs in the Grand-Revaine neighborhood of Port-au-Prince. According to different Haitian media reports, the police have not given more information about the investigation of his case since March 13 when they announced that his file was sent to the justice department. According to a report dated April 3, the Police announced the arrest of two men who were found with Legagneur's phone<sup>1041</sup>.

### B. Murders

763. The Office of the Special Rapporteur condemned the murder of journalists Petión Rospide<sup>1042</sup>, on June 10 and of Nehemie Joseph<sup>1043</sup> on October 10, both were shot dead by alleged unknown persons for reasons that would be related to their journalistic activity.

764. According to public information, the host of *Radio Sans Fin*, Rospide would have been shot dead while driving back to his home in an official vehicle of the radio station where he worked in Port-au-Prince. The 45-year-old reporter had just finished his radio show that focused on corruption allegations against the government of Haitian President Jovenel Moïse. President Moïse issued a statement on June 11, calling Rospide's death "an atrocious act" and expressed his rejection of the attacks reported against local media.

765. On October 10, *Radio Méga* reporter Nehemie Joseph was found dead with bullet wounds in his private vehicle in the town of Mirebalais, north-east of Port-au-Prince. Joseph would have published last September on Facebook that he would have been threatened by politicians who accused him of inciting protests. In addition, he would have let his relatives know about the recent threats he allegedly received<sup>1044</sup>. The work of this journalist was characterized by expressing criticism of the government and often denouncing the mismanagement of the political crisis by local authorities<sup>1045</sup>. According to public knowledge information, Joseph would have been missing before his murder that occurred near Bayas Park when armed individuals would have forced him into the trunk of his own vehicle, before fatally shooting him three times<sup>1046</sup>.

766. The Office of the Special Rapporteur calls on the State of Haiti to investigate, in a complete, effective, and impartial manner, both crimes and others that are unpunished, to clarify their motives, and to judicially determine the relationship they may have to journalistic activity and freedom of expression. It also calls to implement prevention and guarantee measures for journalists who are at risk.

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

<sup>1040</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. March 29, 2018. [Press Release R71/18 Office of the Special Rapporteur expresses its extreme concern over the disappearance of journalist Vladjimir Legagneur in Haiti, and urges the authorities to take necessary measures to determine his whereabouts.](#)

<sup>1041</sup> VOA News. April 6, 2019. [Haiti Police Arrest Suspects Who Say They Murdered Journalist Legagneur.](#) IFEX. April 15, 2019. [Violence against journalists and impunity a constant in Haiti.](#) Reporters Without Borders (RSF). September 14, 2018. [Six months later, nothing known about Haitian journalist's disappearance.](#)

<sup>1042</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 14, 2019. [Press Release R151/19 The Office of the Special Rapporteur condemns the murder of journalist Petión Rospide and expresses its concern over the ongoing violence against journalists in the framework of the public demonstrations' coverage in Haiti.](#) Committee to Protect Journalists (CPJ). June 13, 2019. [Radio Sans Fin host Pétion Rospide killed in Port-au-Prince, Haiti.](#) Knight Center for Journalism in the Americas. June 11, 2019. [Radio journalist killed in Haiti amid protests against the country's president.](#)

<sup>1043</sup> CPJ. October 11, 2019. [Radio Panic FM journalist found dead in Haiti following threats.](#) Knight Center for Journalism in the Americas. October 11, 2019. [Radio journalist killed in Haiti amidst violent protests against country's president.](#)

<sup>1044</sup> AP. October 11, 2019. [Thousands of protesters in Haiti loot stores, battle police.](#) Le Nouvelliste. October 10, 2019. [Un journaliste tué par balle à Mirebalais.](#) Amnesty International. October 31, 2019. [Haiti: Amnesty International verifies evidence of excessive use of force against protesters.](#)

<sup>1045</sup> RSF. October 14, 2019. [Another journalist murdered in Haiti.](#) Knight Center. October 11, 2019. [Radio journalist killed in Haiti amidst violent protests against country's president.](#)

<sup>1046</sup> Periodistas\_Es. October 11, 2019. [Periodistas asesinados en Haití: Néhémie Joseph.](#) Reporters Without Borders (RSF). October 14, 2019. [Another journalist murdered in Haiti](#)

768. In addition, in a joint statement of 2005, the Special Rapporteurs, of the IACHR and of the ACPHR, affirmed that “[this kind of] crimes have a chilling effect on freedom of expression that increases when governments do not investigate these crimes promptly or when the perpetrators are not prosecuted”<sup>1047</sup>.

### C. Attacks, threats, and intimidation against journalists and the media and Public Protest

769. The IACHR and its Office of the Special Rapporteur have repeatedly<sup>1048</sup> expressed their concern about the escalation of violence in the demonstrations and protests in Haiti that have been taking place since last 2018. In this context, a Response Room for Timely and Integrated Coordination (SACROI) has also been installed to monitor the situation<sup>1049</sup>.

770. According to information received by the IACHR, different attacks against journalists have been recorded in Haiti in the context of demonstration coverage. Social protests started due to economic and political factors, centered on the rejection of President Moïse's mandate. In addition to the crisis unleashed following the presentation of a report on the management of PetroCaribe funds in January this year regarding acts of corruption by government authorities and other actors, there would also be shortage of fuels, and lack of energy and food with episodes of violence generated by organized groups. In particular, during its 173rd Session, the Commission received information from representatives of civil society organizations about the situation of journalists and the lack of guarantee for their work<sup>1050</sup>.

771. According to public information, the reported aggressions would come both from the excessive use of public force and also by armed groups linked to different political sides, that is to say, officialism and opposition, who depending on the moment of social agitation instigate the population to attend a protest or alternatively prevent them from attending.

772. On February 13, the correspondent journalist for the *Reuters* agency in Haiti, Robenson Sanon was shot in the right arm and was injured while covering protests in Port-au-Prince. Sanon said that he could not identify where the shot came from. According to public information, Sanon was initially taken to the Hospital of the State University of Haiti (HUEH), but the unit had no doctors or bandages available. Subsequently, the journalist was transferred to Bernard Mevs Hospital, where he received care and was discharged the same day<sup>1051</sup>.

773. In this context, the National Association of Media of Haiti (ANMH), the Association of Independent Media of Haiti (AMIH), and the Association of Journalists of Haiti (AJH) issued a statement denouncing the lack of protection and guarantees for the press staff during the protests in the country, indicating that in just one week the protesters would have hit journalists, damaged press vehicles and tried to confiscate journalists' work equipment. In the same vein, they denounced the attack on the offices of the *National Television of Haiti*, also reported cases of interference in the frequencies of the media and indicated that agents of the Haitian national police would have threatened communicators<sup>1052</sup>.

774. On June 9, two journalists from *Radio Sans Fin* (RSF) reported having been almost shot dead<sup>1053</sup>. To this incident, other events are added, such as the one registered against the photographer of the *Le Nouvelliste* newspaper, who was injured by rubber bullets. In addition, *Radio Tele Ginen* reporters were reportedly beaten with stones and their cars were vandalized on Monday, June 10. Rospide, the murdered journalist, reported these attacks through his radio program and also reported on the attack on two vehicles of *Radio Tele Ginen* by groups of protesters. During the protest escalation recorded in June, other reporters injured were Michel Dominique, Esdra Jeudy, and Richardson Jourdan of *TNH08* and *Le Nouvelliste's* photojournalist, Lesly Dorcin<sup>1054</sup>.

775. According to public information, on July 16, three unidentified people fired at the vehicle of journalist and television political analyst of *Tele Pacific* and the newspaper *Le National*, Kendi Zidor<sup>1055</sup>, who had previously denounced death threats after the publication of an editorial in the newspaper *Le National*, where he

<sup>1047</sup> The ACHPR Special Rapporteur for Freedom of Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. 2005. [Joint Declaration](#).

<sup>1048</sup> <sup>1048</sup> IACHR. February 13, 2019. [CIDH expresa preocupación ante situación en Haití](#); IACHR. July 3, 2019. [IACHR Concludes Visit to Haiti](#); IACHR. October 11, 2019. [IACHR and its Special Rapporteurship for Freedom of Expression Concerned about Violence and Increased Political Tensions in Haiti](#).

<sup>1049</sup> IACHR. February 27, 2019. [Concerned about Worsening Violence and Scarcity in Haiti, IACHR Unveils Plans for a Rapid and Integrated Response Coordination Unit to Monitor the Situation](#).

<sup>1050</sup> IACHR/YouTube. September 23, 2019. [173 Period of Sessions. Session on Haiti: violence in social protests](#). Reuters. December 11, 2019. [El caos se apodera de los suburbios de Haití, sumida en la peor violencia en años](#).

<sup>1051</sup> Loop Haití. February 13, 2019. [Haïti - Manifestation : le journaliste Robenson Sanon touché par balle](#). Knight Center for Journalism in the Americas. February 18, 2019. [Haitian journalist shot during protests against the government](#).

<sup>1052</sup> *Le Nouvelliste*. February 14, 2019. [Violences contre la presse: association de journalistes et patrons de médias protestent](#).

<sup>1053</sup> Loop Haití. June 10, 2019. [Haïti - Insécurité : Un journaliste de la RSF tué par balles](#).

<sup>1054</sup> Acento. October 16, 2019. [SIP condena asesinato de un segundo periodista en Haití este año](#).

<sup>1055</sup> *Le National*. May 23, 2019. [La justice menottée](#). Knight Center for Journalism in the Americas. July 24, 2019. [Journalist who received threats survives shooting in Haiti's capital](#). Committee to Protect Journalists (CPJ). July 22, 2019. [Haitian journalist Kendi Zidor survives shooting attempt in Port-au-Prince](#).

criticized the handling of the Haitian authorities for investigations into the La Saline massacre, in which dozens of people were allegedly tortured and killed in November 2018<sup>1056</sup>.

776. On August 6, the journalist of the *Loop Haiti* agency, Luckson Saint-Vil, was attacked by unknown persons with firearms, when he was going to his home in southern Haiti, reporting that the vehicle transporting him would have been shot seven times. According to available information, Saint-Vil reported death threats to the judicial police only a few days before the attack. The threats were made after the journalist won the Philippe Chaffanjon Prize in June 2019 for a report on alleged links between violent gangs and authorities<sup>1057</sup>.

777. In this regard, the Secretary of State for Communications of Haiti has stated about this, on August 8, that it condemned the increase in verbal and physical aggressions, as well as intimidation of Haitian journalists, and would have regretted the slowness of judicial decisions<sup>1058</sup>.

778. According to information provided to this Office, on September 23, the graphic reporter of the *AP* agency, Dieu Nalio Chery received an impact on the face by Senator Jean Marie Ralph Fethière, who shot indiscriminately when he felt threatened at the doors of the Senate. Chery wore a helmet and a bulletproof jacket that had “press” written, and was covering a ratification vote of the nominated Prime Minister Fritz William Michel, accused of corruption<sup>1059</sup>.

779. On September 30, *Radio Sans Fin* (RSF) journalist Edmond Joseph Agenor was hit with a bullet in the wrist when he was covering the clashes between protesters and the police in Port-au-Prince. According to public information, Joseph was visibly wearing a press badge, a life jacket, and a helmet. Different civil society organizations reported that on several occasions the police would have used lethal weapons to disperse the protests<sup>1060</sup>.

780. On November 11, the correspondent who was replacing Chery while he was recovering, *AP* agency photographer Rebecca Rockwell, was injured by a bottle, again during demonstrations<sup>1061</sup>.

781. The IACHR was informed about the circulation of hate speech that constitutes incitement to violence through radio broadcasts and social networks. These speeches would be exacerbating political polarization and attacks against vulnerable groups. In this regard, the IACHR reiterates that in the face of examples of serious crimes that have occurred due to the exacerbation of hatred against certain groups, the State must take the necessary measures to respond to these discourses promoting human rights. In that sense, it also recalls that Article 13.5 of the American Convention establishes that speech that incites violence for discriminatory reasons is not protected, and when it can generate real and imminent violence, it can be sanctioned.

782. The media and journalists should, as appropriate, support effective systems of self-regulation, at the level of specific media sectors (such as professional bodies) or at the level of individual media (public ombudsmen or publishers), which include standards to promote the veracity of the news, among other things, contemplating the right of rectification and/or reply in the case of incorrect events in the media. Likewise, the media should evaluate the possibility of offering critical coverage of misinformation and propaganda as part of their news services, which would be consistent with their surveillance role in society, especially during electoral periods and debates on topics of public interest<sup>1062</sup>.

783. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical political and social expression of the activities of the authorities. The Commission has pointed out that “it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly”<sup>1063</sup> and that “the exercise of the right of assembly to through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its materialization”<sup>1064</sup>. Likewise, the 2013 Joint Declaration on violence against journalists in the framework of social demonstrations indicates that the rights of assembly and freedom of expression “are fundamental and their guarantee is a necessary condition for existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations in order to ensure their peaceful development or disperse those that become violent, provided that such limits

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<sup>1056</sup> IACHR. November 22, 2019. [A Year After La Saline Massacre, the IACHR Remains Concerned about the Ongoing Political and Institutional Crisis in Haiti](#).

<sup>1057</sup> CPJ. August 13, 2019. [Journalist Luckson Saint-Vil survives shooting attack in southern Haiti](#). Loop Haiti. August 6, 2019. [Notre reporter Luckson Saint-vil victime d'une attaque armée à Léogâne](#).

<sup>1058</sup> Prensa Latina. August 8, 2019. [Gobierno de Haití deplora aumento de ataques contra la prensa](#).

<sup>1059</sup> The Guardian. September 23, 2019. [Haiti: photojournalist shot in face as senator opens fire outside parliament](#). La República. September 23, 2019. [Senador de Haití dispara contra manifestantes: "La defensa personal es un derecho sagrado"](#). BBC. September 24, 2019. [Haiti senator opens fire outside parliament, wounding two](#).

<sup>1060</sup> Reuters. September 30, 2019. [Haitian journalist shot in wrist in latest round of protests](#). Committee to Protect Journalists (CPJ). *October 1, 2019*. [Journalist Edmond Agenor Joseph shot by police in Haiti while covering protests](#). IJDH. November 14, 2019. [CPJ and RSF Call on Haitian Authorities to Investigate Attacks](#).

<sup>1061</sup> Diario Libre. November 11, 2019. [Centenares de opositores intentan llegar a casa del presidente de Haití](#).

<sup>1062</sup> IACHR. Special Rapporteur on Freedom of Expression. May 3, 2017. [Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda](#).

<sup>1063</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>1064</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. 139.

are governed by the principles of legality, necessity, and proportionality. In addition, dispersing a demonstration must be justified in the duty of protection of people, and the safest and least harmful measures for protesters should be used. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances in accordance with internationally recognized principles<sup>1065</sup>.

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

#### **D. Access to Information**

785. Different human rights organizations, journalists, and human rights defenders have denounced the lack of unreliable data and statistics from the State of Haiti which would hamper their work since they would not have a real number of people killed since the conflict began, neither about the wounded, detained, nor about police casualties<sup>1066</sup>.

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<sup>1065</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>1066</sup> Connectas. December 12, 2019. [Haití, ¿cómo salir de la crisis de corrupción y pobreza extrema?](#)

## 21. HONDURAS

786. During 2019 citizen protests took place in the country, promoted by the education and health unions in various cities in Honduras, which were supported by broad sectors of the population. Although the demonstrations developed peacefully, there were also episodes of violence. The Office of the Special Rapporteur noted with concern the excessive use of force by state security forces - police and military - in the repression of protests, which resulted in deaths, detentions and injuries. On the other hand, the persistence of high levels of violence against journalists and the impunity of most crimes continues to be a serious problem for the exercise of journalism and the right to freedom of expression. During 2019, at least 6 murders of communicators were reported that could be linked to the exercise of journalism, and that their material or intellectual authors have not yet been identified. In addition, numerous communicators and journalists left the country due to threats received. Also of particular concern was the persistence of the use of criminal law to punish communicators, the sentence of 10 years imprisonment against a journalist for the commission of crimes of libel being particularly serious.

### A. Progress

787. On August 29, Congress formalized the decision to remove the articles related to crimes against honor from the new Criminal Code approved in May - and which goes into effect on November 10. Thus, the provisions on slander and insults were repealed and will be resolved as a civil justice matter. Likewise, Congressman Mario Pérez, who presided over the commission that prepared the new criminal regulations, informed that those articles that determined “some kind of responsibility for the media” would also be eliminated<sup>1067</sup>. Local and international journalistic organizations that had warned about the limitations on freedom of expression of such provisions welcomed the decision<sup>1068</sup>. The Inter-American Commission on Human Rights (IACHR), the Office of the Special Rapporteur, and the Office of the High Commissioner for Human Rights in Honduras (OHCHR) had expressed in a statement their concern over the aforementioned standards, which implied “disproportionate restrictions on freedom of expression and freedom of the press.” For their part, local organizations such as the Association of Journalists of Honduras [*Colegio de Periodistas de Honduras*] had warned that these provisions criminalized freedom of expression and of the press<sup>1069</sup>. However, other rules that preoccupied the Office of the Special Rapporteur would still remain in the text and could come into force. For example, the inclusion of the crimes of “exploitation of secrecy or privileged information” and “espionage”, which could criminalize the journalistic exercise, and the inclusion of the crimes of “public disorders”, “meetings and illegal demonstrations”, and “disturbance of order”, which could unduly criminalize the exercise of the right to peaceful demonstration and freedom of expression<sup>1070</sup>.

788. The Office of the Special Rapporteur also considers it important that the protection mechanism for journalists and human rights defenders has been maintained. According to information provided to this Office by the General Directorate of the Protection System of the Secretariat of Human Rights of Honduras [*Dirección General del Sistema de Protección de la Secretaría de Derechos Humanos de Honduras*], 215 people were beneficiaries of protection measures as of August 30, 2019; 26 are social communicators, 146 are human rights defenders; 15 justice operators; and 28 journalists. The protection mechanism has units for: Case Reception and Immediate Reaction, Risk Analysis, Implementation and Monitoring, Prevention and Context Analysis, and a Legal Technical Advice office. For the 2019 year, the budget allocation by the National Treasury Funds for the protection program was 17,913,207 lempiras<sup>1071</sup>, which represented an increase of 20.5% in relation to the budget allocated in 2018 (14,921,172 lempiras)<sup>1072</sup>.

### B. Murders

789. On March 17, journalist Gabriel Hernández was murdered in the Nacaóme municipality, Valle department. Hernández, 54, directed the program “El Pueblo Habla” of *Valle TV*. He was shot by two individuals aboard a vehicle and died hours later in the hospital. The journalist, who also worked as a correspondent for

<sup>1067</sup> Congreso Nacional. August 20, 2019. [CN eliminará delitos contra el honor del nuevo Código Penal](#); La Prensa. August 20, 2019. [Congreso elimina los artículos que violentaban la libertad de expresión](#).

<sup>1068</sup> La Prensa. August 31, 2019. [SIP aplaude eliminación de penas por injuria y calumnia del nuevo Código Penal](#); Committee to Protect Journalists (CPJ). September 3, 2019. [Honduras to drop criminal defamation from new penal code](#).

<sup>1069</sup> La Prensa. June 14, 2018. [CPH exige derogar artículos lesivos a libertad de expresión](#); La Prensa. May 15, 2019. [Nuevo código penal, un golpe a los medios de comunicación dicen los expertos](#); Proceso Digital. May 25, 2019. [Periodistas advierten riesgos en ejercicio de su profesión frente a nuevo Código Penal](#); La Prensa. May 17, 2019. [Colegio de Periodistas de Honduras pide declarar inconstitucional artículos que lesionan la libertad de expresión](#).

<sup>1070</sup> IACHR. July 12, 2019. [IACHR and OHCHR Express Concern over the Provisions of the Criminal Code in Honduras and Call for a Review in Accordance with International and Inter-American Human Rights Standards](#).

<sup>1071</sup> Information supplied on September 11, 2019 by the Dirección General del Sistema de Protección of the Secretaría de Derechos Humanos to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1072</sup> Secretaría de Derechos Humanos de Honduras. [El Mecanismo de Protección de las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia, en cifras al 2018](#).

*Radio Globo*, was known for his strong criticism against the municipal mayor of Nacaóme and the congress deputies of the department. According to available information, the journalist had been subjected to threats, police attacks, and refusals of information by municipal authorities, headed by the Mayor of Nacaóme<sup>1073</sup>. The Office of the Special Rapporteur condemned the murder in a press release and called on the Honduran State to fully, effectively, and impartially investigate the crime, clarify its motives, and judicially determine the relationship it might have to journalistic activity and freedom of expression<sup>1074</sup>.

790. On July 5, television presenter Santiago Carvajal, a rights activist for the LGTBI community, was murdered. The communicator would have been attacked with firearms by unidentified individuals in the city of Puerto Cortés. He died hours later at the Mario Catarino Rivas Hospital in San Pedro Sula. Carvajal directed the critical program *La Galaxia de Santy*, on a local television channel. The motives of the crime would not have been clarified yet<sup>1075</sup>.

791. On August 31, journalist and communicator Edgar Joel Aguilar, a correspondent for the national television channel *Canal 6* and the local television station *Cable Mar TV*, was murdered by a stranger who shot him several times when he was in a barbershop, in La Entrada, Nueva Arcadia municipality, Copan department. Aguilar covered police news and, according to local press, days before his death he had received threats through social networks. The communicator would have made a complaint to the Police Investigation Directorate and requested protection<sup>1076</sup>. According to the director of the National Protection Mechanism, Danilo Morales, the program would not have been informed about the threats against the journalist<sup>1077</sup>. In previous years Aguilar had already been the victim of attacks and threats<sup>1078</sup>.

792. On November 1, journalist Buenaventura Calderón, one of the coordinators of the “Ecos de la Mosquitia” news program, was killed on KupiaKumi Radio in Puerto Lempira. Calderón was shot to death with his wife, María Calderón, who died hours later in the hospital. Calderón dealt with issues related to drug trafficking in the area, corruption and was a defender of the human and territorial rights of mischievous peoples of that region. According to police authorities, the causes of the murder of the communicator, who was also a merchant, and his wife, are under investigation<sup>1079</sup>.

793. On November 21, the body of the communicator and television presenter of Channel 45 of Catacamas (Olancho), Johana Alvarado, who had signs of abuse and head shots was found. The causes of the crime would not have been clarified by the Honduran Police<sup>1080</sup>.

794. On November 25 in Puerto Cortés, department of Cortés, journalist José Arita was killed, who was reportedly attacked with firearms by strangers when he left the facilities of Puerto Vision Channel 12, after completing his program “La Hora de the truth”. The Honduran Police security spokesman, Jair Meza Barahona, reported that the murder may be related to Arita’s journalistic work<sup>1081</sup>. The Office of the Special Rapporteur notes with concern that this would be the sixth murder against press personnel in 2019 and urges the Honduran State to investigate the cases in a complete, effective and impartial manner, clarify their motives and determine the relationship they could have with the journalistic activity.

795. The Office of the Special Rapporteur has repeatedly indicated that the murder of journalists constitutes the most extreme form of censorship and States have a positive obligation to identify and punish the

<sup>1073</sup> Reporters Without Borders (RSF). March 19, 2019. [Journalist murdered in southern Honduras, first this year](#); Univisión. March 18, 2019. [Asesinan a tiros al periodista hondureño Gabriel Hernández](#); Proceso Digital. March 17, 2019 [Asesinan al periodista Gabriel Hernández en Nacaome](#); Secretaría de Derechos Humanos de Honduras. [Comunicado](#). March 20, 2019.

<sup>1074</sup> IACHR. Special Rapporteurship for Freedom of Expression. March 3, 2019. [Press Release R71/19 The Office of the Special Rapporteur Condemns the Murder of Journalist in Honduras and Urges to Investigate Connection to Journalistic Activity](#).

<sup>1075</sup> El País. July 7, 2019. [Asesinado un presentador de televisión hondureño integrante de la comunidad LGTBI](#); El Heraldo. July 6, 2019. [Muere comunicador social de la comunidad LGTBI tras ser atacado a balazos en Puerto Cortés](#); Telesur. July 7, 2019. [Asesinan en Honduras a comunicador social de la comunidad LGTBI](#).

<sup>1076</sup> La Prensa. August 31, 2019. [Matan a balazos a corresponsal de televisión en una barbería de Copán](#); La Prensa September 19, 2019. [Unesco pide que se investigue asesinato de periodista hondureño](#); El Heraldo. August 31, 2019. [Dentro de una barbería matan a un periodista hondureño](#); IFEX. September 1, 2019. [Asesinan al periodista Edgar Joel Aguilar en Honduras](#).

<sup>1077</sup> Reporteros de Investigación. August 31, 2019. [Director del Mecanismo de Protección: no fuimos informados de amenazas a muerte contra periodista de Canal 6.](#)

<sup>1078</sup> CPJ. September 4, 2019. [Cablemar TV reporter Aguilar shot dead in Copán, Honduras](#); El Heraldo. August 31, 2019. [Dentro de una barbería matan a un periodista hondureño](#).

<sup>1079</sup> IACHR. Special Rapporteurship for Freedom of Expression. December 4, 2019. [Comunicado de prensa R316/19. Relatoría Especial condena asesinato de periodista José Arita en Honduras e insta a investigar relación con su actividad periodística](#); CPJ. November 6, 2019. [Asesinan al presentador de radio Buenaventura Calderón en Honduras](#); Notibomba. November 1, 2019. [OACNUDH lamenta crimen de líder opositor y su esposa en Honduras](#)

<sup>1080</sup> <sup>1080</sup> IACHR. Special Rapporteurship for Freedom of Expression. December 4, 2019. [Comunicado de prensa R316/19. Relatoría Especial condena asesinato de periodista José Arita en Honduras e insta a investigar relación con su actividad periodística](#); Honduras TV. November 21, 2019. [A escasas cuadras del Ministerio Público de Catacamas le quitan la vida a comunicadora social](#); Tiempo Digital. November 21, 2019. [Matan a comunicadora social mientras cubría noticias cerca del MP de Catacamas](#)

<sup>1081</sup> IACHR. Special Rapporteurship for Freedom of Expression. December 4, 2019. [Comunicado de prensa R316/19. Relatoría Especial condena asesinato de periodista José Arita en Honduras e insta a investigar relación con su actividad periodística](#); Comité para la Protección de Periodistas. November 27, 2019. [Asesinan al presentador de programa televisivo José Arita en Puerto Cortés, Honduras](#); El Heraldo. November 25, 2019. [Matan a disparos a comunicador social en Puerto Cortés](#).

perpetrators of these crimes. For this Office, it is essential that the State investigate, in a complete, effective, and impartial manner, the murders of journalists and clarify their motives and judicially determine the relationship they may have to journalistic activity and freedom of expression. The authorities should not rule out the exercise of journalism as a motive for murder and/or aggression before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions in the development of the processes in stages of indictment or trial. Not having completely exhausted the logical lines of investigation favors, above all, that intellectual authors cannot be identified.

796. Adicionalmente, el principio 9 de la Declaración de Principios sobre Libertad de Expresión de la CIDH señala que "[e]l asesinato, secuestro, intimidación, amenaza a los comunicadores sociales, así como la destrucción material de los medios de comunicación, viola los derechos fundamentales de las personas y coarta severamente la libertad de expresión. Es deber de los Estados prevenir e investigar estos hechos, sancionar a sus autores y asegurar a las víctimas una reparación adecuada". Particularmente, en el caso de crímenes contra periodistas y comunicadores sociales, la CIDH ha señalado que la impunidad contribuye a la autocensura de la prensa.

### C. Attacks, threats, and intimidation against journalists and the media

797. Violence against journalists and the impunity of the perpetrators of attacks and threats, continues to seriously affect the exercise of the right to freedom of expression in Honduras. According to the information received by the Office of the Special Rapporteur, several reporters were assaulted while doing their job<sup>1082</sup>. The cameraman of the *Une TV* channel, Issac Buezo, was hit by a rubber bullet launched by members of the National Police on January 27 when he was covering an operation against a protest of government opponents in Tegucigalpa<sup>1083</sup>. The journalist Yeovany Villalobos, of *Canal 11*, would have been wounded in the eye by a stone thrown during a confrontation between protesters and the Police, on May 1; *Q'hubo TV* cameraman Mike Lino would have been injured in the leg<sup>1084</sup>. The journalist Melissa Hernández and her cameraman would have been assaulted on June 28 by members of the National Police in Choluteca while they were covering the eviction in an area known as the "Barrios Bravos"<sup>1085</sup>. The journalist Wenceslao Canales, host of the "Cuarto Poder" program, on *Canal 29*, and a correspondent for *Canal 11*, would have received intimidating messages after reporting critical situations at the "San Isidro" hospital in Tocoa, Colón department<sup>1086</sup>. Also, on August 5, the director of the Police Investigation Directorate (DPI) would have attacked and snatched the journalist's cell phone, and threatened to arrest him while he was covering a police act<sup>1087</sup>.

798. On September 1, the vehicle of journalist Miguel Ángel Tróchez would have been burned; in previous days he had been the victim of extortion and death threats. The journalist, host of "Paradise TV" on *Canal 24*, would have denounced the facts before the Police Investigation Directorate (DPI), and would have requested protection from the National Protection Mechanism<sup>1088</sup>.

799. On September 26 in Tegucigalpa, an unidentified individual would have pointed a gun at journalist Sandra Maribel Sánchez, a journalist for *Radio Progreso*, when she got out of her car and would have demanded that she re-enter it. Another car would have approached at that time, and as a consequence the aggressor, who was driving a motorcycle, would have fled. Sanchez considered that it was an act of intimidation that could be linked to her critical reports about the Armed Forces and her allegations about government corruption. The journalist had already received threats in 2018 due to her work<sup>1089</sup>.

800. La Relatoría Especial recuerda que el principio 9 de la Declaración de Principios sobre Libertad de Expresión de la CIDH señala que "[e]l asesinato, secuestro, intimidación, amenaza a los comunicadores sociales, así como la destrucción material de los medios de comunicación, viola los derechos fundamentales de las personas y coarta severamente la libertad de expresión. Es deber de los Estados prevenir e investigar estos hechos, sancionar a sus autores y asegurar a las víctimas una reparación adecuada". Particularmente, en el caso

<sup>1082</sup> Journalist César Omar Silva was reportedly assaulted by security forces of the Undersecretary of Security, Alejandra Hernández, when he tried to interview her at Toncontín International Airport, in Tegucigalpa, on August 29. C-Libre. August 31, 2019. [Seguridad de funcionaria agrede a periodista](#); YouTube/Benjamín Cepeda Carranza. August 30, 2019. [Agresión física con el periodista Cesar Silva](#).

<sup>1083</sup> C-Libre. January 27, 2019. [Policía agrede a camarógrafo mientras cubría represión a protestas](#);

<sup>1084</sup> Also, the director of Radio Progreso, Ismael Moreno, allegedly reported damage to the station's car. C-Libre. May 2, 2019. [Ataques contra la prensa y hacia manifestantes en movilización de 1ero de mayo](#).

<sup>1085</sup> Pasos de Animal Grande. July 16, 2019. [Honduras en retroceso: Castigos por no seguir la agenda de Casa Presidencial](#); C-Libre. June 28, 2019. [Policía Nacional dispara contra periodista y camarógrafo en Choluteca](#).

<sup>1086</sup> C-Libre. July 17, 2019. [Periodista es amenazado por denunciar contaminación en hospital de Tocoa](#).

<sup>1087</sup> Facebook account of W Radio. No date. [W informa policía agrede a periodista](#); C-Libre. August 13, 2019. [Jefe de la DPI impide cobertura y amenaza a Periodista](#).

<sup>1088</sup> Proceso Digital. September 1, 2019. [Queman vehículo a periodista víctima de extorsión en Santa Bárbara](#); Tiempo Digital. September 1, 2019. [Amenazan e incendian vehículo a comunicador social en Santa Bárbara](#); C-Libre. September 4, 2019. [Amenazas, extorsión y quema de vehículo sufrió periodista en Santa Bárbara](#).

<sup>1089</sup> HCH Televisión Digital. September 26, 2019. [La periodista Sandra Maribel Sánchez sufre un atentado](#); Committee to Protect Journalists (CPJ). October 3, 2019. [In Honduras, attacker holds gun to head of Radio Progreso anchor Sánchez](#). Radio Progreso. September 27, 2019. [Radio Progreso denuncia intento de secuestro contra periodista Sandra Maribel Sánchez](#).



de crímenes contra periodistas y comunicadores sociales, la CIDH ha señalado que la impunidad contribuye a la autocensura de la prensa.

#### D. Social Protest

801. Intense protests developed during the year, which were repressed through indiscriminate and disproportionate use of force<sup>1090</sup>. The armed forces also participated in the repression, in contradiction with the inter-American standards on the matter.

802. In April, mass demonstrations began in Honduras to protest the approval of reforms to restructure the health and education systems, promoted by the Government. Initially the protests were led by groups of teachers and doctors –through the Platform for the Defense of Health and Education - who rejected the reforms because they understood that they would result in a privatization of services and the dismissal of public officials. Then students and later transport groups and a sector of the National Police joined. The protests were widespread and spread from the capital Tegucigalpa to several cities in the country. After the impact generated by the protests, the Executive Branch repealed the reforms, but the demonstrations continued. The reaction of the government to the protesters would have been the deployment of a severe repression<sup>1091</sup>, first with police, and then military, which reportedly aggravated the intensity of the protests<sup>1092</sup> and resulted in the death of at least six people, more than 80 injured<sup>1093</sup>, and dozens of detainees<sup>1094</sup>. According to the organization Committee for Free Expression [*Comité por la Libre Expresión*] (C-Libre), from March 4 to June 25 there were at least 346 protests across the country<sup>1095</sup>.

803. On April 30, the Coalition against Impunity [*Coalicción contra la Impunidad*] (CCI), composed of more than 45 civil society organizations, published a statement in which it expressed its condemnation “of the context of repression, persecution, and violence” unleashed by the government against peoples’ demonstrations<sup>1096</sup>. On July 15, more than 20 member organizations of the IFEX-LAC advocacy network expressed deep concern about the situation of freedom of expression in Honduras<sup>1097</sup>.

804. On May 27, the Secretariat of State in the Security Office issued a statement regarding the call of the Health and Education unions to continue the protests. The Secretariat indicated that its officials were “authorized under the law to evict protesters who persist in blocking the roads and those that with vandalism destroy public and private property and endanger the physical integrity of the population.” It also urged “all sectors of society to resort to dialogue and avoid criminal actions.” Organizations defending freedom of expression questioned the content of the message, understanding that the Secretariat “stigmatizes social protest” by defining it as “vandalism actions”<sup>1098</sup>. On June 9 during a television interview, security secretary Julián Pacheco Tinoco would have threatened to detain protesters: “It doesn’t matter who, it doesn’t matter who we have to go detain, we are going to do it”<sup>1099</sup>.

805. On June 19, a sector of the National Directorate of Special Forces of the National Police of Honduras went on strike and ceased participating in security operations; while joining the claims of the Health and Education unions for better working and salary conditions<sup>1100</sup>.

<sup>1090</sup>On February 11, a group of villagers from Yaguacire, a village of the Central District, who had blocked roads in protest of an unfinished project to pave the access road to the village, were evicted by the National Police with tear gas. Proceso. February 11, 2019. [Pobladores de aldea Yaguacire se toman carretera del Sur, Policía los desaloja](#); Tiempo Digital. February 11, 2019. [Honduras: Policías lanzan gas lacrimógeno a pobladores de Yaguacire](#).

<sup>1091</sup>An investigation by Amnesty International documented that during the protests security forces reportedly used firearms and indiscriminately used less lethal weapons, such as tear gas or rubber bullets, injuring dozens of people. Amnesty International. July 5, 2019. [Honduras: Exercising the right to protest has a high cost for those who dare take to the streets](#); EFE. July 5, 2019. [Amnistía Internacional condena la “respuesta represiva” del Gobierno contra los manifestantes en Honduras](#)

<sup>1092</sup>At the end of May a group of protesters set tires on fire at the main entrance of the US embassy in Tegucigalpa. El País. June 1, 2018. [Las protestas en la Embajada de Estados Unidos en Honduras, en imágenes](#); Al Jazeera. June 22, 2019. [Honduras protest crackdown: Five things to know](#); EFE. June 22, 2019. [Manifestaciones siguen enlutando a una Honduras en la que no cesan las crisis](#).

<sup>1093</sup>El País. June 22, 2018. [Al menos tres muertos en Honduras tras el despliegue del Ejército por la oleada de protestas](#); C-Libre. April 11, 2019. [Asesinan a menor de edad en represión a protesta en Choluteca](#); BBC. June 22, 2019. [Protestas en Honduras: al menos 3 muertos en las movilizaciones en contra del gobierno de Juan Orlando Hernández](#); Infobae. June 21, 2019. [Se agudiza la crisis en Honduras: nuevas protestas dejaron al menos tres muertos](#); Amnesty International. July 5, 2019. [Honduras: Exercising the right to protest has a high cost for those who dare take to the streets](#).

<sup>1094</sup>C-Libre. April 30, 2019. [Gobierno desata represión policial- militar contra Plataforma por el derecho a la Salud y Educación](#); C-Libre. May 27, 2019. [Policías y Guardia Presidencial reprimen movilización de Plataforma por la Salud y Educación](#); C-Libre. May 22, 2019. [Fuerza policial reprime protestas en defensa de la Salud y Educación](#).

<sup>1095</sup>Amnesty International. July 5, 2019. [Honduras: Exercising the right to protest has a high cost for those who dare take to the streets](#).

<sup>1096</sup>C-Libre. 30 de abril de 2019. [Pronunciamiento: Frente al contexto de violencia desatada por el régimen de Juan Orlando Hernández](#).

<sup>1097</sup>IFEX. July 15, 2019. [IFEX-ALC condemns repression and legal initiatives that undermine freedom of expression in Honduras](#).

<sup>1098</sup>Secretaría de Seguridad. Comunicado. May 27, 2019; C-Libre. May 28, 2019. [Policía oficializa amenaza de continuar represión contra manifestaciones en defensa de la Salud y Educación](#).

<sup>1099</sup>C-Libre. [Militares y Policías agreden y levantan perfiles a la prensa y a defensores de DDHH](#).

<sup>1100</sup>RT. June 20, 2019. [“No vamos a reprimir más al pueblo”: agitadas protestas antigubernamentales en Honduras mientras los policías entran en paro](#); Telesur. June 19, 2019. [Policía de Honduras declara paro y protesta contra Gobierno de Hernández](#); ABC. June 21, 2019. [Violentas protestas en Honduras dejan dos muertos en medio de una huelga policial](#).

806. On June 20, President Juan Orlando Hernández reported at a press conference that he ordered the deployment of the Armed Forces to contain the protests and “guarantee the right to freedom of movement, protection of private/public property, and of course the protection of the integrity of the population”<sup>1101</sup>. The measure was approved by the National Defense and Security Council and was adopted after a day in which protests intensified, with roadblocks, burning of tires in several cities in the country, and vandalizing commercial premises.

807. In this context, the Office of the Special Rapporteur received information about serious aggressions committed by security forces against journalists and media workers covering the protests<sup>1102</sup>. In addition, various reports of acts of violence and harassment against protesters and human rights defenders participating in the protests have been recorded<sup>1103</sup>. Thus, for example, Journalists Dina Paz and Bladimir Rivera, of *CrTv Canal 51*, would have been attacked by members of the Police with tear gas, while covering a mobilization in the department of Choluteca, on April 21<sup>1104</sup>. On April 27, members of the Special Forces Battalion and the National Police would have launched tear gas against the participants of a mobilization in Tegucigalpa. Melvin Osorto, leader of the protest movement and member of the Freedom and Refoundation Party [*Partido Libertad y Refundación*] (LIBRE), was reportedly arrested by the police after denouncing the repression of the protesters on Facebook<sup>1105</sup>. On May 30, during the coverage of a strike called by Health and Education unions in various parts of the country, several journalists had suffered the theft of their equipment, physical attacks, and insults<sup>1106</sup>. Cameraman Gerson Maldonado, of the *Azteca Honduras* television channel, would have been injured after being hit by a tear bomb allegedly launched by police forces during the repression of a mobilization on May 27<sup>1107</sup>. On May 30, a teacher who participated in the protests in his town was reportedly shot dead by National Police agents, who had shot at the crowd. The bullet impact would have caused the loss of a kidney and would have damaged his large intestine, transverse colon, and lung<sup>1108</sup>.

<sup>1101</sup>Twitter account of the President of Honduras Juan Orlando (@JuanOrlandoH). [June 20, 2019](#); El Diario/EFE. June 21, 2019. [Honduras ordena despliegue militar y policial para proteger los DDHH en las protestas](#).

<sup>1102</sup>Metro TV journalist Marcelo Castellón was reportedly assaulted by members of the Police on April 29 while covering the mobilizations called for by medical unions, teachers and students in the city of Choluteca. C-Libre. April 22, 2019. April 30, 2019. [Ataques hacia la prensa en manifestaciones por la defensa de Educación y la Salud en Choluteca](#). On April 30, journalist Alex Cáceres, of local channel Hable Como Habla (HCH), was reportedly assaulted by riot police officers while covering a mobilization. C-Libre. May 1, 2019. [Policías Antimotines arremeten contra periodista de HCH](#). Journalist Leonardo Guevara, of Radio Progreso, was reportedly assaulted by members of the National Police while covering a police operation against demonstrators of the Plataforma en Defensa de la Salud y Educación, in the municipality of Tela. Twitter account of Leonardo Guevara (@leoguevara80). [June 5, 2019](#); C-Libre. June 8, 2019. [Periodista es agredido por enlace policial que brinda medidas de protección](#). On June 4, the video equipment of Hispan Tv network journalist, Dassaev Aguilar, was reportedly destroyed while covering a mobilization in Tegucigalpa. C-Libre. June 7, 2019. [Infiltrados en movilización de Plataforma destruyen equipo a Corresponsal de Hispan Tv](#). On June 11, journalist Leonardo Pineda and cameraman Jorge Núñez, of Canal 21, were reportedly harassed by police while covering a demonstration. C-Libre. June 16, 2019. [Periodistas continúan siendo víctimas de agresiones policiales en Choluteca](#). In July, directors and journalists of Channel 6 reportedly filed a complaint with the Comisionado Nacional de Derechos Humanos (CONADEH) due to the assaults allegedly suffered by media workers from members of the National Police while covering the demonstrations. The journalists victims of police assault were Tania Elwin, Román Paz, Lily Valladares, Claudia Sosa, Paola Cobos and Kelin Chirinos. C-Libre. July 28, 2019. [Canal 6 denuncia agresiones contra sus periodistas](#).

<sup>1103</sup>On April 9 a student protest at the Universidad Nacional Autónoma de Honduras (UNAH - CU), was reportedly repressed by the National Police with tear gas. C-Libre. April 9, 2019. [Coalición contra la Impunidad condena el uso de equipo militar para limitar la libertad de expresión](#); C-Libre. April 9, 2019. [Fuerza policial arremete “por tierra y por aire” contra protesta estudiantil](#). On April 29, Riot Police members reportedly threw tear gas bombs against the headquarters of the Comité de Familiares de Detenidos Desaparecidos en Honduras (COFADEH). C-Libre. April 30, 2019. [Pronunciamiento: Frente al contexto de violencia desatada por el régimen de Juan Orlando Hernández](#). On May 22 protest actions called for by the Plataforma por la Defensa de la Salud y la Educación were reportedly repressed by police forces in three parts of the country, including a student mobilization which was reportedly repressed with tear gas bombs by the National Police and the Tropa de Inteligencia y Respuesta Especial (TIGRES). C-Libre. May 22, 2019. [Fuerza policial reprime protestas en defensa de la Salud y Educación](#). On June 12, at the end of a demonstration called by the Plataforma por la Defensa de la Salud y la Educación in front of Toncontín International Airport, members of the National Police and the Military Police of Public Order allegedly arrested protesters and assaulted members of the press and human rights defenders. The media workers assaulted were Leonidas Maradiaga and Albert Palacios, from *UNE Tv*; Lilian Flores and Anbal Recarte, from *Suyapa Tv*; and Marvin Ortiz, from *radio Globo*. C-Libre. June 14, 2019. [Militares y Policías agreden y levantan perfiles a la prensa y a defensores de DDHH](#). Members of the C-Libre organization were also reportedly assaulted during a demonstration in May. C-Libre. May 2, 2019. [Policía agreden a equipo de C-Libre en represión a manifestaciones en la capital](#).

<sup>1104</sup>C-Libre. 22 de abril de 2019. [Tercer ataque contra la prensa de Choluteca en abril](#).

<sup>1105</sup>C-Libre. April 28, 2019. [Represión a últimas protestas en la capital este fin de semana y dejan un detenido](#); Pasos de Animal Grande. May 3, 2019. [Incontrolable la brutalidad policial contra manifestantes](#).

<sup>1106</sup>Journalists from canal *UNE Tv*, Leonidas Maradiaga and Víctor Rodríguez, were threatened and assaulted by members of the Military Police of the Public Order while recording the arrest of a young man. Jonathan Henríquez, the cameraman of Panorama Cultural e Informativo (PCI), a *Canal 51* show, and journalist Andrés Molina were assaulted with blows and tear gas. *Radio Globo* correspondent Sandra Pérez was affected by tear gas thrown by the police force; journalists Wilfredo Zepeda and Fabricio Garibaldi, of *Radio Globo* and *Canal 51* were threatened by police personnel; Alex Martínez, from *UNE Tv*, was beaten by members of the Police and denounced the theft of his informative material; journalists Roger Corrales and Nathalia Reynoth, from *Viva Tv* channel, were chased by a police patrol after they recorded tear gas bombs thrown against a demonstration. Journalists Javier Hidalgo, from *Televida*, and Leonardo Pineda, from *Prensa Libre*, were also victims of police assault. C-Libre. May 30, 2019. [Periodistas son víctimas de agresión policial en manifestaciones en defensa de la Salud y Educación](#).

<sup>1107</sup>Tiempo. May 27, 2019. [Policías usan gas contra manifestantes cerca de Casa Presidencial](#); Pasos de Animal Grande. July 16, 2019. [Honduras en retroceso: Castigos por no seguir la agenda de Casa Presidencial](#); C-Libre. May 27, 2019. [Policías agreden a camarógrafo mientras cubría manifestación de Salud y Educación](#).

<sup>1108</sup>Amnesty International. July 5, 2019. [Honduras: Exercising the right to protest has a high cost for those who dare take to the streets..](#)

808. On April 11, Wilfredo de Jesús Moncada, who was 17 years-old, died as a result of a shot allegedly made by security forces from a motorcycle during the repression of a demonstration<sup>1109</sup>. On June 19, Erik Peralta, 37, and Luis Maldonado, 29, died. Peralta tried to cross an avenue blocked by a protest when army troops had arrived at the site and started firing. A bullet would have pierced his chest and caused his death almost immediately. Maldonado would have suffered a craniocerebral trauma due to the impact of a bullet. Also, on June 20, Eblin Noel Corea Maradiaga, a 17-year-old student, would have been executed by a member of the Army in the town of Yarumela, La Paz, where hours before a road blockade had taken place as a sign of protest<sup>1110</sup>. On September 19, the military junior Adán García Banegas was arrested, whom the Special Prosecutor's Office for Crimes Against Life identified as allegedly responsible for the killing of Corea Maradiaga; he was subsequently prosecuted and subjected to pretrial detention<sup>1111</sup>.

809. Likewise, the Office of the Special Rapporteur received with concern information on repressive actions by security forces against demonstrations convened by students, sometimes even within educational centers. As a result of police and military actions, students would have been seriously injured and others would have been detained<sup>1112</sup>. For example, on June 24, troops of the Military Police would have entered the National Autonomous University of Honduras [*Universidad Nacional Autónoma de Honduras*] (UNAH) and shot at dozens of people protesting in the access area. As a result of the operation, at least five people would have been shot, including a 25-year-old student, who was shot in the arm, and Elder Nahúm Peralta, another 21-year-old student, who received a bullet impact that drilled his right buttock<sup>1113</sup>. In a press release, the National Interinstitutional Security Force [*Fuerza de Seguridad Interinstitucional Nacional*] (Fusina) would have justified its actions by the need to rescue an officer allegedly being held by some students, as well as by the use of Molotov bombs and other devices that would have been thrown against law enforcement agents<sup>1114</sup>. Amnesty International reported that the use of lethal force was excessive and unnecessary. In addition, the organization would not have been able to find evidence of the alleged retention of the military officer, and the rector of the university would have affirmed that no evidence had been presented on this fact, nor that there had been a negotiation process prior to the use of force<sup>1115</sup>.

810. Five students of the José Trinidad Reyes Institute (JTR) were arrested on July 18 during a protest that was violently repressed by the National Police. A school security guard would also have been detained. According to the information reported by the media, members of the Police and the Government Integral Troop of Special Security Response [*Tropa Integral Gubernamental de Respuesta Especial en Seguridad*] (TIGRES) would have launched tear gas outside and inside the facilities of the educational center, in San Pedro Sula. The young people would have been accused of endangering members of the National Police and of causing damages to public property. On July 19, a criminal judge would have released the students and the guard and issued substitute measures to prison. The defense of the students would have shown that, when they were arrested, they were inside the educational center taking an exam<sup>1116</sup>.

811. On August 6 in Tegucigalpa, a mobilization in front of the National Congress would have been repressed by members of the National Police with tear gas, and several students would have been injured. The protesters, meanwhile, would have burned tires and thrown stones at the police<sup>1117</sup>. Another mobilization called by students in front of the headquarters of the National Autonomous University of Honduras (UNAH) in San Pedro Sula would also have been repressed with tear gas. During the coverage of the protests, the cameraman of *Canal*

<sup>1109</sup>C-Libre. April 11, 2019. [Asesinan a menor de edad en represión a protesta en Choluteca.](#)

<sup>1110</sup>Secretaría de Derechos Humanos. June 24, 2019. [Secretaría de Derechos Humanos pide esclarecer circunstancias de la muerte de EBLIN NOEL COREA MARADIAGA](#); Amnesty International. July 5, 2019. [Honduras: Exercising the right to protest has a high cost for those who dare take to the streets](#); Telesur. June 20, 2019. [Al menos dos fallecidos y 17 heridos dejan protestas en Honduras](#); Prensa Libre/EFE. June 20, 2019. [Protestas en Honduras: Dos muertos y varios heridos registra jornada violenta.](#)

<sup>1111</sup>Tiempo Digital. September 27, 2019. [Envían a prisión a militar acusado de matar a joven protestante en La Paz](#); Amnesty International. September 20, 2019. [Honduras: Detention of a member of the military could be a first step towards justice for the death of young man](#); Radio América. September 26, 2019. [Prisión preventiva contra militar por crimen de menor durante protestas en Yarumela.](#)

<sup>1112</sup>A journalism student was reportedly assaulted on June 22 during a mobilization called by the official National Party and government supporters, under the name of "Peace March." In addition to the assault, the young man was reportedly arrested by police officers and exposed on social networks as a suspect of throwing tear gas. He was released after showing he was in the demonstration covering the facts. Notibomba. No date. [Honduras: Estudiante de periodismo es agredido en marcha por La Paz](#); C-Libre. June 22, 2019. [Activistas de la "Marcha por la Paz" apalean a periodistas en cobertura](#); Facebook account of Somos Periodismo HN. [Así se nos trato en movilizaciones por la "PAZ"](#).

<sup>1113</sup>Infobae. June 25, 2019. [Militares de Honduras entraron a una universidad y dispararon a estudiantes: al menos ocho heridos](#); La Prensa. June 24, 2019. [Policía Militar ingresa a la UNAH: 4 estudiantes y dos soldados heridos](#); EFE. June 25, 2019. [Tres estudiantes heridos en un enfrentamiento con policías militares de Honduras](#); Amnesty International. July 5, 2019. [Honduras: Exercising the right to protest has a high cost for those who dare take to the streets](#); C-Libre. June 24, 2019. [Policía Militar abre fuego en la UNAH, deja varios estudiantes heridos.](#)

<sup>1114</sup>EFE. June 26, 2019. [Universidad de Honduras pide investigar el uso de la fuerza de policías militares.](#)

<sup>1115</sup>Amnesty International. July 5, 2019. [Honduras: Exercising the right to protest has a high cost for those who dare take to the streets.](#)

<sup>1116</sup>Tiempo. July 19, 2019. [¡Liberados! Los cinco estudiantes detenidos del JTR](#); La Prensa. July 20, 2019. [Medidas sustitutivas dictan a cinco estudiantes y un guardia del JTR.](#)

<sup>1117</sup>EFE. 7 de agosto de 2019. [Manifestantes y policías se enfrentan en una protesta para pedir salida Hernández](#); Telesur. 6 de agosto de 2019. [Policía hondureña reprime protesta para exigir renuncia de JOH](#); C-Libre. 7 de agosto de 2019. [Reprimen protestas opositoras a Hernández, mientras resguardan movilizaciones oficialistas.](#)

11, Juan Carlos Castillo, would have been beaten by at least four members of the Police and Special Forces, and had to be transferred to a medical center because of the injuries<sup>1118</sup>.

812. On September 9, National Police troops would have repressed with bullets and tear gas manifestations of villagers and environmental organizations against the installation of a housing complex in the La Tigra National Park nature reserve<sup>1119</sup>.

813. The Ministry of Education would have approved a regulation for the organization and development of the national parades to be held on September 15, published on August 16 in the Official Gazette, which establishes sanctions for those educational institutions that protest or offend the honor of State authorities during the event. According to the text, it is not allowed to "carry banners, costumes, legends, accessories, and other expressions that exhibit political or partisan content outside the theme of the parade"; "To utter insults against the image and honor of the representative authorities of the three branches of the State and departmental and municipal authorities", to leave the national parade "without due authorization", not to appear in the national parade "without just cause", or to act with "manifest disobedience and disrespect" towards "the authorities that coordinate the event". Those who do not perform "the corresponding greeting in front of the Main Courthouse or Grandstand of Honor, where the national pavilion is located", among other things, will also be subject to sanctions. Those who incur the indicated offenses will be sanctioned, according to the Statute of the Honduran Teacher, with fines of 5% to 10% of the monthly salary and with the suspension without salary from eight to 30 days<sup>1120</sup>.

814. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and essential for the critical political and social expression of the authorities' activities. The Commission has pointed out that "it is inadmissible in principle the criminalization *per se* of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly"<sup>1121</sup> and that "the exercise of the right of assembly through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its realization"<sup>1122</sup>.

815. Likewise, the 2013 Joint Declaration on violence against journalists in the framework of social demonstrations indicates that the rights of assembly and freedom of expression "are fundamental and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles"<sup>1123</sup>.

## E. Protection mechanisms

816. According to the information received, in some cases journalists in situations of risk and under threats would have found insufficient protection granted by the National Protection Mechanism for Human Rights Defenders, Journalists, Social Communicators, and Justice Operators. This situation would have forced several journalists to leave the country. One of the most serious cases is that of journalist Leonel García Guevara, who would have left the country after the murder of his colleague Gabriel Hernández in March; both had received death threats. García Guevara would have requested urgent protection measures from the Protection Mechanism, which would have been initially denied, but after Hernández's death, the process to assess his risk situation would have begun and protective and preventive measures would have been ordered<sup>1124</sup>. According to

<sup>1118</sup> La Prensa. August 7, 2019. [Policía agrade a camarógrafo de canal 11 en protesta de la Unah-vs](#); Tiempo. August 7, 2019. [Agresión contra camarógrafo de Canal 11 indigna a periodistas de SPS](#); El Heraldo. August 7, 2019. [Video capta agresión contra camarógrafo durante protestas en SPS](#).

<sup>1119</sup> Honduras Noticias. September 9, 2019. [Toma de calles y enfrentamientos por defensa del Parque Nacional La Tigra, en Tegucigalpa](#); Telesur. September 9, 2019. [Hondureños rechazan proyecto habitacional en reserva natural](#); C-Libre. September 13, 2019. [Policías disparan contra manifestantes en defensa del agua](#); Criterio. September 17, 2019. [Tras reunión con alcalde capitalino, policía reprime con bala y bombas lacrimógenas a defensores de La Tigra](#).

<sup>1120</sup> La Tribuna. September 13, 2019. [Anuncian sanciones a colegios por malas prácticas en desfiles patrios](#); El Tiempo Digital. [Dos bandas desafían las prohibiciones del Gobierno en desfiles](#); Confidencial. September 10, 2019. [El régimen castigará con dureza a docentes y alumnos que griten Fuera JOH durante desfiles](#); El Heraldo. September 12, 2019. [Sanciones para colegios que exhiban contenidos políticos en desfiles](#).

<sup>1121</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>1122</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. 139.

<sup>1123</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>1124</sup> El Heraldo. March 18, 2019. [Periodista acribillado en Nacaome decidió renunciar a la seguridad que tenía asignada](#); Reporters Without Borders (RSF). March 19, 2019. [Journalist murdered in southern Honduras, first this year](#); Reporteros de Investigación. May 3, 2019. [Periodista abandona Honduras tras asesinato de colega con el que habían pedido información pública al alcalde de Nacaome](#); Tiempo. March 20, 2019. [Muerte de comunicador: PN la califica de "compleja" y asigna equipo de investigadores](#).

information from the Secretariat of Human Rights provided to the Office of the Special Rapporteur, when the journalist decides to return to the country, he would have police support and police patrols at the place of his residence, in case he returns to the country.

817. Journalist Joel Mejía would have closed his media *JM Visión*, in the department of Olancho, and would have left the country with his family after receiving several threats allegedly from relatives of the mayor of La Unión, Ramón Edgardo Cárcamo<sup>1125</sup>.

818. Journalist Jairo López, from the city of Choluteca, reported having been the victim of repeated harassment, detentions, and threats by senior police officers due to his work. Although he is a beneficiary of State protection measures<sup>1126</sup>, the journalist has questioned that the Protection Mechanism has made decisions without his consent, such as the withdrawal of the police escort, and that it has not been effective in his protection<sup>1127</sup>. According to information provided by the Secretariat of Human Rights, López's case was admitted in February 2017 and is being studied in the Risk Analysis Unit; it would have protective measures such as specific police support and other accessory measures.

819. Likewise, journalist Edgar Andino, producer of the "El Patrullero de Choluteca" program, broadcasted on *Canal 21*, reported that his home was being watched by strangers and that he allegedly received threats from activists of the National Party in the city of Choluteca. Andino is also a beneficiary of the Protection Mechanism. The persecution against the reporter would be motivated by the coverage of citizen protest against electoral fraud in Choluteca<sup>1128</sup>. According to information provided by the Secretariat of Human Rights to the Office of the Special Rapporteur, Andino's case was admitted in May 2018. In February 2019, the relocation of him and his family was adopted as an urgent measure; in addition, they would have police patrolling, among other measures. According to the information, the journalist and his family are currently filing for political asylum<sup>1129</sup>.

820. Journalists Selvin López Anariba and Dulce Valle would have left the country after being victims of death threats and extortion by unknown individuals<sup>1130</sup>. Journalist Luis Rodríguez would have reported being a victim of constant threats since 2017, and would have held public officials in the Comayagua department responsible for any attacks he may suffer in the future<sup>1131</sup>.

821. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for the protection mechanisms to be effective. For example, to emphasize: 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 prosecution; 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>1132</sup>.

## F. Subsequent Liabilities

822. The Office of the Special Rapporteur was informed about cases in which criminal justice was used to sanction expressions or information disseminated by journalists, communicators, or persons in the political sphere. With special concern, this Office received information on the decision of the Criminal Chamber of the Supreme Court of Justice, which on March 8 ratified a sentence of 10 years in prison to the director of *Radio*

<sup>1125</sup> Reporteros de Investigación. May 3, 2019. [Periodista abandona Honduras tras asesinato de colega con el que habían pedido información pública al alcalde de Nacaome](#). Criterio. May 11, 2019. [Antes de ser el próximo periodista asesinado, Joel Mejía abandonó Honduras](#); HCH Televisión Digital. February 5, 2019. [Periodista Joel Mejía recibe amenazas por realizar su trabajo en Olancho](#); C-Libre. February 5, 2019. [Periodista de Olancho recibe amenazas para que abandone la zona](#).

<sup>1126</sup> Secretaría de Derechos Humanos. [Comunicado](#). November 10, 2018..

<sup>1127</sup> Resumen Latinoamericano. January 27, 2019. [Detienen a periodista Jairo López y a su escolta cuando cubría las protestas contra JOH](#); UNE TV. January 30, 2019. [LIBERTAD DE EXPRESIÓN. El periodista Jairo López denuncia amenazas a muerte por mantener su lucha en contra del régimen orlandista](#); C-Libre. January 31, 2019. [Estado hondureño deja en total desprotección a periodista Jairo López](#); Pasos de Animal Grande. November 10, 2018. [Urgente: capturan violentamente a Jairo López beneficiario de medidas de protección en Honduras](#).

<sup>1128</sup> Reporters Without Borders (RSF). March 19, 2019. [Journalist murdered in southern Honduras, first this year](#); C-Libre. February 22, 2019. [Periodista en Choluteca denuncia amenazas a su vida](#); Pasos de Animal Grande. February 19, 2019. [El Peligro acecha al periodista Edgar Andino: "Hay un hombre que quiere meterse por la ventana de mi cuarto, ayúdeme por favor"](#).

<sup>1129</sup> Information supplied on September 11, 2019 by the Dirección General del Sistema de Protección of the Secretaría de Derechos Humanos to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1130</sup> Proceso Digital. February 22, 2019. [Periodistas víctimas de extorsión: Dejamos hotado todo en Honduras para salvar nuestras vidas](#); Noticias Honduras. February 21, 2019. [Dos periodistas más abandonan Honduras por amenazas](#)..

<sup>1131</sup> The journalist's program, "Sálvese quien pueda", broadcast on Canal 38, was reportedly suspended in January, allegedly due to pressures on the channel's owner by two Comayagua deputies. Tiempo Digital. April 10, 2019. [Video / Periodista "Buzo Caperuzo" denuncia amenazas a muerte de presuntos políticos](#); Pasos de Animal Grande. April 10, 2019. [Ayúdenos gringos a sacar esta maldita mafia: Periodista Luis Rodríguez](#); C-Libre. April 12, 2019. [Amenazas de muerte denuncia periodista en Comayagua](#).

<sup>1132</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81; IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 712

*Globo*, David Ellner Romero, for the commission of six crimes of “defamation for allegations constitutive of insults” to the detriment of Sonia Gálvez, former prosecutor for Women and the wife of former Deputy Attorney General, who accused him of conducting a campaign against her on his media. On March 21, the IACHR granted precautionary measures for the journalist and, consequently, requested the State of Honduras to suspend the execution of the conviction<sup>1133</sup>. However, on March 28, members of the Intelligence Troop and Special Security Response Group (TIGRES) would have broken into the facilities of Radio *Globo* and arrested Romero<sup>1134</sup>.

823. Also, on February 18, congress deputy for the Freedom and Refoundation Party, María Luisa Borjas, would have been sentenced to two years and eight months in prison for the crime of slander constituting defamation. Borjas would have been reported by businessman Camilo Atala, whom she had accused as the intellectual author of the murder of environmentalist Berta Cáceres. On January 29, she had been convicted by the natural judge of the case and president of the Supreme Court of Justice Rolando Argueta Pérez, who understood that Borjas' statements were irresponsible, since she did not conduct a prior investigation to ensure the veracity of her accusation<sup>1135</sup>.

824. On April 1, *Canal 6* journalist Carlos Martínez Zepeda would have been sued by two congress deputies of the Freedom and Refoundation Party (Libre), Patricia Murillo and Scherry Melissa Arriaga, for alleged crimes of insult and defamation. The journalist had also been sued in October 2016 by congress deputy Bernardo Enrique Yllescas<sup>1136</sup>.

825. Journalist César Omar Silva, of *UNE Tv*, would have been sentenced on June 3 by Justice of the Peace Efraín Eduardo Rodríguez to a 37-day prison sentence for “mistreatment”, following a complaint filed on February 27 by Marcos Porrás, who had arrived in Honduras as the ambassador of Venezuela, appointed by the opposition and self-proclaimed president of that country Juan Guaidó. Porrás, who would have refused to grant an interview to the journalist, would also have initiated a complaint for defamation and slander<sup>1137</sup>.

826. The IACHR has argued that “[the] type of political debate that gives rise to the right to freedom of expression will inevitably generate certain critical or even offensive speeches for those who hold public office or are closely linked to the formulation of public policy”<sup>1138</sup>. Therefore, as stated in principle 10 of the Declaration of Principles, “[t]he protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official.” That is, the use of criminal mechanisms to punish discourse in matters of public interest, and especially related to public or political officials, does not respond to a pressing social need that justifies it, is unnecessary and disproportionate, and can be a means of indirect censorship given its chilling effect on the debate on matters of public interest.

827. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” In addition, the IACHR has repeatedly held that the use of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression<sup>1139</sup>.

## G. Legal Reforms

828. The Inter-American Commission on Human Rights (IACHR) and the Office of the High Commissioner for Human Rights in Honduras (OHCHR) expressed in a statement their concern over provisions of the new Criminal Code of Honduras. While the National Congress announced that it would eliminate articles related to honor crimes, such as slander and insults - and those that determine some type of responsibility for the media<sup>1140</sup>- other rules that concern the aforementioned agencies could continue in force. For example, the criminalization of the offenses of “exploitation of secrecy or privileged information”, “espionage” and “public disorders”. Regarding the latter, the IACHR, its Office of the Special Rapporteur, and OHCHR observed that its formulation could unduly criminalize the exercise of the right to peaceful demonstration, as well as affect the effective exercise of the right to freedom of expression. On the other hand, both organizations expressed concern about

<sup>1133</sup> IACHR. [Resolución 15/2019. Medida cautelar No. 75-19. José David Ellner Romero respecto de Honduras](#). March 21, 2019; Criterio. March 25, 2019. [CIDH otorga medidas cautelares y pide dejar en suspenso captura contra David Romero](#).

<sup>1134</sup> CNN. March 29, 2019. [Justicia de Honduras allana Radio Globo para detener al periodista David Romero](#); La Prensa. March 28, 2019. [Corte ratifica captura contra David Romero y declara sin lugar solicitud de la CIDH](#); Twitter account of IACHR (@CIDH). [March 29, 2019](#).

<sup>1135</sup> El Herald. January 29, 2019. [Declaran culpable a la diputada María Luisa Borjas por el delito de calumnias constitutivas de injurias](#); Tiempo. February 18, 2019. [Diputada María Luisa Borjas es condenada a más de dos años de prisión](#).

<sup>1136</sup> Proceso. April 1, 2019. [Diputadas presentan querrela contra periodista Carlos Martínez](#); El Patriota. April 4, 2019. [Diputadas de Libre querellan a periodista](#); C-Libre. February 1, 2019. [Periodista querellado teme por su vida y familia](#).

<sup>1137</sup> Pasos de Animal Grande. June 5, 2019. [El juego de la “justicia hondureña”: Mandar a la cárcel a periodistas críticos](#); La Prensa. June 3, 2019. [Sentencian a periodista César Silva por agresión contra venezolano](#).

<sup>1138</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights](#). OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

<sup>1139</sup> IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

<sup>1140</sup> Congreso Nacional. August 20, 2019. [CN eliminará delitos contra el honor del nuevo Código Penal](#).

the criminalization of "illegal meetings and demonstrations", "association to commit crimes", "disturbance of order" and "terrorist association". Regarding this last crime, the IACHR and OHCHR observed that as contained in the new Code, the notion of terrorist association has an excessively broad scope and could lead to the criminalization of a series of behaviors that do not deserve the classification of terrorism in the light of international jurisprudence and human rights standards. The IACHR and the OHCHR called on the State of Honduras to review the provisions of the Criminal Code approved to be in accordance with international standards and human rights commitments adopted by Honduras<sup>1141</sup>.

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<sup>1141</sup>IACHR. July 12, 2019. [IACHR and OHCHR Express Concern over the Provisions of the Criminal Code in Honduras and Call for a Review in Accordance with International and Inter-American Human Rights Standards.](#)

## 22. JAMAICA

829. The Office of the Special Rapporteur has observed that in the municipality of St. James it the realization of a series of events in a state-owned building has been prevented, within the framework of the LGBTIQ community celebrations in the country. In addition, high level authorities have made stigmatizing statements regarding communicators and the media.

830. During 2019, several attempts were made to carry out legal reforms that could affect the exercise of freedom of expression. In this regard, the Criminal Justice and Administration Act has been modified, increasing the penalties for those who take photographs of persons deprived of liberty. In addition, the amendment to the Access to Information Act has been proposed to increase the period from 20 to 70 years in which the documents of the cabinet are exempt from being disclosed. The Office of the Special Rapporteur highlights the role played by civil society organizations to prevent this from happening

### A. Access to public information

831. During 2019, there has been discussion in Jamaica about the Access to Information Act, passed in 2002, and the period of exemption from disclosure it would give to cabinet documents. Section 15(1) of the Act establishes that, "An official document is exempt from disclosure if it is a cabinet document." Section 6(2) additionally provides that, "The exemption of an official document or part thereof from disclosure shall not apply after the document has been in existence for twenty years, or such shorter or longer period as the Minister may specify by order, subject to affirmative resolution."<sup>1142</sup>

832. The government of Jamaica submitted a draft resolution to parliament, seeking to amend section 6(2) of the Access to Information Act to extend the period of exemption from public access to cabinet documents from 20 to 70 years.<sup>1143</sup> A number of organizations spoke out against such a change, claiming that it would have a negative effect on press freedom and government transparency.<sup>1144</sup> Ultimately, Foreign Minister Kamina Johnson Smith announced on October 4 that she was withdrawing the proposed amendment and establishing a committee to review the Access to Information Act, the Archives Act, and the Official Secrets Act.<sup>1145</sup> At the time of writing, there is no indication that this Committee has issued a report yet.

833. The Office of the Special Rapporteur recalls that Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Moreover, in keeping with the principle of maximum disclosure, the law should ensure the broadest and most effective access to public information possible.

### B. Censorship

834. The Office of the Special received information about a dispute between the Municipality of St. James and the Montego Bay Pride group, which works to promote and protect the rights of the LGBTIQ community in Jamaica.

835. According to available information, on September 12, Montego Bay Mayor Homer Davis announced that the Municipality of St. James would not grant permission to the organization to hold events at the state-owned Montego Bay Cultural Center. Davis defended this action by saying that it was necessary to avoid disturbing the "sacredness and purpose" of the building ["We must not do anything to disturb the sacredness and purpose of why that building is there"]. Councilman Charles Sinclair also explained that "allowing such an event would breach the municipal corporation's mandate to uphold Jamaica's Constitution, which only recognizes marriage between a man and a woman."<sup>1146</sup>

836. The Montego Bay Pride group announced in a September 14 press release that a forum to discuss equal marriage was not allowed to be held at the Montego Bay Cultural Center. The organization said that the mayor's statements had a "potential chilling effect on free speech and other constitutional rights" and accused him of

<sup>1142</sup> Government of Jamaica. Access to Information Unit. [The Access to information Act](#). January 5, 2004.

<sup>1143</sup> Jamaica Observer. October 2, 2019. [Gov't wants waiting period for Cabinet documents extended from 20 to 70 years](#); The Gleaner. October 3, 2019. ["Withdraw it" – Gov't told to rethink 50-year increase in period of exemption from public access to cabinet documents](#); My Vue News. October 2, 2019. [Jamaica – Government moving to make it harder to lay hands on cabinet documents](#).

<sup>1144</sup> The Gleaner. October 3, 2019. ["Withdraw it" – Gov't told to rethink 50-year increase in period of exemption from public access to cabinet documents](#); Nation Wide NewsNet. October 2, 2019. [Gov't faces criticism over policy proposal to deny access to cabinet documents for 70-years](#).

<sup>1145</sup> Loop Jamaica. October 3, 2019. [Gov't sends "secret documents" matter to joint select committee](#); RJR News. October 3, 2019. [Gov't withdraws controversial resolution to extend exemption of cabinet documents from public disclosure to 70 years](#); Jamaica Observer. October 4, 2019. [Remain vigilant to protect access to information](#); Stabroek News. October 6, 2019. [Jamaica: Gov't withdraws resolutions barring access to cabinet documents for 70 years](#); Loop Jamaica. October 5, 2019. [NIA welcomes withdrawal of controversial cabinet documents resolution](#).

<sup>1146</sup> The Gleaner. September 13, 2019. [NO PRIDE – MoBay Mayor shuts door on gay rights group to protect sacredness of cultural centre](#); The Gleaner. September 16, 2019. [MoBay Pride furious over civic centre lockout](#).

<sup>1146</sup> Bajan Reporter. September 16, 2019. [Montego Bay Pride considers legal action against mayor](#). The Gleaner. September 16, 2019. [MoBay Pride furious over civic centre lockout](#); McKay's News. September 15, 2019. [Montego Bay Pride considers legal action against mayor](#).



wanting to make democratic debate impossible by censoring Jamaican citizens.<sup>1147</sup> On September 19, it announced that the event had been cancelled for security reasons.<sup>1148</sup>

837. On September 24, Montego Bay Pride filed an application for judicial review with the Supreme Court against Montego Bay Mayor Homer Davis and the Municipality of St James.<sup>1149</sup> On October 14, the Court granted the organization an interim order authorizing it to rent the Montego Bay Cultural Center.<sup>1150</sup> Finally, upon appeal by Mayor Davis, on October 16 the Jamaican Court of Appeal reversed the Supreme Court's order, preventing the event from taking place.<sup>1151</sup>

838. The Office of the Special Rapporteur recalls that, while it is true that all forms of expression are protected in principle by the freedom enshrined in Article 13 of the Convention, there are certain types of speech that receive special protection because of their importance to the exercise of other human rights, or to the consolidation, proper functioning and preservation of democracy. In the case law of the inter-American system, the types of specially protected speech are the following three: (a) political speech and speech involving matters of public interest; (b) speech regarding public officials in the exercise of their duties and candidates for public office; and (c) speech that is an element of the identity or personal dignity of the person expressing herself.<sup>1152</sup>

### C. Indirect censorship

839. According to public information, on September 11 the Jamaican Senate approved an amendment to section 33 of the Criminal Justice and Administration Act, significantly increasing the penalties for anyone who takes photographs of prisoners arriving at or leaving a courthouse. The amendment provides for a maximum fine of JMD\$1 million (approximately USD \$7,000), and even the possibility of up to one year in prison.<sup>1153</sup> Different national and international organizations have voiced their opposition to this amendment, claiming that it has a chilling effect on journalists.<sup>1154</sup>

840. The Office of the Special Rapporteur recalls that Principle 5 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression." The Office further notes that the use of criminal mechanisms to punish speech on matters of public interest is not justified by a compelling social imperative, is unnecessary and disproportionate, and can be a means of indirect censorship by discouraging debate on matters of public interest.

### D. Stigmatizing statements

841. Prime Minister Andrew Holness gave a speech at a Jamaican Labour Party conference on November 18, in which he criticized the press for supposedly reporting only opinions rather than true facts, and he recommended using social media or his personal website as a means of obtaining reliable information.<sup>1155</sup>

842. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that their statements do not undermine the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations, and

<sup>1147</sup> Bajan Reporter. September 16, 2019. [Montego Bay Pride considers legal action against mayor](#). The Gleaner. September 16, 2019. [MoBay Pride furious over civic centre lockout](#); McKoy's News. September 15, 2019. [Montego Bay Pride considers legal action against mayor](#).

<sup>1148</sup> Mamba Online. September 26, 2019. [Montego Bay Pride cancelled over security concerns](#); Erasing 76 crimes. September 19, 2019. [Security risks force cancellation of Montego Bay Pride](#).

<sup>1149</sup> The Gleaner. September 29, 2019. [MoBay Pride sues Mayor Davis, Municipal Corporation](#); Buzz Caribbean. September 29, 2019. [Lawsuit filed against Mayor in Jamaica after pride group banned from using cultural centre](#).

<sup>1150</sup> The Supreme Court of Jamaica. [Maurice Tomlinson v. Mayor Homer Davis and St. James Municipal Council](#). October 14, 2019; The Gleaner. October 15, 2019. [MoBay Pride granted interim order to rent cultural centre](#); Buzz Caribbean. October 15, 2019. [MobyPride given interim order to rent cultural centre](#).

<sup>1151</sup> Court of Appeal of Jamaica. [Homer Davis and St. James Municipal Corporation v. Maurice Tomlinson](#). November 8, 2019; The Gleaner. October 18, 2019. [Court of Appeal overturns interim injunction granted to Moby pride](#); Jamaica Observer. October 19, 2019. [Appeal Court overturns order granted to gay pride group](#); Erasing 76 Crimes. October 16, 2019. [Jamaican court again blocks Montego Bay Pride events](#); Buzz Caribbean. October 18, 2019. [Ruling overturned - Montego Bay Pride barred from using Cultural Centre](#).

<sup>1152</sup><sup>1152</sup>IACHR. Office of the Special Rapporteur for Freedom of Expression. [Inter-American Legal Framework of the Right to Freedom of Expression](#) OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009 Ch. 2 para. 32.

<sup>1153</sup> Loop Jamaica. September 16, 2019. [\\$1 million fine for taking pictures of accused persons attending court](#); RJR News. December 2, 2019. [RSF urges Holness to repeal law that fines journalists \\$1M or prison time for taking photos of accused persons](#); Jamaica Observer. September 20, 2019. [PAJ joins call to repeal law forbidding courtroom photography](#).

<sup>1154</sup> RJR News. September 17, 2019. [Media Association concerned about law which prohibits taking photos of defendants at court](#); RJR News. December 2, 2019. [RSF urges Holness to repeal law that fines journalists \\$1M or prison time for taking photos of accused persons](#); The Kitts & Nevis Observer. December 3, 2019. [Journalist group calls for Jamaica to end court restriction](#); Jamaica Observer. September 20, 2019. [PAJ joins call to repeal law forbidding courtroom photography](#).

<sup>1155</sup> Jamaica Observer. November 19, 2019. [Holness takes swipe at press](#); The Gleaner. November 25, 2019. [PAJ criticizes Holness' remarks about the press](#); Irie FM. November 25, 2019. [Press Association concerned about Holness criticisms](#).

should be sensitive to the context in which they speak, so as to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and [dissemination] of their thoughts.”<sup>1156</sup>

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<sup>1156</sup>I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

## 23. MEXICO

843. During 2019, journalists in Mexico continued to face a crisis of violence that killed 11 communicators. The attacks on journalists persists, aggravated by the lack of legal consequences expressed in the impunity of these crimes. The government's response to implement improvements and provide more resources for the protection mechanism seems insufficient given the magnitude of the violence against journalists and human rights defenders. In accordance with the recommendations made by the Office of the Special Rapporteur in the "Special Report on the Situation of Freedom of Expression in Mexico", after the on-site visit in 2017, this Office took note of the evaluation of the Protection Mechanism for Defenders of Human Rights and Journalists requested from the Office of the United Nations High Commissioner for Human Rights (OHCHR) by the current government), which is presented as a valuable opportunity to improve different aspects of the protection mechanism. Also, this office sees with concern, the increase in stigmatizing statements by high public authorities against members of the press, which promotes the practice of mass harassment in social networks, as reported by different organizations and media.

### A. Progress

844. With regards to progress, the Office of the Special Rapporteur received information from the Office of the Special Prosecutor for the Attention of Crimes against Freedom of Expression (FEADLE) about actions taken in 2019 to investigate and verify the facts and the results of the investigations, regarding the perpetrators of the murders, and on the multiple gaps that Mexico still faces for reparation and justice.

845. Among the efforts of the State to guarantee freedom of expression and the integrity of journalists, in July Congress installed the Commission of Attention to Journalists that urges the 125 Mexican municipalities to coordinate, in order to guarantee the necessary prevention and protection measures to guarantee that journalists have a safe and conducive environment to exercise their work freely and independently<sup>1157</sup>.

846. On January 10, after 13 years of Lydia Cacho being arrested and tortured<sup>1158</sup> by the police of Puebla under the instruction of the then governor, Mario Marín, in complicity with businessman Kamel Nacif in retaliation for the publication of the book *Los demonios del Eden*, the State<sup>1159</sup> apologized for violations to the rights of: freedom of expression, personal freedom and security, not to be subjected to torture, non-discrimination based on gender, and access to justice. However, there are still pending subjects such as the capture, prosecution, and punishment of those responsible for the material and intellectual torture perpetrated against her<sup>1160</sup>.

847. The Office of the Special Rapporteur welcomes the decision of the Supreme Court of Justice of the Nation (SCJN), which confirmed the ruling issued by a federal court that declared illegal and undue the interruption of the contract that *MVS* signed with Carmen Aristegui<sup>1161</sup>, as well as her dismissal from the radio on March 15, 2015. With this resolution, the ruling issued in June 2018 was also ratified, which was favorable to the communicator and stipulated that the contract remained in force because there was no justified cause or valid reason for the company to cancel it arbitrarily.

848. This Office was also informed about the sentence against the former mayor, Emilio Dzul Huchim and five former municipal police officers from Seyé, Yucatán, for the 2014 attacks against journalist Edwin Canché, who was physically and psychologically tortured<sup>1162</sup>. The defendants were not subjected to pretrial detention throughout the criminal proceedings and thanks to Civil Society Organizations (CSOs) the crimes were reclassified.

849. The Office of the Special Rapporteur highlights the importance of the sentence that ordered FEADLE to investigate a case and exercise its legal power to prosecute crimes committed against journalists. According to public information, the Seventh Court of *Amparo* District in Criminal Matters in Mexico City, on June 28, resolved in favor of the writ of *amparo* presented by Propuesta Cívica in the case of journalist Miguel Ángel Villarino Arnábar, for the refusal of FEADLE to exercise its faculty to open a file and investigate the events that occurred on April 4, 2018, when the journalist was the victim of torture and threats by a public official (custodian), while in pretrial detention as a result of a criminal procedure plagued with due process violations<sup>1163</sup>. These attacks were in retaliation for his journalistic work with a critical line published through their news portal "Bestiometro.com".

<sup>1157</sup> Congreso de México. April 3, 2019. [La Comisión de Protección a Periodistas del Congreso CDMX analiza propuestas para fortalecer la legislación en la materia.](#)

<sup>1158</sup> El Universal. September 12, 2019. [Transcripción de la conversación telefónica Kamel-Gamboa.](#) La Jornada. April 16, 2019. [Orden de aprehensión contra Marín y Nacif por torturar a Lydia Cacho.](#)

<sup>1159</sup> Aristegui Noticias. August 2, 2019. [Detención de Lydia Cacho en 2005, una venganza por la publicación de su libro sobre pederastia: Aristegui \(Video\).](#)

<sup>1160</sup> INFOBAE. October 17, 2019. [Detuvieron al cuarto implicado en tortura a la periodista Lydia Cacho.](#)

<sup>1161</sup> CPJ. February 14, 2019. [CPJ welcomes Mexican Supreme Court ruling in Carmen Aristegui case.](#) New York Times. July 21, 2019. [Mexican Journalist Who Exposed Scandal Says Lawsuit Is Meant as a Warning.](#)

<sup>1162</sup> Diario de Yucatan. January 3, 2019. [Sentencia contra exalcalde de Seyé, precedente a favor de la prensa.](#)

<sup>1163</sup> Artículo 19. March 21, 2018. [Poderes públicos de Campeche reviven la ola de represalias contra periodistas críticos en la entidad.](#)

850. As stated by the Special Rapporteurs of Freedom of Expression IACHR and UN, in their "Special Report on the Situation of Freedom of Expression in Mexico"; It is imperative that as a result of the local context, federal authorities intensify the use of FEADLE's legal authority to investigate and prosecute crimes against journalists, with strict adherence to established procedures so as not to harm criminal investigations with unjustified delays.

851. The Office of the Special Rapporteur also highlights that it has received the response to an Art.41 letter sent to the Mexican State regarding the progress in the investigations of the murders of journalists Javier Valdez Cárdenas, Miroslava Breach Velducea, and Rubén Espinosa Becerril, the latter journalist murdered along with four other women in an apartment in Colonia Narvarte<sup>1164</sup>, whose family has repeatedly denounced obstacles to clarify the facts in their murder and punish those responsible.

## B. Impunity

852. In the Special Report on the Situation of Freedom of Expression in Mexico, as a result of the 2017 visit to the country, this Office emphasizes that attacks against journalists are accompanied by a continuous sense of insecurity and impunity that perpetuates violence.

853. According to data provided by FEADLE in January 2019 to the Office of the Special Rapporteur, in the last eight years, only 10 out of 1,140 (00.13%)<sup>1165</sup> investigations initiated would have ended in a conviction, a figure that shows that the lack of legal consequences in the face of an assault against journalists provokes the recurrence of the facts and fosters a climate of intimidation. Of the 13 murders reported by this Office in 2018, to date there is no registered conviction.<sup>1166</sup>

854. According to public knowledge information, after the murder of journalist Miroslava Breach, the death of five other people would have been linked to the case, however, the Chihuahua authorities have not yet shown that they are investigating the events thoroughly<sup>1167</sup>.

855. All this is a "distraction," denounces Lydia Cacho, the award-winning Mexican investigative journalist, exiled since two months ago in the United States after a raid of her house by armed men, who stole her work material and poisoned her two pets in Mexico on July 21.

856. This Office has indicated in its 2019 press releases<sup>1168</sup>, that in Mexico the lack of access to justice and revictimization of murdered journalists' families in recent years persists, such as the case of journalist and activist Moisés Sánchez and journalist Francisco Pacheco<sup>1169</sup>. Despite the recommendation issued by the National Human Rights Commission (CNDH), in most cases, FEADLE has not specified the time or manner to access the contents of the investigation for indirect victims, nor has it carried out diligence to continue with the integration of the previous investigation, nor has it had constant communication with family members. To this is added the distrust to the local authorities in charge of the investigations, which in many cases are believed to have acted in collusion with organized crime organizations.

## C. Protection mechanism

857. The Office of the Special Rapporteur has taken note that the local prosecutors offices do not obey the principle of Proactive Transparency<sup>1170</sup> that would allow the start of investigations of cases in Mexico. In addition, according to information provided to this Office, they omit the obligation they have to capture statistics on investigations where journalists are victims or complainants. In this way, the figures corresponding to the investigations initiated by FEADLE make visible the structural problems in the fight against impunity in crimes committed against freedom of expression, and this has become one of the reasons why violence against the press in Mexico persists. Although reports and studies<sup>1171</sup> on the structural situation of violence in Mexico indicate that it is exacerbated due to impunity, most federal entities still do not have specialized agencies for investigating crimes against journalists and defenders<sup>1172</sup>.

<sup>1164</sup> Gatopardo. August 2, 2019. [Caso Narvarte: la verdad como "exquisitez"](#).

<sup>1165</sup> Debate. February 25, 2019. [Impunes el 99.13 por ciento de delitos contra la prensa](#).

<sup>1166</sup> Procuraduría General de la República de México. Subprocuraduría de Derechos Humanos, Prevención del Delito y Servicios a la Comunidad. October 25, 2019. [Informe estadístico de la Fiscalía Especial de para la Atención a Delitos cometidos contra la Libertad de Expresión](#). México: FEADLE.

<sup>1167</sup> Animal Político. September 5, 2019. [Las cinco muertes ligadas al asesinato de la periodista Miroslava Breach](#).

<sup>1168</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Press Releases Mexico 2019](#).

<sup>1169</sup> Artículo 19. April 25, 2019. [A 3 años del asesinato de Francisco Pacheco, FEADLE obstaculiza el acceso a la justicia](#). Aristegui Noticias. April 25, 2019. [Francisco Pacheco: tres años de impunidad](#).

<sup>1170</sup> Artículo 19. [Protocolo de la impunidad en delitos contra periodistas. Análisis de investigaciones sobre delitos contra la Libertad de Expresión](#). Ch. 1 p. 18.

<sup>1171</sup> Propuesta Cívica. Frente al riesgo y al caos. Análisis del marco normativo de protección para personas defensores y periodistas en México. June, 2019. OACNUDH México. Diagnóstico sobre el funcionamiento del mecanismo. July, 2019. Artículo 19. [Protocolo de la impunidad en delitos contra periodistas. Análisis de investigaciones sobre delitos contra la Libertad de Expresión](#). Committee to Protect Journalists (CPJ). [Press freedom summit urges Mexico to reform journalist protections](#). July 2, 2019. Reporters Without Borders (RSF). [Mexico: RSF campaigns on impunity for violence against journalists in Mexico](#). September 25, 2019.

<sup>1172</sup> Comisión Nacional de los Derechos Humanos de México (CNDH). Informe 2019

858. As the Special Rapporteur has indicated in its different press releases in 2019<sup>1173</sup> and in the aforementioned Special Report, FEADLE lacks effective investigation plans, does not exhaust all the lines of investigation, does not identify all persons responsible for crimes (which includes intellectual authors and accomplices), and does not analyze the context in which the crimes occurred, particularly the way in which political and criminal power operates at the local level and in other local realities. Failures persist in terms of witness protection and negligence when collecting and effectively preserving police and forensic evidence. In addition, the Office of the Special Rapporteur has received information on the ineffectiveness of investigations into threats and harassment of journalists, both online and in traditional media, which are halted due to cumbersome legal requirements, such as psychological assessments of victims and lack of true coordination between the protection mechanisms. To this end, this Office has identified that obstacles that affect the participation of victims in investigations and their stigmatization persist. It is also concerning that the institution does not use its legal powers to exercise jurisdiction over cases of murders, kidnappings, or disappearances of journalists in federal entities with the highest levels of violence and impunity.

859. Along these lines, it should be noted that the implementation of the Protection Mechanism remains ineffective with respect to coordination between all levels of government and institutions. Despite having signed cooperation agreements with the 32 federative entities, these are not binding, and the Federal Government cannot demand compliance, which makes it impossible to properly implement the protection measures. In addition, the lack of participation of the security forces in the programs, the reactive police intervention, the absence of risk analysis and protection measures according to the needs of the defenders, and the privatization of the security measures are some of the difficulties that the mechanism presents<sup>1174</sup>.

860. The Office of the Special Rapporteur reiterates that FEADLE should adopt a specific protocol that establishes the principles and legal obligations of the persons in charge of investigating crimes against freedom of expression and set a common standard on how to conduct a timely, diligent, independent, and transparent investigation of these cases, in accordance with international human rights standards and best practices, and in consultation with civil society.

861. According to information provided to this Office, FEADLE has initiated 1,140 investigations, of which it has assigned a total of 163 investigations<sup>1175</sup>, this in regard to the inquisitorial criminal justice system. A total of 23 investigation files would have been prosecuted for the cases related to the accusatory criminal justice system that came into force in 2016. Of the 10 sentences derived from the 1,140 investigations that FEADLE has started, at least 6 of them have been for crimes in which a public servant is involved, according to the nature of the crime committed, which would allow this link. This means this figure represents that in at least 60%<sup>1176</sup> of the sentences some official had some degree of participation in the commission of crimes against journalists or press personnel.

#### **D. Murders, attacks, threats, and intimidation against journalists and the media**

862. The Office of the Special Rapporteur notes with concern the persistence of murders against journalists in Mexico, a figure that rose in relation to 2018, a painful indicator of violence against communicators in various regions of the country. During 2019, 11 journalists and communicators were murdered: Nevith Condes, on August 24 in Tejupilco<sup>1177</sup>, South of the State of Mexico; Rogelio Barragán, on July 30 in Morelos<sup>1178</sup>; Edgar Alberto Nava, on August 2 in Guerrero<sup>1179</sup>; Jorge Celestino Ruiz, on August 2 in Veracruz<sup>1180</sup>; Norma Sarabia, on June 11 in Huimanguillo, Tabasco<sup>1181</sup>; Francisco Romero on May 16 in Playa del Carmen, Quintana Roo<sup>1182</sup>; Telesforo Enriquez on May 3 in San Agustín Loxicha, Oaxaca<sup>1183</sup>; Santiago Barroso, on March 15 in San Luis Río Colorado, Sonora<sup>1184</sup>; Reynaldo López, on February 16 in Hermosillo, Sonora<sup>1185</sup>; Jesús Eugenio Ramos, on

<sup>1173</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Press Releases Mexico 2019](#).

<sup>1174</sup> Artículo 19. [Protocolo de la impunidad en delitos contra periodistas. Análisis de investigaciones sobre delitos contra la Libertad de Expresión](#) Ch. 1 P. 17.

<sup>1175</sup> Procuraduría General de la República de México. Subprocuraduría de Derechos Humanos, Prevención del Delito y Servicios a la Comunidad. [Informe estadístico de la Fiscalía Especial de para la Atención a Delitos cometidos contra la Libertad de Expresión](#). México: FEADLE, p. 7.

<sup>1176</sup> Artículo 19. [Informe estadístico de la Fiscalía Especial de para la Atención a Delitos cometidos contra la Libertad de Expresión](#).

<sup>1177</sup> Animal Político. August 24, 2019. [Asesinan al periodista Nevith Condes Jaramillo, en Tejupilco, Estado de México](#).

<sup>1178</sup> CNN Español. July 31, 2019. [Encuentran muerto a periodista mexicano Rogelio Barragán](#).

<sup>1179</sup> PubliMetro. August 2, 2019. [Periodista Édgar Alberto Nava es asesinado en Guerrero](#).

<sup>1180</sup> Univisión. August 3, 2019. [Asesinan a otros dos periodistas en México en menos de 24 horas](#).

<sup>1181</sup> France 24. June 12, 2019. [Asesinan a la periodista Norma Sarabia en Tabasco, sur de México](#).

<sup>1182</sup> INFOBAE. May 16, 2019. [Asesinaron al periodista Francisco Romero en Playa del Carmen](#).

<sup>1183</sup> Aristegui Noticias. May 3, 2019. [Asesinan a periodista indígena en Oaxaca](#). DW. May 2, 2019. [Asesinan a fundador de radio comunitaria indígena en el sur de México](#).

<sup>1184</sup> Jornada. March 17, 2019. [Asesinan a balazos al periodista sonoreño Santiago Barroso](#). Proceso. May 16, 2019. [Asesinan al periodista Santiago Barroso en la puerta de su casa](#).

<sup>1185</sup> Animal Político. February 17, 2019. [Asesinan en Sonora al locutor Reynaldo López; el comunicador Carlos Cota resultó herido](#). Univisión. February 17, 2019. [Asesinan a tiros al locutor Reynaldo López, el tercer periodista muerto en México en 2019](#).

February 9 in Emiliano Zapata, Tabasco<sup>1186</sup>; and José Rafael Murúa, on January 19 in Mulegé, Baja California Sur<sup>1187</sup>, who were allegedly murdered due to the journalistic and communicational work they were carrying out.

863. The cases of journalists and communicators who had security measures by the Mechanism for the Protection of Human Rights Defenders and Journalists, such as Francisco Romero, are particularly important<sup>1188</sup>. It is of concern to this Office that the cases of Rogelio Barragan, Jorge Celestino Ruiz, and Norma Saravia, had lodged complaints that the Mechanism would have been negligent at the time of assessing the situation when the journalists would have requested the protection<sup>1189</sup>.

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

865. In addition, in a 2005 joint statement, the Special Rapporteurs of the IACHR and of the ACHPR, affirmed that "[this kind of] crimes have an inhibitory effect on freedom of expression that is increasing when governments do not investigate these crimes promptly or when the perpetrators are not prosecuted."

### **E. Attacks, threats, and intimidation against journalists and the media**

866. During 2019, various organizations, the media, and human rights organizations<sup>1190</sup> in Mexico denounced and recorded more than a hundred attacks against journalists and communicators demonstrating that far from disappearing, violence in the country has been sophisticated using digital harassment and disinformation campaigns as a tool<sup>1191</sup>.

867. Death threats and harassment are common practices in Mexico. For example, on January 29, a ministerial police officer from Guerrero pointed an assault rifle at a group of about 10 reporters in the subdivision of the Single Union of Public Servants of the State of Guerrero [*Sindicato único de Servidores Públicos del Estado de Guerrero*] (SUSPEG) in Chilpancingo, while covering an operation<sup>1192</sup>. Along the same lines, on February 10, police officers from the municipality of Nezahualcōyotl assaulted three photographers from *El Reforma*, *Pásala*, and *El Gráfico* when they documented the finding of a lifeless person in the Ampliación Ciudad Lago neighborhood<sup>1193</sup>. On March 26, the reporter Cristián Papalotzin López, from *La Prensa* digital media, was detained, threatened, and forced to broadcast a live interview against his will by the auxiliary president of the San Francisco Atexcatzinco community in Tlaxcala<sup>1194</sup>. On May 4, this office was informed about the arbitrary detention and cruel and inhuman treatment by elements of the Municipal Secretariat of Public Security and Traffic of Benito Juárez, Quintana Roo against the reporter of the *Novedades* newspaper, Eric Galindo<sup>1195</sup>. On July 4, security agents from the Investigation Department of the Attorney General's Office would have confiscated equipment and assaulted journalist Beda Peñaloza from the media *A fondo* in the State of Mexico<sup>1196</sup>.

868. Another illustrative incident about this kind of aggressions was against journalist and human rights defender, Lydia Cacho<sup>1197</sup>, with the raid of her home, the theft of work equipment and journalistic documents, in addition to the poisoning of her pets, on July 21.

869. In addition, among the hundreds of complaints, the physical attacks perpetrated against Martín Valtierra, director of the *Contrastes de Comondú* digital media<sup>1198</sup>, are to be noted. On January 29, he was hit with

<sup>1186</sup> Aristegui Noticias. February 9, 2019. [Asesinan al locutor Jesús Eugenio Ramos en Tabasco; Fiscalía inició investigación](#). El Heraldo. February 10, 2019. [Fiscalía de Tabasco investiga homicidio del periodista Jesús Ramos](#).

<sup>1187</sup> BBC Mundo. January 22, 2019. [Rafael Murúa, el primer periodista asesinado en México en 2019](#). El País. January 22, 2019. [Asesinado un periodista en Baja California Sur, el primero en México de 2019](#).

<sup>1188</sup> Periodistas Desplazados. August 9, 2019. [Pierden' expediente de Francisco "Ñaca-Ñaca" Romero](#).

<sup>1189</sup> Reversos. June 17, 2019. [La FEADLE, el mecanismo de protección y reporteros sin frontera responsables por omisión de la muerte de Norma Saravia](#). Diario Contrapeso Ciudadano. August 6, 2019. [Investigan a SSP de Veracruz por suspender protección a periodista asesinado](#). Zenzotle 400. July 31, 2019. [En evidencia el inútil Mecanismo de Protección de Periodistas; Rogelio Barragán había pedido ayuda, pero en la SEGOB ni siquiera le devolvieron la llamada](#). Artículo 19. May 16, 2019. [Asesinato de Francisco Romero, cuarto periodista asesinado con medidas de protección del Mecanismo](#).

<sup>1190</sup> Federación de Asociaciones de Periodistas Mexicanos. July 16, 2019. [Se incrementan las agresiones a periodistas en el Estado de México](#).

<sup>1191</sup> Reporters Without Borders. March 13, 2019. [Impunidad de los crímenes contra periodistas en México: RSF anuncia su comunicación oficial a la Corte Penal Internacional](#). DW. August 2, 2019. [Asesinato de periodistas: en México, la prensa es la única fuente de justicia](#).

<sup>1192</sup> "Agent of @FGEGuerrero identified as Romel El Vampiro with his weapon threatened reporters who were covering operation headed by director of Ministerial Police Esteban Maldonado Palacios, an individual with a dark background, yesterday in #Chilpancingo #Guerrero". June 30, 2019. [@EzequielFloresC](#).

<sup>1193</sup> La Jornada. February 10, 2017. [Policía agrede a fotógrafos en Nezahualcōyotl](#).

<sup>1194</sup> La Prensa de Tlaxcala. March 26, 2019. [Presidente de San Francisco Atezcatzingo, intenta limpiar su nombre del fraude a 255 personas](#).

<sup>1195</sup> Soy Barrio. May 5, 2019. [Maltratan y detienen policías a periodista de Novedades. Impedían que grabara](#).

<sup>1196</sup> Poder Edomex. July 7, 2019. [Condena azucena Cisneros agresiones contra periodistas](#). Reporteros en Movimiento. Facebook. July 5, 2019. [La reportera Beda Peñaloza muestra fotos de los ministeriales que le robaron su equipo ayer en Ecatepec, la FGJEM guarda silencio](#).

<sup>1197</sup> Forbes México. July 22, 2019. [Saquean casa de Lydia Cacho y envenenan a sus mascotas](#). Animal Político. July 22, 2019. [Saquean casa de la periodista Lydia Cacho y envenenan a sus mascotas](#).

<sup>1198</sup> El Sudcaliforniano. January 29, 2019. [Captan el momento en que agreden a batazos a Martín Valtierra](#). El Sol de México. January 30, 2019. [Atacan a batazos a periodista sudcaliforniano, Martín Valtierra](#).

baseball bats by strangers outside his home in Baja California. On March 22, Hiram Moreno, from the *Evidencias* news site, survived a gun attack in Oaxaca<sup>1199</sup>. On June 17, Oswaldo Müller and the *Canal 6 Telediario* team were attacked by civilians during a live broadcast in the municipality of Nezahualcóyotl in front of municipal guards<sup>1200</sup>. On June 26, Juan Manuel Vega of the magazine *Dígalo sin Miedo*<sup>1201</sup> survived an attack with firearms in the municipality of Reyes la Paz in the State of Mexico.

870. On the other hand, this Office was also informed about kidnappings of communicators and press personnel. Such as the case of the investigative reporter of *La Crónica de Hoy*, Daniel Blancas<sup>1202</sup>, who was deprived of liberty by armed subjects on February 1 in Hidalgo. Another case of kidnapping was against the judicial reporter Marcos Miranda, who would have received threats for his work as editor of the portal *Noticias a Tiempo*, and was kidnapped on June 10 by armed men in the city of Boca del Río, Veracruz<sup>1203</sup>. The state governor, Cuitláhuac García, informed of his release a few days after the fact.

871. According to public information, the director of the digital media *La Prensa de Tlaxcal*, Alberto Amaro Jordán<sup>1204</sup>, reported a firearm attack and the presence of an individual taking photographs in front of his home between August 29 and September 2.

872. During 2019, according to public information, journalist Ana Luisa Cantoral of digital media *Página 3*<sup>1205</sup> received a death threat on April 10 in Oaxaca, and on July 1 in Tezoyuca, State of Mexico, Claudia Bautista Justo<sup>1206</sup>, of the station *La Unik* radio also received a death threat.

873. Violence against women journalists is another worrying pattern in Mexico, this Office has reported stereotype-based attacks against different women journalists, who have suffered all kinds of attacks related to their gender status. On May 14, the *Z Noticias Zacapu* reporter and broadcaster, Alejandra Jiménez García<sup>1207</sup>, reported having been the victim of threats with a gender and sexual violence component by unknown individuals in Panindícuaro, Michoacán. Along the same lines, the reporter Monserrat Ortiz of the *ADN40*<sup>1208</sup> media was threatened with being raped and killed after the publication of a report on gender violence. Communicator Alicia Blanco<sup>1209</sup>, wife of Pedro Tamayo, a journalist murdered in 2016, reported on April 29 that she had been the victim of persecution by a group of armed subjects aboard a car after leaving a legal hearing in Cosamaloapan, Veracruz. In the same vein, the Office of the Special Rapporteur has taken note of the allegations of the reporter in Morelia (Michoacan), Mitzi Yanet Torres<sup>1210</sup>, that the police had assaulted her with blows, and she would have been detained and threatened with sexual violence.

874. According to public knowledge, the newspaper *El Piñero de la Cuenca* in Oaxaca, denounced to different media outlets that since May 24 it has been the victim of a smear campaign that allegedly would have been carried out from the Facebook page, "*El Voceador de la Loma*", publicly accusing the newspaper of extortion<sup>1211</sup>. According to information provided by the newspaper, the campaign began after the media conducted an interview where it questions the municipal president of the town of Loma Bonita about the purchase of land. Along the same lines, the director of the media, Roberto Hernández, and his son, Roberto Polo Hernández González, received death threats through different platforms on social networks linked to municipal officials in Tuxtepec<sup>1212</sup>. Along the same lines, journalist Carlos Abad, denounced that through the same WhatsApp and Facebook profiles that they used with the Hernández family, he would have also received a death threat.

<sup>1199</sup> Sin Embargo. March 20, 2019. [El periodista Hiram Moreno es atacado a balazos en Oaxaca: por fortuna, salió con heridas leves](#). Eje Central. March 21, 2019. [Periodista Hiram Moreno sobrevive a ataque armado en Oaxaca](#).

<sup>1200</sup> El Universal. June 17, 2019. [Captan agresión a reporteros en cobertura de accidente vehicular en Neza](#). La Prensa. June 17, 2019. [Agreden a reportero de Telediario cuando hacia enlace en vivo desde Nezahualcoytl](#).

<sup>1201</sup> MSN Noticias. June 26, 2019. [Balean a reportero de Los Reyes La Paz](#). Cuestión Polémica. July 15, 2019. [A la opinión pública: No queremos periodistas asesinados en Edomex](#).

<sup>1202</sup> Aristegui Noticias. February 6, 2019. [Periodista fue secuestrado y golpeado por presuntos huachicoleros en Hidalgo](#). Excélsior. February 5, 2019. [López Obrador se solidariza con periodista secuestrado por huachicoleros](#).

<sup>1203</sup> CNN Español. June 13, 2019. [México: rescatan a Marcos Miranda, periodista que había sido secuestrado en Veracruz](#). Univisión. June 13, 2019. ["Gracias a Dios estoy vivo": así fue el rescate del periodista Marcos Miranda, secuestrado en el sur de México](#).

<sup>1204</sup> Co-Nexiones. October 9, 2019. [Condena la confederación de periodistas de Tlaxcala las agresiones que sufrió el periodista Alberto Amaro Jordán en Apizaco](#). Código Tlaxcala. September 5, 2019. [Amenazan a Alberto Amaro](#).

<sup>1205</sup> Proceso. April 11, 2019. [Reportera de Oaxaca denuncia amenazas de muerte](#).

<sup>1206</sup> Síntesis de Guerrero. July 15, 2019. [Se incrementan las agresiones a periodistas en el Estado de México](#).

<sup>1207</sup> La Jornada/Facebook. May 23, 2019. [Periodista de la radiodifusora Z de Zacapu, y los portales Noticias de Hoy I.P. y Notivisión de Quiroga, denunció amenazas en su contra, tras reportear sobre cambios de uso de suelo e incendios provocados, en Zacapu #Michoacán](#). Noticias TM. May 30, 2019. [Periodista Alejandra Jiménez pide protección tras recibir amenazas de muerte por denunciar incendios provocados en Michoacán](#).

<sup>1208</sup> ADN 40. February 5, 2019. [Reportera de adn40 es amenazada tras exhibir a agresor de mujeres](#). Proceso. February 5, 2019. [Periodista recibe amenazas tras reportaje sobre violencia a mujeres; la CNDH y PGJ-CDMX intervienen](#).

<sup>1209</sup> Centro PRODH. April 30, 2019. [Denuncian intimidación armada contra Alicia Blanco, esposa del asesinado periodista Pedro Tamayo](#).

Artículo 19. April 29, 2019. [Sujetos armados persiguen a la periodista Alicia Blanco en Cosamaloapan, Veracruz](#).

<sup>1210</sup> "Mitzi Yanet Torres, 34, is a reporter at #Morelia, #Michoacán. On Tuesday she reported an attempted rape. The police who came to her "help" assaulted and detained her for no reason. The medical expert said she "had no blows," just like the judge who handled her case. Look at her face. #México". Twitter account of Verónica Calderón. @veronicalderon August 21, 2019. 5:29 P.M

<sup>1211</sup> Sin Embargo. April 14, 2019. [Artículo 19 denuncia uso de cuentas ligadas a funcionarios para amenazar a periodistas en Oaxaca](#).

<sup>1212</sup> Artículo 19. April 13, 2019. [Amenazan de muerte a reporteros desde cuentas ligadas a funcionarios municipales de Tuxtepec, Oaxaca](#). El Piñero. April 12, 2019. [Funcionarios y comando de bots del gobierno de Tuxtepec, orquestaron ataques y amenazas contra reportero Carlos Abad](#).

875. The Office of the Special Rapporteur has received information on death threats and physical aggressions against the Mexican journalist and columnist of the *Washington Post*, Carlos Loret de Mola<sup>1213</sup>, after the publication of the documentary *Mar de sombra*, where he reports the so-called "Cartel de la Totoaba" by the indiscriminate fishing and slaughter of the vaquita marina and other species.

876. According to the Special Rapporteurs' observation, in their Special Report on the Situation of Freedom of Expression in Mexico 2018, "it is necessary that the risk assessment methodologies include a differentiated approach that takes specific risks that certain groups of journalists face into account, including women journalists and indigenous journalists. The Government should also take additional actions to include digital security among the risk assessments carried out by the Mechanism and provide, where appropriate, digital protection measures, such as the secure management of personal communications data. Likewise, the Mechanism should effectively deal with physical aggressions perpetrated by state officials, as well as other forms of institutional violence against journalists (namely discredit and criminalization campaigns)".

## F. Stigmatizing statements

877. On April 24, the editorial director of the newspaper *Diario Reforma*, Juan E. Pardini, received death threats and harassment by unknown subjects, they would also have started a smear campaign towards the media that he directs under the hashtag #NarcoReforma<sup>1214</sup>. The incident would have occurred three days after the statements made by President Lopez Obrador in one of the *mañaneras* against the *Diario Reforma*. "*Las Mañaneras*", is the name by which the morning press conferences offered by the President of the Republic are known, although they have been described as a signal of opening for the press by the new government, they have also been used to attack different media and critical journalists.

878. This Office has documented dozens<sup>1215</sup> of stigmatizing statements against journalists and members of the press from authorities in different states<sup>1216</sup>, which has led civil society organizations that protect the journalistic exercise to issue statements asking the government to lower the level of confrontation with the media<sup>1217</sup>.

879. On April 15, President López Obrador told reporters: "If you overstep, you know, don't you? What happens, don't you?"<sup>1218</sup> The next day, he made a clarification, explaining that he was referring to society holding accountable journalists who unfairly criticized his government. Along the same lines, the Mexican president has used the term "fifi" on several occasions to refer to what he says is known as the conservative press.

880. "Ah, the fifi press (...) are conservatives with the appearance of liberals. They are specialists in simulation"<sup>1219</sup>.

881. "I did not invent the term fifi, it was used to characterize those who opposed President Madero. The fifis were those who burned the house of the Maderos, they were those who made a celebration in the streets when the military killed Gustavo Madero"<sup>1220</sup>.

882. On February 24, during the national meeting on Tourism held in Chetumal, Quintana Roo, Laura Beristáin, mayor of the municipality of Solidaridad, accused the media belonging to the companies Grupo Cantón and Grupo Quequi of being "journalistic hitmen"<sup>1221</sup> indicating that they would publish false data about violence in her municipality.

883. On July 22, in another *mañana*, President Lopez Obrador mentioned the media<sup>1222</sup>, including the newspaper *El Proceso* and *Reforma*<sup>1223</sup>, indicating that he did not like the coverage that they made to his government, by saying: "Well, the magazine Proceso for example, it was not good to us", within the framework of a questioning by reporter Arturo Rodríguez about the operation of the sale of Fertinal<sup>1224</sup>. As a result, the president said, without showing evidence, that the media did not report the looting policy of the so-called neo-liberal period. In addition, he added that magazine edits for conservatism to remain, not to transform: "*It is very*

<sup>1213</sup> "I have received physical aggression and death threats over the stories on the Totoaba Cartel that has #Vaquita on the brink of extinction". Twitter account of Carlos Loret de Mola. @CarlosLoret March 28, 2019. 6.19 P.M. Diario de Yucatán. March 29, 2019. "[No voy a matar a Carlos Loret, le voy a tumbar los dientes](#)".

<sup>1214</sup> Diario Contrapeso Ciudadano. April 27, 2019. [Críticas de AMLO desata amenazas de muerte contra Pardini](#). CNN. April 26, 2019. [Tras amenazas de muerte, Gobierno ofrece protección a director del Periódico Reforma](#).

<sup>1215</sup> TV Páccifico. August 19, 2019. [Comisión de Derechos Humanos reprocha expresiones de rechazo y descalificación de alcaldes hacia periodistas y medios](#).

<sup>1216</sup> New York Times. August 7, 2019. [AMLO y la prensa mal portada](#). Animal Político. June 3, 2019. [El acoso a la prensa en América Latina](#).

<sup>1217</sup> DW. August, 2019. [Periodistas en México: "El discurso de AMLO envalentona a otros funcionarios públicos"](#).

<sup>1218</sup> Big Bang México. April 15, 2019. [AMLO a periodistas: "si se pasan, ya saben lo que les pasa"](#). MSN. April 15, 2019. [AMLO le pide a los periodistas que sean prudentes: "si se pasan, ya saben"](#).

<sup>1219</sup> Zenit Noticias / Youtube. March 13, 2019. [Son unos hipócritas a la prensa fifi Lopez Obrador](#).

<sup>1220</sup> El Heraldo. May 26, 2019. [Esta es la definición de fifi según AMLO](#).

<sup>1221</sup> Tabasco Hoy. February 26, 2019. [Oculta edil inseguridad a Presidente](#). Sin Embargo. February 27, 2019. [Alcaldesa de Quintana Roo llama "sicarios periodísticos" a medios locales; Artículo 19 pide no estigmatizar](#).

<sup>1222</sup> Official AMLO website. July 22, 2019. [Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador](#).

<sup>1223</sup> New York Times. August 7, 2019. [AMLO y la prensa mal portada](#).

<sup>1224</sup> Proceso. July 20, 2019. [Salinas Pliego, el magnate que movió los hilos en la estafa Pemex-Fertinal](#).



comfortable to say I am independent or say that journalism should not take sides or bet on the transformation. It is analyzing reality, criticizing reality, but not transforming it. It is to edit it to affect the transformations"<sup>1225</sup>. Hours earlier, unidentified subjects forcibly entered the house of journalist Lydia Cacho<sup>1226</sup>, killed her two dogs and stole files, cameras, digital memories, and a computer with material related to her investigations related to cases of child abuse.

884. On November 4, President López Obrador once again criticized the coverage that some media made of the operation that the Mexican armed forces carried out to capture Ovidio Guzmán, son of drug trafficker Joaquín "Chapo" Guzmán, which was unsuccessful. During one of the morning conferences, the president recalled the phrase of Gustavo Madero (brother of former President Francisco I. Madero), "they bite the hand of the one who took the muzzle from them," referring, he explained, to the time before the military to coup to kill Madero, when the press would have insisted on attacking him.

885. Lopez Obrador said: "Hence a very strong phrase that I am going to say, I am going to say it because all this helps. Do you know what Gustavo Madero came to say? "They bite the hand of the one who took the muzzle from them." That was not forgiven, ever. That is why they were focused on him, first on Gustavo Madero and then on his brother. I don't want that ever to happen again. That is one of the most shameful stories of journalism and politics in Mexico." In that context, the Mexican president asked the media to act ethically and be rigorous with information and called for them to stop what he considers to be yellow press and a media show. "The media," he said, "must be regulated through means and in this case, it has to be society, it has to be citizens"<sup>1227</sup>.

886. Also, Lopez Obrador said was the victim of a "dirty war orchestrated by the national and international media (...) I remember almost eight columns of EL PAÍS, in Spain, after there was an election in Mexico, with a headline: 'Obrador is a ballast'<sup>1228</sup>.

887. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that with their statements they are not damaging the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, the media, and human rights organizations, and must pay attention to the context in which they express themselves to ensure that their expressions do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who intend to contribute to public deliberation through the expression and diffusion of their thought."

## G. Social Protest

888. On May 21, the Mexican Senate passed four laws that would regulate the operation of the national guard, a police security body in the country, which would criminalize public protest<sup>1229</sup>. The laws passed, would contain articles with a crowd control perspective and not a facilitation and protection of the exercise of human rights in the context of demonstrations and assembly. This Office was specifically informed about articles 16 and 40, which maintain a perspective of crowd control and not of facilitation and protection of the exercise of human rights in the context of demonstrations and assembly. In the same way, article 27 of the initiative prohibits the use of firearms or lethal weapons against "demonstrations or peaceful public meetings with a lawful purposes", without setting a definition for such concept. Through press releases and statements, several international organizations indicated that the ambiguity of some articles of the law, as well as the discretionary power conferred on police authorities to decide in which cases to act or not, encourages arbitrariness and human rights violations.

889. This Office was informed about the decision of the Tabasco State Congress, which approved a reform to the state criminal code that seeks to punish those who prevent the execution of any public or private project and those who block streets and roads<sup>1230</sup>. This reform, which entered into force on August 1, imposes jail sentences on those who prevent "the free movement of people and vehicles, machinery, specialized equipment, or similar for the execution of public and private works, and works on the roads and means of communication".

<sup>1225</sup> Proceso. July 23, 2019. ["Despóticas muestras de intolerancia", las declaraciones de AMLO contra Proceso: Coparmex](#). Expansión Política. July 22, 2019. [AMLO critica \(otra vez\) a la prensa que no apoya la "transformación"](#).

<sup>1226</sup> True, the levels of violence and cruelty increase to the same extent that impunity protects them. Thank you for your solidarity. My journalistic investigations are safe abroad; copies were sent, nobody will steal the truth. #AquíNadieSeRinde Cuenta de Lydia Cacho @lydiacachosi. [July 22, 2019. 6:56. P.M.](#)

<sup>1227</sup> El Mañanero Diario. November 4, 2019. [Lo más sonado de la semana #7: "Le muerden la mano a quien les quitó el bozal", le dice AMLO a los medios](#). El universal. November 7, 2019. [Manos, bozales y perros](#). Animal Político. November 6, 2019. [No veo a periodistas como enemigos, sino como adversarios, dice AMLO](#).

<sup>1228</sup> El País. November 6, 2019. [López Obrador carga contra EL PAÍS tras ser cuestionado por su actitud hacia la prensa crítica](#).

<sup>1229</sup> AP. May 23, 2019. [México aprueba leyes de actuación de la Guardia Nacional](#). Infobae. May 21, 2019. [Senado aprobó las leyes secundarias de la Guardia Nacional; ONG's temen más violaciones a los derechos humanos](#).

<sup>1230</sup> Gatopardo Revista. August 7, 2019. [Tabasco, del Éxodo por la Democracia a la Ley Garrote](#). El Diario. August 20, 2019. [Relatores de ONU critican reforma que penaliza protestas en estado mexicano](#).

890. The Office of the Special Rapporteur has taken note of the excessive use of public force and attacks against journalists<sup>1231</sup> during the demonstration of women on August 12 in Mexico City, which was held through a public call following the allegations of at least three cases of rape by police in the capital<sup>1232</sup>.

891. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the political and social critical expression of the activities of the authorities. The Commission has pointed out that “it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly” and that “the exercise of the right of assembly to through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its realization”.

892. Likewise, the 2013 joint declaration on violence against journalists in the context of social demonstrations, indicates that “[the] State has a duty to guarantee that journalists and communicators, who are carrying out their informative work in the context of a public demonstration, are not detained, threatened, assaulted, or limited in any way in their rights for exercising their profession.

## H. Subsequent Liabilities

893. In 2019, an action under the figure of moral damage for the payment of millions was filed against researcher and analyst Sergio Aguayo<sup>1233</sup>, journalist Humberto Padgett<sup>1234</sup>, driver Pedro Ferriz de Con<sup>1235</sup>, lawyer Roberto Saucedo, and columnist Arnaldo Cuellar<sup>1236</sup> in Mexico. Padgett, after a long process, overcame the lawsuit, while the Ferriz Con, and Cuellar processes were still open at the close of this this Annual Report.

894. The Office of the Special Rapporteur has noted with concern the conviction against Aguayo, according to public knowledge information, magistrates of the sixth civil court revoked the sentence that the journalist had already won in March and gave the reason to the former governor of the State of Coahuila, Humberto Moreira. The ruling concludes that Aguayo “has caused moral damage to the plaintiff Humberto Moreira Valdés, affecting his honor”, so he is condemned to the “publication or disclosure of the conviction at his expense, in the newspapers Reforma and Siglo of Torreón, and on the personal twitter account of the defendant Sergio Aguayo Quezada, being in said media and formats where the facts and opinions that constituted the damage to moral were disseminated”. In addition, he must pay Moreira 10 million Mexican pesos “for punitive damages”, in addition to the payment of “expenses and costs (the expenses that must be paid in a judicial process) generated”, which were not specified<sup>1237</sup>.

895. On May 31, journalists from *Uniradio*, Sonia de Anda and Daniel Iglesias, as well as reporters from the Weekly *Zeta*, Eduardo Villa and Isai Lara<sup>1238</sup>, received information about the lawsuit for alleged moral damage committed by them and various people against the private security company Seguritech Privada SA de C.V. in Tijuana, Baja California, regarding a civil process established in Mexico.

896. Also in Baja California, on June 6, the Third Criminal Judge of Tijuana, notified the *AFN Tijuana* media<sup>1239</sup> to “take down and delete web servers, web pages, social networks, digital files, and other sections where they could store information from Rogelio 'N' 1 (...)”. The data referred to derived from the publication of a 2011 note, which contains the journalistic follow-up of events of public interest that occurred in the demarcation on November 8 of the same year, when the murder of two people was made public.

897. According to information provided to this Office, following the report “Salinas Pliego, the magnate who moved the threads of the Pemex-Fertinal scam” published by the magazine *Proceso* in July 2019, Ricardo Salinas Pliego and his company Banco Azteca sued the weekly claiming<sup>1240</sup> that this publication is part of a smear

<sup>1231</sup> Noticias Milenio/ Youtube. August 16, 2019. [Agreden a reportera de MILENIO en manifestación de mujeres](#). Derechos Digitales. August 30, 2019. [Represión contra mujeres periodistas y activistas en México](#).

<sup>1232</sup> Milenio. August 12, 2019. ["Nos nos cuidan, nos violan": protestan por violencia de policías contra mujeres](#). CNN. August 20, 2019. [Abusos de la fuerza pública, asesinatos y violencia: las razones por las que protestan las mujeres en México](#).

<sup>1233</sup> El Sol de México. October 11, 2019. [Sergio Aguayo pagará 10 mdp a Humberto Moreira tras perder juicio](#). Juzgado Décimo Sexto Civil de la Ciudad de México. Moreira Valdés Humberto contra Sergio Aguayo Quezada. Toca: 957/2019.

<sup>1234</sup> Aristegui Noticias. June 18, 2019. [Pierde Eruviel Ávila juicio vs el periodista Humberto Padgett](#). Tercer Tribunal Colegiado de Circuito de lo Civil en el Segundo Circuito (Amparo Directo 184/2019 and Amparo Directo 185/2019) formed by judges Juan Carlos Ramírez Gómora, Victorino Hernández Infante and Isafas Zárate Martínez.

<sup>1235</sup> Cuarto Tribunal Colegiado en Materia Civil del Primer Circuito en la Ciudad de México. El Financiero. February 25, 2019. [Tribunal acreditó que Pedro Ferriz de Con me causó daño moral: Moreira](#).

<sup>1236</sup> El Proceso. October 10, 2018. [Inicia juicio contra activista y periodista acusados de daño moral por el propietario de Canal TV8 en Guanajuato](#).

<sup>1237</sup> Tribunal Superior de Justicia de México. Toca 957/2019. Aristegui Noticias. October 14, 2019. [Esta es la sentencia contra Aguayo, en la que lo condenan a pagar 10 mdp por "daño moral" a Moreira](#).

<sup>1238</sup> Uniradio Noticias. June 1, 2019. [Demanda de Seguritech atenta contra la libertad de expresión: CCSBPC](#). Artículo 19. June 8, 2019. [Una demanda de daño moral y una orden de eliminación de contenido buscan restringir a la prensa en Tijuana, BC](#).

<sup>1239</sup> Somos el Medio. June 10, 2019. [Restringen contenidos a la prensa en Tijuana tras una demanda de daño moral y una orden de eliminación](#).

<sup>1240</sup> Poplab. October 23, 2019. [Este es el reportaje que Ricardo Salinas Pliego no quiere que leas](#). 62º Civil Court of Mexico City Ricardo Salinas and Banco Azteca sue Proceso for “moral damage”.

campaign that threatens honor and good reputation. The appeal filed by the lawyers of Salinas Pliego would have taken time to be heard because there was a prior censorship order<sup>1241</sup>.

898. The Office of the Special Rapporteur reminds the State of Mexico, that in its 2018 Special Report, the Special Rapporteurs recommended that the State “[to] repeal the Printing Crimes Act of 1917 and reform the criminal codes of the federal entities in order to eliminate crimes that criminalize freedom of expression, and to refrain from using other provisions of criminal law to punish the legitimate exercise of freedom of expression.” Also, “to reform the civil codes of the federal entities to guarantee the protection of honor through civil procedures, stipulating limits and criteria for sanctions, in accordance with international standards.” Finally, it stressed that the role of SEGOB and the Mechanism should be key in this regard”.

### **I. Source Confidentiality**

899. On March 21, according to public information, the Ministry of Public Security of Michoacán would have asked the digital media *Changoonga.com* of Morelia<sup>1242</sup> to reveal personal data of a citizen who provided information on an alleged case of police abuse published on February 25 of 2019 in said medium. The media also reported that it would have received calls and messages to reporters as a form of pressure and threats.

900. The Office of the Special Rapporteur recalls that principle 8 of the Declaration of Principles establishes that “every social communicator has the right to keep his/her source of information, notes, personal, and professional archives confidential.” Likewise, remember that Article 13.3 of the American Convention establishes that “the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” Principle 5 of the Declaration of Principles on Freedom of Expression of the IACHR states that “prior censorship, direct or indirect interference in, or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

### **J .Legal Reforms**

901. The Office of the Special Rapporteur has noted that on July 31, the Hidalgo State Congress approved the elimination of so-called crimes against honor from the entity's laws<sup>1243</sup>. Legislators abolished the Sixth Title of the Criminal Code of Hidalgo that eliminates articles 191 to 202 of the Criminal Code. This repeal was one of the recommendations made by the Special Rapporteurs for freedom of expression of the UN and the OAS in their joint 2018 report and would represent progress for freedom of expression, considering the context in which crimes against honor are arbitrarily imputed to voices critical to different interests, constituting a censorship mechanism.

902. Along these same lines, this Office was informed about the initiative of the Nayarit State Congress<sup>1244</sup> to repeal articles 217 and the content of the Seventh Title called Crimes Against Honor presented on October 24. Nayarit is one of the few states that contemplates crimes against honor in its criminal legislation; which are insults and defamation.

903. On May 9, Congress deputies of the State of Veracruz approved to reform article 298 of the Criminal Code of said entity to sanction with one to five years in prison and a fine, to whoever photographs, films, or disseminates images of a corpse or human remains<sup>1245</sup>. This reform contains a broad and ambiguous wording, which could generate restrictive interpretations, as well as a discretionary and arbitrary application thereof, to the detriment of the journalistic exercise.

904. This Office is concerned about the entry into force on August 1 of the reforms to the criminal law in Tabasco, where protest is criminalized. According to public information, the so-called "Garrote Law" mandates that those who prevent the free movement of people, vehicles, or machinery for the execution of public works be punished with imprisonment and fines.

<sup>1241</sup> Aristegui Noticias. October 23, 2019. [Reportaje por el que demandó Salinas a 'Proceso', "muy bien documentado"; hubo orden de juez para no hablar del juicio: Villanueva](#).

<sup>1242</sup> Changoonga. March 13, 2019. [SSP Michoacán Presiona A Changoonga.com Para Entregar Información De Víctima](#). Artículo 19. March 21, 2019. [Secretaría de Seguridad Pública de Michoacán presiona a medio para revelar fuente](#).

<sup>1243</sup> Expansión Política. July 31, 2019. [El Congreso de Hidalgo elimina los "delitos contra el honor"](#).

<sup>1244</sup> Todo Texcoco. October 25, 2019. [Congreso de Nayarit derogará 'delitos contra el honor'](#). Matutino Gráfico. October 28, 2019. [Propone Polo despenalizar las injurias y difamación](#). El Independiente. July 31, 2019. [Calumnia y difamación ya no son delitos](#).

<sup>1245</sup> Artículo 19. May 16, 2019. [Reforma al Código Penal de Veracruz pone en riesgo la labor periodística](#).

### **K. Censorship of journalistic material / Prior censorship / Direct and indirect censorship**

905. Regarding the censorship of journalistic material, this Office was informed about the detention and denial of entry permit to Mexico on January 17 to two international journalists seeking to cover the caravan of migrants in Tijuana. According to available information, the Canadian photojournalist and documentary filmmaker, Kitra Cahana and the AP agency photographer, Daniel Ochoa, were detained for 13 hours and reported that their phones were confiscated because the security force reportedly did not let them communicate with their embassies<sup>1246</sup>.

906. On May 14, MVS Radio Tampico reporter, Cynthia Gallardo<sup>1247</sup> of the site *Ordenador*, said they were blocked for informational coverage by the municipal councilor of MORENA (National Regeneration Movement) [*Movimiento de Regeneración Nacional*], Nelly Torres Benítez, while covering an event in the Municipal Electoral Council in the same municipality, in Tamaulipas.

907. On May 28 in Chiapas, the independent reporter Damián Sánchez, reported having been obstructed in its coverage by members of the National Institute of Migration (INM) and Federal Police agents, who would have prevented him from taking photographs during a detention of migrants' operation in Tapachula. Along the same lines, the reporters José Torres, correspondent for the newsletter "Así las Cosas" and the journalist Alberto Padilla of *Animal Político*, denounced that they would have beaten to evict them from the Migratory Station Siglo XXI<sup>1248</sup>.

908. The Office of the Special Rapporteur recalls that Article 13.2 of the American Convention states that the exercise of freedom of expression "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability." In the same vein, principle 5 of the Declaration of Principles provides that, "prior censorship, direct or indirect interference in, or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

### **L. Access to public information**

909. The Office of the Special Rapporteur was informed about the signing of the "Agreement establishing various actions for the transfer of historical documents related to human rights violations and political persecutions linked to political and social movements, as well as acts of corruption that are in possession of the dependencies and entities of the Federal Public Administration", on February 28<sup>1249</sup>. Although this signature constitutes progress for access to public information, different organizations indicated that the decision still has some ambiguities and indicate that it is necessary to establish protection mechanisms and processes of documentary valuation with experts or auditors, independent of the obligated subjects.

910. According to different media, on April 4, the Supreme Court of Justice of the Nation (SCJN) in Mexico issued two *amparos* sentences<sup>1250</sup> with reference to the right to the truth about the cases of the massacres of San Fernando and Cadereyta. In this way, it is possible that the National Institute of Transparency, Access to Information and Protection of Personal Data [*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*] (INAI), catalogs acts of serious human rights violations for the purpose of access to information and it would no longer be necessary to wait for the determination of the National Human Rights Commission to access such information in a given case.

911. On April 20, the PODER Non-Governmental Organization, which specializes in transparency and accountability, denounced a series of informational blockades carried out from March 27 to April 5 by the Federal Commission for Protection against Health Risks [*Comisión Federal para la Protección contra Riesgos Sanitarios*] (COFEPRIS). The organization said that the blockades happened when they requested interviews to know in depth the list of ingredients in tobacco products that tobacco companies deliver to said institution and also questioned the delay of Mexichem in the delivery of the remediation plan after the explosion of the Pajaritos petrochemical complex.

912. Through the request of information made by a citizen after the murder of the journalist Norma Saraiva, on June 12, the INAI reminded the Attorney General of the Republic (FGR) of Mexico of its obligation to publicize the number of complaints, prior investigations, investigation files, and arrest warrants for crimes against

<sup>1246</sup> Univisión. March 6, 2019. [El gobierno tiene lista secreta de periodistas y abogados ligados a caravana migrante, según reporte](#). El País. March 8, 2019. [Estados Unidos vigiló a periodistas que cubrían la caravana migrante](#).

<sup>1247</sup> Somos el Medio. May 21, 2019. [Reportera de MVS radio es agredida por consejera de Morena](#).

<sup>1248</sup> El Universal. August 27, 2019. [CNDH abre expediente por agresión a dos periodistas](#). Proceso. August 27, 2019. [La CNDH condena agresión contra periodistas en desalojo de migrantes en Tapachula](#).

<sup>1249</sup> SEGOB. February 28, 2019. [Acuerdo por el que se establecen diversas acciones para la transferencia de documentos históricos relacionados con violaciones de derechos humanos y persecuciones políticas vinculadas con movimientos políticos y sociales, así como con actos de corrupción en posesión de las dependencias y entidades de la Administración Pública Federal](#).

<sup>1250</sup> SCJN. Sentencia de amparos 661/2014 y 453/2015. La Silla Rota. April 8, 2019. [¿Dos caras de la misma sentencia?](#) Aristegui Noticias. April 5, 2019. [Inai determinará acceso a averiguación sobre masacres de San Fernando y Cadereyta: Corte](#).

freedom of expression, injuries, torture, kidnapping, homicide, forced disappearance, violation of correspondence, or disclosure of sources or secrets, committed against journalists and human rights defenders, in 2017 and 2018<sup>1251</sup>. Likewise, it indicated that they must report on the operational plan of work and the percentages of compliance with the Mechanism for the Protection of Journalists and Human Rights Defenders, as well as the number of complaints filed before the then Attorney General's Office.

913. Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that “access to information held by the State is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

### M. Internet and Freedom of Expression

914. On June 3, the Civil Society Organization Mexicans Against Corruption and Impunity [*Mexicanos Contra la Corrupción y la Impunidad*] (MCCI) denounced before the Attorney General's Office, the National Human Rights Commission, and the Ministry of Interior, that its portal was victim of several attacks initiated on May 6 in order to damage its reputation, as reported to different media, the organization's portal would have been hacked and intervened with fake news.

915. According to information provided by Civil Society Organizations in Tuxtepec<sup>1252</sup>, about 25 Facebook profiles and 2 fan pages would have been detected from which false information about journalists is disseminated. They also identified a pattern that has to do with the creation of fake Facebook accounts, as well as the dissemination of images and threats through WhatsApp groups, mainly after a media outlet publishes notes where municipal public officials are questioned about the use they make of public resources.

916. Along the same lines, the WhatsApp company and the Citizen Lab of the University of Toronto published on October 29, that more than 1,400 people, in at least 20 countries around the world, were attacked with Pegasus malware by exploiting a vulnerability on the instant messaging platform. They also identified more than one hundred members of civil society, journalists, activists, and human rights defenders attacked in this way, being Mexico one of the countries that would have reported greater vigilance in the first months of 2019. Although the company has not disclosed the exact figure or the identity of the affected people, it said it communicated with them according to a notification to inform them about the high probability of having been targeted by an attack<sup>1253</sup>.

917. The Office of the Special Rapporteur has received information on a series of attacks against different journalists originated by robots, known as bots, through hashtags on social networks #PrensaSicaria #PrensaProstituida, and #PrensaCorrupta<sup>1254</sup>. These aggressions occurred after the morning press conference of President Lopez Obrador on October 31, where the president made a series of stigmatizing statements against the press, as this Office has already noted in the corresponding section of this Annual Report. Within this framework, according to an analysis carried out by the Information, Infrastructure, and Technology Linking Unit of the Ministry of Public Security of Mexico, the hashtags would have been used by 28,161 users, and generated around 34 million reactions<sup>1255</sup>.

### N. Communications Surveillance

918. On March 20, the Canadian Citizen Lab, together with the organizations Social TIC, R3D, and Artículo 19, presented the research report detailing how Griselda Triana was attacked with the Pegasus spying software in the days after the murder of her husband Javier Valdez, in 2017. According to the document, the software would have allowed a third party to have access to, and even control, most of Triana's phone features<sup>1256</sup>. In June 2017, different media outlets in Mexico reported for the first time that the federal government had bought Pegasus spy software from the Israeli security company NSO Group. Different civil society organizations stated that, although so far it is impossible to determine the exact origin of the attacks with spyware, their research points to a group linked to the Mexican Government. The Mexican Government headed by then President Enrique Peña Nieto repeatedly denied accusations that it was spying on journalists, activists, and human rights defenders.

<sup>1251</sup> MVS Noticias. June 12, 2019. [Ordena INAI a la fiscalía entregar información sobre delitos contra periodistas y defensores de DH](#). La Jornada. June 12, 2019. [Ordena Inai a FGR revelar datos sobre Protección a Periodistas](#).

<sup>1252</sup> El Universal. April 14, 2019. [Denuncian amenazas a dos reporteros de la Cuenca](#). Proceso. March 10, 2019. [Periodistas de Oaxaca denuncian a alcalde de Tuxtepec por presunto espionaje](#).

<sup>1253</sup> Artículo 19. October 21, 2019. [WhatsApp revela que Pegasus continuó operando en México en 2019](#).

<sup>1254</sup> Aristegui Noticias. November 1, 2019. [Considera AMLO que ataques en redes a periodistas son genuinos, pero acepta indagar bots \(mientras no le cueste al gobierno\)](#).

<sup>1255</sup> Radio y Televisión Mexicana. November 5, 2019. [Acusan a opositores en guerra de bots. Of all those who joined the hashtags #HitmenPress #ProstitutedPress #CorruptPress, more than 7,200 are bots... what was not said, is that the main ones are related to @MorenaPartyMx](#). Twitter account of journalist Stephanie Ochoa. @StefyOchoa. [November 4, 2019, 11:42 A.M.](#)

<sup>1256</sup> Aristegui Noticias. March 20, 2019. [Tras asesinato de Javier Valdez, usaron spyware Pegasus contra su viuda Griselda Triana](#). Citizen Lab. March 20, 2019. [Wife of Journalist Slain in Cartel-Linked Killing Targeted with NSO Group's Spyware](#).

919. According to information provided by different media worldwide, in March 2019 the US Department of Immigration and Customs Enforcement (CBP) would have created a database of people “suspected” of being “organizers, coordinators, and instigators”, and of journalists who covered the last caravan of Central American immigrants that arrived in Tijuana in Mexico last 2018. The published documents bear the seal of the International Liaison Unit, which coordinates intelligence between the United States and Mexico<sup>1257</sup>. The anonymous source that would have leaked the information indicated that this database is shared by CBP, the immigration police (ICE), the border patrol, and the FBI.

920. On May 23, the president of the Public Broadcasting System of Mexico, Jenaro Villamil stated that media companies and journalists who obtained contracts during the government of Enrique Peña Nieto should explain “what kind of services they provided.” On the matter, the Special Rapporteurs recommended in the Special Report that the State should carry out an “independent investigation process on the acquisition and use of malware (including ‘Pegasus’)”. They also emphasize that “an investigation of this type must be independent of the federal government and the governments of the federal entities that, presumably, have purchased or used the spy program, and include experts from academic organizations and society civil, even, potentially, from foreign countries. Meanwhile, in any investigation that is ongoing, the rights of those who are subject to surveillance actions must be respected, which includes their security and privacy.” Finally, they recommend “establishing a legal framework to protect people from arbitrary or clandestine interference in their privacy, including the protection of journalistic sources in accordance with international standards on the subject”. In this sense, “State agencies involved in surveillance must establish guarantees and judicial supervision measures, within the permissible limits in a democratic society”. In addition, “Mexico should consider the possibility of creating an independent body to effectively supervise the State’s surveillance tasks”.

## **O. Government advertising**

921. The Office of the Special Rapporteur was informed about the publication of May 23 where the newspaper *Reforma* published a list with the names of 36 journalists and their companies, who would have received the amount of 1,081 million Mexican pesos in government advertising during the past government of the former President Enrique Peña Nieto. The information generated controversy, questions, and doubts, which is why, through an open letter to the president, signed on May 31, the website *Publicidad Oficial*, created by organizations and journalists, requested the government to repeal the previous Social Communication General Law<sup>1258</sup>, the drafting of a preferred law by initiative of the Executive, and the opening of a broad debate with an open parliament process to approve a new law. The draft was presented in October 2018 under the name of the Citizen Initiative of the General Law of Government Advertising and it contemplates clear, objective, and transparent criteria for the distribution of government advertising in accordance with the provisions of the Supreme Court of Justice of the Nation of Mexico and international standards on the matter.

922. According to public information, within the austerity plan of the new government, a 50% reduction in spending on government advertising was proposed. During the Enrique Peña Nieto six-year term, the budget was of almost 10 billion pesos annually, which according to different media outlets, the lack of proper regulation would have allowed millions of pesos to be used to promote public figures and skew the information that civil society would consume in addition to generating an inhibitory effect for the free journalistic exercise.

923. Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR states, “the exercise of power and the use of public funds by the State, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.” Also, according to the 2007 joint declaration on diversity in broadcasting, the Special Rapporteurs, of the UN, IACHR, OSCE, and ACHPR, indicated that “measures must be implemented to ensure that government advertising is not used as a means for political interference in the media”. Also, in the 2018 joint declaration on independence and diversity of the media in the digital era, the Special Rapporteurs point out that “[States] must establish effective systems to ensure transparency, impartiality, and non-discrimination in the media’s access to State resources, including government advertising.

<sup>1257</sup> Los Angeles Times. March 11, 2019. [Estados Unidos rastreó a activistas de inmigración, periodistas y abogados. ¿Es legal?](#)

<sup>1258</sup> #MediosLibres. October 2018. [Iniciativa ciudadana con proyecto de decreto por el que se expide la ley general de publicidad oficial.](#) Publicidad Oficial MX. May 31, 2019. [Carta Abierta a AMLO.](#)

## 24. NICARAGUA

924. Throughout 2019, the Nicaraguan government maintained a pattern of repressive measures and actions to restrict in a systematic way the exercise of protest, the exercise of independent journalism, and the actions of human rights defenders. In that context, the main journalists of the country remained for several months in exile, the government controls the main private media that have been seized, also the duopoly of the television and radio in Nicaragua, in addition to the practice of discriminatory allocation of government advertising, which is reserved exclusively for the official media and those of the Ortega family. On the other hand, there was a continuous harassment and surveillance against journalists, especially in the cities of Bluefields, León, Masaya and Matagalpa. Additionally, the Office of the Special Rapporteur observes that the Executive controls the import and delivery of paper, machinery, equipment, and spare parts for written, radio, and television media, and much of the paper to print the newspaper *LA PRENSA*, the newspaper *Hoy*, *El Nuevo Diario*, and *Metro* are held by the General Directorate of Customs Services [*Dirección General de Servicios Aduaneros*] (DGA). As reported, due to the above, in September the newspapers *Metro* and *El Nuevo Diario* announced that they were closing, as well as the printed edition of the weekly satirical supplement *El Azote*. Likewise, the Nicaraguan government keeps equipment and facilities of *Confidencial*, *Niú*, *Esta Semana y Esta Noche*, and *100% Noticias* remain confiscated for a year.

925. On the other hand, the IACHR and its Office of the Special Rapporteur observe with great concern the situation of impunity characterizing the serious crimes committed against journalists and the media in the context of the social protests that were carried out in Nicaragua in 2018. According to information available, due to the application of the Amnesty Law, approved in June 2019, the investigations related to these crimes would have been archived. Thus, for example, it was reported that investigations into the fire of *Radio Darío*, and the murder of journalist Ángel Gahona, would have been archived. Finally, on June 11, journalists Lucia Pineda and Miguel Mora were released under the Amnesty Law, after being detained for almost 6 months on charges of alleged terrorist offenses and hate speech. According to the information available, the accusation against them would still be in place even though the trial would have been suspended.

926. The Office of the Special Rapporteur observes with great concern the situation of impunity in which the serious crimes committed against journalists and the media would be found in the context of the 2018 social protests. As reported, due to the application of the Amnesty Law approved in June 2019, the investigations related to these crimes have been shelved. Thus, for example, it was informed that the investigations into the *Radio Darío* fire and the murder of the journalist Ángel Gahona had been shelved.

### A. Political control and undue interference in the media

927. The Office of the Special Rapporteur has repeatedly noted in its Annual Reports, as well as in the 2018 Report “Serious violations of human rights in the framework of social protests in Nicaragua”, the existence of a duopoly of television media and radio stations in Nicaragua. According to the available information, most of the audiovisual media is under the political control of the presidential family or a businessman related to the government<sup>1259</sup>; and therefore, these media are biased or their journalists face obstacles to perform their work independently. In addition, the mentioned state media would also be part of the government propaganda machinery.

928. On the other hand, the Office of the Special Rapporteur notes that the equipment and facilities of *Confidencial*, *Niú*, *Esta Semana y Esta Noche*, and of *100% Noticias* remain confiscated since December 2018, despite the fact that in March 2018, within the framework of the National Dialogue, the government committed to “reviewing the decisions taken by the State in relation to the properties affected in the context of the events that occurred as of April 18, 2018, in order to return of these assets when appropriate, in accordance with the Constitution and the law”<sup>1260</sup>.

929. As reported, in relation to *Confidencial*, *Niú*, and *Esta Semana y Esta Noche*, the administrative and legal remedies available were filed to demand the return of the property confiscated<sup>1261</sup> by the State and for compensation for the moral and economic damages caused<sup>1262</sup>. However, since December 14, 2018, the national police occupies the editorial. Likewise, the complaint filed on these events before the Attorney General’s Office did not prompt any investigations and the appeals filed against the Supreme Court and Court of Appeals of Managua were not decided<sup>1263</sup>. In this regard, in a statement dated September 20, the State indicated, among

<sup>1259</sup> Committee to Protect Journalists (CPJ). August 5, 2019. [Nicaragua: A crackdown in four parts](#); Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA. Nicaragua](#). October 3, 2019

<sup>1260</sup> *Hoy*. March 30, 2019. [Firman acuerdo para que Ortega respete los derechos y garantías de los nicaragüenses](#); AP News. March 29, 2019. [Nicaragua: Gobierno y oposición firman acuerdo sobre presos](#); La Prensa. September 9, 2019. [Periodistas independientes demandan al régimen orteguista que restituya las libertades públicas](#); *El Nuevo Diario*. August 8, 2019. [Cosep y Amcham exigen devolución de bienes de Confidencial y 100% Noticias](#).

<sup>1261</sup> IACHR. Special Rapporteurship for Freedom of Expression. December 14, 2018. [UN and IACHR Experts on FoE condemn attacks, raids and censorship against journalists in Nicaragua](#).

<sup>1262</sup> *Confidencial*. June 13, 2019. [Confidencial: seis meses bajo asalto y confiscación](#).

<sup>1263</sup> CNN en español. August 8, 2019. [Empresarios denuncian violación a la libertad de expresión y el derecho de empresa en Nicaragua](#); *Voa Noticias*. August 8, 2019. [Proprietarios de medios confiscados en Nicaragua piden su devolución](#).

other things, that the *amparo* writs filed were under study and resolution, and would currently be pending decision by the Supreme Court of Justice<sup>1264</sup>.

930. According to Carlos Fernando Chamorro, owner and director of these media, the official version of the events is in a document dated February 19 signed by the Director General of the police that was presented to the Court of Appeals. On this occasion, said Director General would have indicated that by “attacking and occupying *Semana* and *Confidencial*” he was fulfilling orders from the Ministry of the Interior to take possession of the property and assets of the NGO Communication Research Center [*Centro de Investigación de la Comunicación*] (Cinco) which had its legal status stripped by the National Assembly on December 12, 2018 and of which the journalist is a member of the Board of Directors. Regarding the above, Chamorro indicated that “the State aggression against Promedia [producer of *Esta Semana y Esta Noche*], Invermedia [producer of *Confidencial*], and Cabal [environmental services consulting company], cannot be justified under the protection of arbitrary cancellation of the status of said NGO, because there is no binding relationship between both institutions”<sup>1265</sup>.

931. In turn, with respect to the *100% Noticias* media, according to public knowledge information, its facilities were raided by the police on December 21, 2018, and its director Miguel Mora and the press chief Lucia Pineda were arrested for alleged terrorist crimes and hate speech that were never proven<sup>1266</sup>. Despite the two journalists having been released on June 11 along with 55 protesters under the Amnesty Law, the channel's facilities remain closed to date and the accusation against them would continue in force despite the trial being suspended<sup>1267</sup>.

932. As reported, in this case, actions would also have been filed before the Supreme Court of Justice and the Court of Appeals of Managua<sup>1268</sup>. On the *100% Noticias* Channel, in a communication dated September 20, the Nicaraguan State indicated that its occupation would have been carried out within the framework of a criminal investigation and in accordance with the legal system. Likewise, it affirmed that “the scope of the Amnesty Law and its generic effects include the closing of the proceedings, the immediate release, and the cancellation of the criminal record, but not the return of the properties or instruments with which the crime was carried out”<sup>1269</sup>.

## **B. Violence and attacks against journalists and the media**

933. According to information received by the IACHR and its Special Rapporteurship, a continuous harassment, siege, intimidation and surveillance against journalists was recorded in Nicaragua. According to the Violeta Barrios de Chamorro Foundation [*Fundación Violeta Barrios de Chamorro*], from April 2018 to April 2019, 1,080 cases of press freedom violations were identified; and until July 30, at least 90 Nicaraguan journalists have had to go into exile as a result of pressure from the Government<sup>1270</sup>.

934. Additionally, in August, this Office of the Special Rapporteur together with UN Special Rapporteurs expressed their concern regarding reprisals against *Radio Darío* personnel, as well as the repression of other communication workers in Nicaragua. They also indicated that there would be indications of a systematic and continuing repression of the media, with journalists being silenced, assaulted, and receiving death threats; they also stressed that in an unstable context, such as Nicaragua, the work of the media is of the utmost importance to strengthen the civic space<sup>1271</sup>. This Office notes that, in a communication dated September 17, the State of Nicaragua indicated, among other things, that it would reject the accusations, threats, and harassment against the personnel of *Radio Darío*, as well as the allegations of raids in the premises or new location where this radio would operate<sup>1272</sup>.

<sup>1264</sup> Communication from the State of Nicaragua dated September 20, 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Despacho 505. October 4, 2019. [Régimen no devolverá 100% Noticias y Confidencial queda en manos de la Corte.](#)

<sup>1265</sup> Confidencial. June 13, 2019. [Confidencial: seis meses bajo asalto y confiscación](#); El Nuevo Diario. August 8, 2019. [Cosep y Amcham exigen devolución de bienes de Confidencial y 100% Noticias.](#)

<sup>1266</sup> Univisión. December 22, 2018. ["Urgente, hay paramilitares dentro del canal": allanan una televisora en Nicaragua y acusan a su director de incitar al terrorismo](#); La Prensa. April 4, 2019. [Miguel Mora y Lucía Pineda entre los diez casos más emblemáticos en el mundo de reporteros que están encarcelados](#); Voa Noticias. January 30, 2019. [Periodistas nicaragüenses enviados a juicio por "terroristas".](#)

<sup>1267</sup> El Nuevo Diario. August 8, 2019. [Cosep y Amcham exigen devolución de bienes de Confidencial y 100% Noticias](#); Consejo Superior de la Empresa Privada (COSEP). August 23, 2019. [COSEP y AmCham exigen devolución de 100% Noticias y Confidencial.](#)

<sup>1268</sup> La Prensa. September 9, 2019. [Periodistas independientes demandan al régimen orteguista que restituyan las libertades públicas](#); Knight Center for Journalism in the Americas. September 10, 2019. [Independent journalists in Nicaragua demand press freedom, including return of newsrooms and delivery of printing materials.](#)

<sup>1269</sup> Communication from the State of Nicaragua dated September 20, 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Despacho 505. October 4, 2019. [Régimen no devolverá 100% Noticias y Confidencial queda en manos de la Corte.](#)

<sup>1270</sup> Fundación Violeta Barrios de Chamorro. August 30, 2019. [EVBCH, IFEX-ALC y SIP presentan ante el Comité de Derechos Humanos de la ONU Informe Alternativo sobre el estado de la Libertad de Expresión en Nicaragua](#); Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA. Nicaragua.](#) October 3, 2019; Confidencial. August 22, 2019. [Las voces que vencen la censura desde Costa Rica.](#)

<sup>1271</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Press release R212/19 Nicaragua: Must stop reprisals against journalists, say human rights experts.](#)

<sup>1272</sup> Communication dated October 17, 2019 sent by the State of Nicaragua to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.



935. On the other hand, this Office of the Special Rapporteur observes that, according to information of public knowledge, due to the government's policy of persecution of independent media in the country, various events were registered, such as: the closure of a television channel, the end of several television programs, and at least two stations would have been harmed repeatedly<sup>1273</sup>. Up next are some of the cases that were reported this year.

936. According to the information available, in March, David Quintana, director and journalist of the digital portal *Boletín Ecológico*, would have been a victim of police harassment because of his work as a journalist<sup>1274</sup>. Likewise, Sergio León, director of *La Costeñísima*, would have been subjected to intimidation and harassment by police operatives outside the radio on March 1 and April 18<sup>1275</sup>. In addition, in March, Marlon Powell Sánchez, a journalist who had the radio show "El dedo en la llaga" [*The finger in the wound*], would have been detained and beaten in detention. Powell Sánchez would be charged with the crimes of terrorism, fire, aggravated robbery, and obstruction of public services to the detriment of the Attorney General's Office (PGR) and the Public Ministry. As reported, the journalist would have spent 53 days in the former Directorate of Judicial Assistance [*Dirección de Auxilio Judicial*] (DAJ) and subsequently would have been transferred to the La Modelo Penitentiary System, where he indicated that he would also have been subjected to torture<sup>1276</sup>. In June, Powell Sánchez would have been released under the Amnesty Law<sup>1277</sup>.

937. In addition, as reported, in April, government supporters would have vandalized the home of journalist Wilber Benavides Fonseca, who would work for a local television channel in Managua. Benavides Fonseca would have returned to the country in the week prior to these events<sup>1278</sup>. In addition, on April 10, the newspaper *La Prensa* indicated that police and paramilitaries would have threatened the graphic reporter, Norwin Mújica de León. As reported, these people would have warned him of a "revenge" against him and against Eddy López Hernández, correspondent for *La Prensa* in León<sup>1279</sup>.

938. According to information of public knowledge, in August, journalists from the Association of Independent Journalists and Communicators of Nicaragua [*Asociación de Periodistas y Comunicadores Independientes de Nicaragua*] (PCIN), who would be exiled in Costa Rica, would have reported death threats and cyberbullying against them, their families, and the media *Esta Semana* and *Nicaragua Actual*. These attacks would have been carried out by alleged sympathizers of the regime of President Daniel Ortega and Rosario Murrillo. As reported, these threats would have intensified in recent times<sup>1280</sup>. Additionally, according to the PCIN, *Radio Mi Voz* in León of journalist Álvaro Montalván, who would be exiled in Costa Rica, would also be subject to constant harassment; as well as Ed Sanles Alemán, administrator of the *Notiweb Bluefields* space<sup>1281</sup>. In turn, the *La Prensa* journalist, Emiliano Chamorro along with former political prisoner Byron Estrada had allegedly been held and interrogated by the "anti-riot police" of the Directorate of Special Operations [*Dirección de Operaciones Especiales*] (DOEP) for more than two hours, when they were returning to Nicaragua after having attended the "unity march" held in San José, Costa Rica. As reported, Chamorro's journalistic notes would have been photographed and his camera was checked<sup>1282</sup>.

<sup>1273</sup> France 24. September 28, 2019. [Nicaragua: Dejan de circular dos periódicos y un medio digital y acusan al Gobierno de Daniel Ortega](#); Confidencial. September 28, 2019. [Cierre total de El Nuevo Diario y Metro: "Nos tomó por sorpresa"](#); La Prensa/EFE. September 27, 2019. [El Nuevo Diario, Metro y Maje dejan de circular por crisis en Nicaragua](#)

<sup>1274</sup> Canal 10. March 25, 2019. [Asedio y persecución contra periodista David Quintana](#); El Nuevo Diario. March 26, 2019. [Periodista Quintana teme ser encarcelado](#).

<sup>1275</sup> Confidencial. 20 de abril de 2019. [Policía persiste en asedio al periodista Sergio León, de Bluefields](#); Diario Las Américas. 19 de abril de 2019. [Denuncian retención de periodista y asedio a emisora de radio en Nicaragua](#); El Salvador. 19 de abril de 2019. [Denuncian retención de periodista y asedio a emisora en Caribe de Nicaragua](#); Canal 10. 19 de abril de 2019. [Director de radio La Costeñísima denuncia asedio por parte de la policía](#); Confidencial. 1 de marzo de 2019. [Hostigamiento policial a La Costeñísima, en Bluefields](#); La Prensa. 19 de abril de 2019. [Orteguismo mantiene asedio policial contra Sergio León, propietario de la radio La Costeñísima](#); El Nuevo Diario. 18 de abril de 2019. [Vuelven a colocar pintas en instalaciones de Radio La Costeñísima](#).

<sup>1276</sup> Confidencial. April 20, 2019. [Policía persiste en asedio al periodista Sergio León, de Bluefields](#); Diario Las Américas. April 19, 2019. [Denuncian retención de periodista y asedio a emisora de radio en Nicaragua](#); El Salvador. April 19, 2019. [Denuncian retención de periodista y asedio a emisora en Caribe de Nicaragua](#); Canal 10. April 19, 2019. [Director de radio La Costeñísima denuncia asedio por parte de la policía](#); Confidencial. March 1, 2019. [Hostigamiento policial a La Costeñísima, en Bluefields](#); La Prensa. April 19, 2019. [Orteguismo mantiene asedio policial contra Sergio León, propietario de la radio La Costeñísima](#); El Nuevo Diario. April 18, 2019. [Vuelven a colocar pintas en instalaciones de Radio La Costeñísima](#).

<sup>1277</sup> EFE. June 10, 2019. [Un periodista detenido es liberado en Nicaragua antes de la visita de la SIP](#); Inter American Press Association (IAPA). June 13, 2019. [Miguel Mora y Lucía Pineda conversan en Managua con la SIP tras ser liberados](#).

<sup>1278</sup> El Nuevo Diario. April 29, 2019. [Periodista que regresó del exterior se siente bajo asedio](#); "DENUNCIATION: Under cover of the night and as criminals, fanatics of the Ortega regime graffitied the walls of my house today Friday 04/26. I hold the CPCs in my community responsible if something happens to me or my family. 1/2 #SOSNicaragua". Twitter account of Wilmer Benavides Fonseca @chepitillo1. [April 26, 2019](#).

<sup>1279</sup> La Prensa. April 10, 2019. [Amenazas de policías y paramilitares orteguistas contra periodistas de LA PRENSA y fotógrafo de León](#).

<sup>1280</sup> Confidencial. August 10, 2019. [Periodistas exiliados denuncian amenazas de muerte](#); Voa Noticias. August 13, 2019. [Periodistas nicaragüenses en el exilio denuncian amenazas](#); 100% Noticias. August 7, 2019. [Periodistas independientes condenan amenazas y acoso](#).

<sup>1281</sup> Despacho 505. August 9, 2019. [Periodistas exiliados denuncian amenazas de muerte y asedio contra sus familias](#); La Mesa Redonda. August 7, 2019. [PCIN condena amenazas y hostigamiento contra periodistas nicaragüenses exiliados en Costa Rica](#); 100% Noticias. August 7, 2019. [Periodistas independientes condenan amenazas y acoso](#).

<sup>1282</sup> Confidencial. August 12, 2019. [Antimotines retienen a excarcelado político y periodista en Peñas Blancas](#); La Prensa. August 12, 2019. [Antimotines retienen e interrogan a periodista de LA PRENSA Emiliano Chamorro y al excarcelado político Bayron Estrada](#).

939. In turn, according to the information available, in September, Kathia Reyes, a journalist for *Canal 10*, would have been intimidated by government supporters while she was covering an event in Chinandega<sup>1283</sup>. Also, on September 1, the newspaper *La Prensa* reported six days of permanent police harassment with a police patrol stationed from 7am to 7pm in front of their building, with police officers who would monitor the area and their staff<sup>1284</sup>. Similarly, on September 6, a new attack against *Radio Darío* would have been registered in León, where a group of motorized vehicles would have had destroyed their surveillance cameras and forced their door. The radio's walls would have also been vandalized with offenses and threats the previous night<sup>1285</sup>. Subsequently, on September 26, police officers and government mobs would have attempted to enter their facilities by force. The foregoing would have happened a day after Aníbal Toruño, owner of the radio, participated in a public hearing before the IACHR together with Sergio León of *La Costeñísima* and Carlos Chamorro of *Confidencial*<sup>1286</sup>. As reported, Toruño would have returned to Nicaragua at the end of August after 9 months in exile<sup>1287</sup>.

940. On the other hand, on September 26, *Radio Corporación* would have denounced that its main antenna in Tipitapa would have had a copper ring stolen by two unidentified people, which would have caused the station to not be heard in some areas of the country<sup>1288</sup>. Similarly, the *Radio Camoapa Estéreo* of the department of Boaco, would also have been subject to attacks on September 14 and 15, when the attempt to damage its transmitter and take down the antenna would have been registered. Later, in October, this radio would also have denounced an alleged energy boycott against it, with the suspension of the electric service of for up to 5 hours per day<sup>1289</sup>.

941. This Office of the Special Rapporteur also observes that during the public hearing of the IACHR on "Compliance with precautionary measures for the protection of independent journalists in Nicaragua<sup>1290</sup>", held on September 25, the representation and beneficiaries of the precautionary measures (Carlos Chamorro<sup>1291</sup>, Anibal Toruño<sup>1292</sup>, and Sergio León<sup>1293</sup>) indicated that they would continue to be exposed to risk events due to their work as independent journalists in the current context, characterized by the closure of democratic spaces. They stressed that the government would continue to restrict the exercise of the freedom of expression of independent journalists, denounced the lack of guarantees for the exercise of freedom of the press, and described new episodes of harassment, threats, and intimidation against independent journalists. They also demanded that confiscated media had not been returned and denounced the harassment by indirect means in the country, such as the blocking of paper and ink for newspapers, as well as inspections related to the fiscal power of the State<sup>1294</sup>.

942. Additionally, in October, it was reported that Jacdiel Manuel Rivera Cornejo, a *Canal 10* correspondent, was threatened with imprisonment by the Departmental Chief of Transit Police in Madriz, while recording interviews about a traffic accident in which a policeman would have died<sup>1295</sup>. In the same month, government supporters would have tried to burn a house where *Canal 21*, an independent channel of a Christian nature, would operate. As reported, it would be the third time they would suffer such attacks<sup>1296</sup>. Other journalists who reported having been subjected to harassment and intimidation in that month were: Juan Francisco Dávila, a

<sup>1283</sup> La Prensa. September 23, 2019. [Periodista de Canal 10 sufre intimidación de simpatizante Orteguista mientras realizaba cobertura en Chinandega](#)

<sup>1284</sup> La Prensa. September 1, 2019. [De 7:00 a 7:00, seis días de permanente acoso policial al diario LA PRENSA](#).

<sup>1285</sup> El Nuevo Diario. September 8, 2019. [Nuevo ataque contra Radio Darío, en León: Destruyen cámaras de vigilancia y fuerzan la puerta](#); La Prensa. September 8, 2019. [VÍDEO: Así fue como fanáticos orteguistas realizaron las pintas contra Radio Darío, en León](#); Confidencial. September 7, 2019. [Orteguistas pintan amenazas en radio Darío y la vivienda de su propietario](#).

<sup>1286</sup> Confidencial. September 27, 2019. [Turbas y policías intentan ingresar por la fuerza a Radio Darío](#); La Prensa. September 26, 2019. [Policía Orteguista intenta entrar por la fuerza a las instalaciones de Radio Darío en León](#).

<sup>1287</sup> Confidencial. September 5, 2019. [Anibal Toruño demanda seguridad para periodistas](#); La Prensa. August 29, 2019. [Jaime Arellano y Aníbal Toruño regresan a Nicaragua después de nueve meses en el exilio](#).

Canal 10. September 26, 2019. [Radio corporación denuncia sabotaje](#); El Nuevo Diario. September 21, 2019. [Radio Corporación denuncia sabotaje contra torre de transmisión](#); Onda Local. September 27, 2019. [Organizaciones condenan cierre de los periódicos El Nuevo Diario y Metro](#); La Prensa. September 25, 2019. [Radio Corporación denuncia sabotaje a su antena principal](#).

<sup>1289</sup> Onda Local. September 16, 2019. [PCIN condena ataques a Radio Camoapa](#); La Lupa. October 2, 2019. [Boicot energético contra radio Camoapa](#); El Nuevo Diario. September 15, 2019. [Desconocidos ingresan a Radio Camoapa y causan daños materiales](#); Despacho 505. October 2, 2019. [Radio Camoapa denuncia boicot energético](#); La Prensa. September 16, 2019. [Denuncian dos sabotajes consecutivos a emisora comunitaria Radio Camoapa](#); Radio Camoapa Estéreo. September 15, 2019. [Denuncia pública](#).

<sup>1290</sup> IACHR. 173 Period of Sessions. September 25, 2019. [Nicaragua: Medidas Cautelares de periodistas](#).

<sup>1291</sup> IACHR. [Resolución No. 91/2018. Medidas Cautelares No. 1606-18. Carlos Fernando Chamorro Barrios y otros respecto de Nicaragua \(Trabajadores del "Confidencial"\)](#). December 21, 2018..

<sup>1292</sup> IACHR. [Resolución No. 47/2018. Medidas Cautelares No. 693-18. Anibal Toruño Jirón y otros integrantes de la Radio "Darío" respecto de Nicaragua](#). July 2, 2018..

<sup>1293</sup> Despacho 505. September 25, 2019. [Periodistas denuncian incumplimiento del Estado a medidas cautelares de la CIDH](#); Knight Center. September 30, 2019. [Nicaraguan journalists tell IACHR that the State has not complied with precautionary measures for their protection..](#)

<sup>1294</sup> IACHR. Audiencia No. 14. Cumplimiento de medidas cautelares de protección en favor de periodistas independientes en Nicaragua. [Anexo Comunicado de Prensa 173 Periodo de Sesiones](#). No date.

<sup>1295</sup> 100% Noticias. October 12, 2019. [Comisionado de la Policía amenaza con cárcel a corresponsal de canal 10](#);

<sup>1296</sup> 100% Noticias. October 14, 2019. [Fanáticos orteguistas intentan quemar una casa donde funciona un canal independiente en Somoto](#).

journalist for *Radio ABC Estéreo* and *Canal 10* in Estelí<sup>1297</sup>; Henry Briceño Portocarrero, from the municipality of San Rafael del Sur, southeast of Managua<sup>1298</sup>; Denis José García, correspondent for *Radio Corporación* in Somoto and host of the “Primero Noticias” news on *Canal 21* on cable also in Somoto. As reported, García would have been subject to harassment by the police twice in October, and the last time he would have had to leave his home for safety reasons<sup>1299</sup>. Wilmer Benavides, from the digital media *Actualidad with Andean Dino*<sup>1300</sup>; Denis José García, correspondent for *Radio Corporación* in Somoto and conductor of the “First News” news on Channel 21 on cable also in Somoto. As reported, García would have been subject to sieges by the police twice in October, and in the last time he would have had to leave his home for security<sup>1301</sup>.

943. In addition, in November, a resurgence of attacks against independent journalists in Nicaragua was reported. In this sense, it was reported that in less than 72 hours, six attacks would have been recorded that would include attacks, robberies and threats<sup>1302</sup>. In this regard, some of the journalists who reported having been subjected to sieges and intimidation in that month were: Carlos Eddy Monterrey, in Bluefields, would have been subject to siege and intimidation by the police, to avoid attending the stellar hearing of *After the News*, from *La Costeñísima*. As reported, from October 31 to November 5, the journalist and his family would have been harassed and besieged five times by police. He indicated that riot police were located with their rifles on the sides of their house and along the street<sup>1303</sup>; Joseling Rojasjournalists of *Canal 10* and María Gómez, a journalist for *Article 66*, who covered a protest in Managua<sup>1304</sup>; the journalist and the director of *Notimatv*, Sandra Martínez and Eduardo Montenegro. In addition, the headquarters of this media in Matagalpa would also have been attacked by government supporters<sup>1305</sup>; journalists Claudia Rivas de Despacho 505 and Lidia López de *La Prensa*, who were threatened by police officers in Masaya<sup>1306</sup>; Roberto Mora Cárcamo, *ABC Estéreo* journalist, who would have been threatened with death<sup>1307</sup>; Geovanny Shifman *Article 66* reporter, in Managua<sup>1308</sup>; Hassel Ruiz 100% News journalist<sup>1309</sup>. Additionally, it was informed that the facilities of *Radio Corporation* and *Channel 10* would have dawned on November 15 surrounded by orteguista police<sup>1310</sup>; Tania López, a journalist in León who would have been robbed and intimidated by motorized groups. According to the journalist, she would have been several opportunities besieged, assaulted and stripped of her work team<sup>1311</sup>. On the other hand, it was informed that in November the government would have started using the channel 15 signal that belonged to the 100% News media. On the matter, 100% News indicated that, of the programming that was made public, the channel would have a high content of partisan political court, despite the information by the government officials that it would be cultural and educational<sup>1312</sup>.

<sup>1297</sup> 100% Noticias. October 7, 2019. [Paramilitares intimidan y roban equipo a periodista de Estelí](#); *La Prensa*. October 7, 2019. [Policías y paramilitares rodean la Catedral de Estelí durante procesión de la Virgen del Rosario](#).

<sup>1298</sup> Artículo 66. October 1, 2019. [Periodista Henry Briceño denuncia asedio y persecución policial en San Rafael del Sur](#).

<sup>1299</sup> *La Prensa*. October 16, 2019. [Periodista de Radio Corporación huye de su casa en Somoto por acoso policial y paramilitar](#); 100% Noticias. October 16, 2019. [APN condena asedio contra corresponsal de Radio Corporación Denis García](#); *El Confidencial/EFE*. October 16, 2019. [Periodista huye de su casa en Nicaragua por asedio policial, denuncia emisora](#); *Radio Corporación*. October 16, 2019. [Denunciamos asedio e intimidación policial contra nuestro corresponsal](#).

<sup>1300</sup> *El Independiente*. October 31, 2019. [Periodistas denuncian ante CPDH agresión de la Policía Orteguista](#); *Nicaragua Investiga*. October 30, 2019. [Policías agreden a periodistas que cubrían protestas en un centro comercial privado de Managua](#)

<sup>1301</sup> *La Prensa*. October 16, 2019. [Periodista de Radio Corporación huye de su casa en Somoto por acoso policial y paramilitar](#); 100% Noticias. October 16, 2019. [APN condena asedio contra corresponsal de Radio Corporación Denis García](#); *El Confidencial/EFE*. October 16, 2019. [Periodista huye de su casa en Nicaragua por asedio policial, denuncia emisora](#); *Radio Corporación*. 16 de octubre de 2019. [Denunciamos asedio e intimidación policial contra nuestro corresponsal](#).

<sup>1302</sup> *La Prensa*. November 17, 2019. [Dictadura de Daniel Ortega recrudece agresiones contra los periodistas independientes en Nicaragua](#).

<sup>1303</sup> 100% Noticias. October 31, 2019. [Policía asedia vivienda del periodista Carlos Eddy Monterrey en Bluefields](#); 100% Noticias. 6 de noviembre de 2019. [Periodista Eddy Monterrey denuncia constante asedio policial](#); *La Prensa*. 5 de noviembre de 2019. [CIDH demanda al régimen Orteguista cesar 'ataques y asedio' contra la prensa independiente](#)

<sup>1304</sup> *La Prensa*. November 5, 2019. [CIDH demanda al régimen Orteguista cesar 'ataques y asedio' contra la prensa independiente](#); Artículo 66. 5 de noviembre de 2019. [CIDH condena ataques de policías del régimen contra periodistas de Canal 10 y Artículo 66](#); Artículo 66. 5 de noviembre de 2019. [Dictadura orteguista pretende imponer a periodistas independientes la "ley del bozal"](#)

<sup>1305</sup> 100% Noticias. November 6, 2019. [Policía intenta robar celular a periodista de Notimatv](#); 100% Noticias. November 16, 2019. [Simpatizantes Orteguistas atacan sede de NotimaTV](#); *Despacho 505*. November 16, 2019. [Agresión y asedio contra propietario de Notimatv](#).

<sup>1306</sup> *Despacho 505*. November 15, 2019. [Agreden a periodistas y no dejan pasar medicina del padre Edwin Román en Masaya](#); *La Mesa Redonda*. November 15, 2019. [Agreden a periodistas mujeres de La Prensa y Despacho 505](#); 100% Noticias. November 15, 2019. [Fanático orteguista destruye teléfono de periodista de La Prensa en las afueras de la iglesia San Miguel](#)

<sup>1307</sup> *La Prensa*. November 17, 2019. [Dictadura de Daniel Ortega recrudece agresiones contra los periodistas independientes en Nicaragua](#).

<sup>1308</sup> Artículo 66. November 10, 2019. [Policía orteguista patea a reportero de Artículo 66 mientras cubría protesta de opositores](#); *La Prensa*. November 10, 2019. [Policía Orteguista reprime otro plantón de autoconvocados en Metrocentro](#)

<sup>1309</sup> 100% Noticias. November 12, 2019. [Fanáticos orteguistas amenazan a trabajadora de 100%Noticias](#)

<sup>1310</sup> 100% Noticias. November 15, 2019. [Canal 10 y Radio Corporación asediados por la policía orteguista](#); *La Prensa*. November 15, 2019. [Así te contamos la jornada de asedio policial de este viernes a la iglesia San Miguel Arcángel de Masaya](#)

<sup>1311</sup> 100% Noticias. November 16, 2019. [Turbas sandinistas roban a periodista de Canal 10 en León](#); *La Prensa*. November 17, 2019. [Dictadura de Daniel Ortega recrudece agresiones contra los periodistas independientes en Nicaragua](#); 100% Noticias. September 21, 2019. [Periodista de Radio Darío, Tania López denuncia asedio en su contra](#)

<sup>1312</sup> 100% Noticias. November 14, 2019. [Gobierno empieza a usar la señal de canal 15 que pertenecía a 100% Noticias](#)

944. De acuerdo con la información disponible, también en noviembre regresó a Nicaragua el periodista Carlos F. Chamorro, director de *Confidencial*. El periodista regresó al país después de pasar casi 11 meses exilado en Costa Rica debido a las amenazas y hostigamientos en su contra<sup>1313</sup>. Más recientemente, el 5 de diciembre, el camarógrafo de Notimatv, Brayan Zeledón, reportó que su teléfono personal fue dañado por un presunto policía mientras cubría un juicio en Matagalpa. De acuerdo con la información disponible, el agresor sería el mismo que asediaría a Eduardo Montenegro, director de este medio, y al equipo<sup>1314</sup>. Además, el 12 de diciembre, fue reportado que la periodista Castalia Zapata y el fotógrafo Luis Alemán *Canal 12*, el periodista Ismael López de la agencia *Reuters* y el fotógrafo Oscar Navarrete de *La Prensa* habrían sido agredidos mientras cubrían una protesta en Managua<sup>1315</sup>.

945. The IACHR recalls that “[t]he murder, kidnapping, intimidation of, and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.” The IACHR has affirmed that violence against journalists not only violates the freedom of thought and expression of the affected person, but also affects the collective dimension of this right. The acts of violence that are committed against journalists (term understood under a broad definition, from a functional perspective) or people who work in the media, and that are linked to their professional activity, violate the right of these people to express and impart ideas, opinions, and information, as well as undermine the rights of citizens and societies in general to seek and receive information and ideas of any kind<sup>1316</sup>.

### C. Impunity regarding the media and journalists

946. The IACHR and its Office of the Special Rapporteur observe with great concern the situation of impunity characterizing the serious crimes committed against journalists and the media in the context of the social protests that were carried out in Nicaragua in 2018. On this matter, 12 In June, the Commission, through a press release, said that the ambiguity of the content of this Law and its scope of application could lead to impunity for serious human rights violations committed in the country, which have been widely documented. In addition, it could prevent the establishment of truth, justice, reparation, guarantees of non-repetition and restrict the rights and guarantees of Nicaraguan society contained in the ACHR<sup>1317</sup>. On this occasion, the IACHR also underlined the ambiguity of the provision of the Law that states that “the beneficiaries [...] must refrain from perpetrating new acts that constitute repetitive behaviors of the crimes contemplated herein,” otherwise the established benefit could be revoked. In this regard, it emphasized that this ambiguity would allow beneficiaries to be subject to further arrests for exercising their political rights to peaceful assembly, as well as their rights to freedom of association and freedom of expression<sup>1318</sup>.

947. In this regard, this Office of the Special Rapporteur notes with extreme concern that the above, in addition to maintaining a situation of impunity in Nicaragua, could also restrict and criminalize the exercise of freedom of expression of journalists and communicators who have been released under this Law, due to the aforementioned provision. These would be the cases, for example, of Lucía Pineda and Miguel Mora of *100% Noticias*, and Marlon Powell Sánchez, of the radio program *El dedo en la llaga*, who would have been released in June within the framework of the application of these regulations. Next up are some of the cases that have been reported to this Office of the Special Rapporteur.

948. In August, the Office of the Special Rapporteur together with UN Special Rapporteurs expressed their concern regarding reprisals against *Radio Darío* personnel, as well as the repression of other communication workers in Nicaragua. In this regard, the Office of the Special Rapporteur is concerned that in a communication dated October 17 sent to this Office, the Nicaraguan State indicated, among other things, that the police investigations in relation to the fire at this radio station that occurred on April 21, 2018, were administratively archived due to the Amnesty Law in the country<sup>1319</sup>.

949. On the other hand, in relation to the murder of journalist Ángel Gahona in the framework of the protests in Bluefields, on April 21, 2018, it was informed that this case would have been closed, and therefore, the

<sup>1313</sup> *Confidencial*. November 25, 2019. “[Regreso a hacer periodismo en Nicaragua](#)”; El País. November 25, 2019. [El periodista Carlos Fernando Chamorro regresa a Nicaragua tras 10 meses en el exilio](#).

<sup>1314</sup> *La Prensa*. December 5, 2019. [Supuesto policía le quiebra el teléfono a un camarógrafo de un medio independiente de Matagalpa durante cobertura periodística](#).

<sup>1315</sup> El Comercio/AFP. December 12, 2019. [Policía golpea a opositores y periodistas en protesta en Nicaragua](#); DW. December 12, 2019. [Policía golpea a opositores y periodistas durante protesta en Nicaragua](#).

<sup>1316</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. Serie C No. 248. Para. 142-149; IACHR. Special Rapporteurship for Freedom of Expression. [Special Study on the Status of Investigations into the Murders of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 67.

<sup>1317</sup> IACHR. June 12, 2019. [IACHR Expresses Concern Over the Passing of the Amnesty Law in Nicaragua](#).

<sup>1318</sup> IACHR. June 12, 2019. [IACHR Expresses Concern Over the Passing of the Amnesty Law in Nicaragua](#).

<sup>1319</sup> Communication dated October 17, 2019 sent by the State of Nicaragua to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

investigation into his murder also, because of a decision to archive the case by the Criminal Chamber of the Court of Appeals of Managua under the Amnesty Law<sup>1320</sup>. Therefore, the two young people who were convicted in August 2018 as perpetrators of the crime were released, who the journalist's family would consider not responsible for the acts<sup>1321</sup>. This Office also observes that, according to Carlos Chamorro, of *Confidencial*, the Public Ministry has not yet ordered an investigation into the complaint he presented on December 19, 2018, to investigate the National Police for the commission of crimes of "robbery, damage to property, breaking and entering, and usurpation of private property." As reported, to date these crimes would remain in impunity<sup>1322</sup>.

950. In view of the foregoing, the IACHR reiterates that according to its repeated jurisprudence and that of the Inter-American Court, the obligations to investigate, identify, and punish those responsible for serious human rights violations are inalienable. In the same vein, the Inter-American Court established that amnesty, statute of limitations, and exclusion of liability provisions that intend to prevent criminal prosecution, as well as any obstacle of domestic law through which it is intended to prevent the investigation and sanction of those responsible for serious human rights violations are inadmissible for contravening non-derogable rights recognized by International Human Rights Law. Amnesty laws that are incompatible with the ACHR have no legal effects<sup>1323</sup>.

951. Likewise, the Office of the Special Rapporteur notes that in regard to justice and impunity for crimes against journalists and the media, both the IACHR and the Inter-American Court have repeatedly referred to the chilling effect of these crimes against journalists and other media professionals, as well as those against citizens who attempt to report abuses of power or illegal acts of any nature. Therefore, this Office recalls that these crimes can lead to silencing and self-censorship of communicators if in these cases the possible link between the crimes and the exercise of journalistic activity is not determined or ruled out completely and expeditiously.

#### D .Direct and indirect censorship

952. According to information received by the IACHR and its Office of the Special Rapporteur, since August 2018, the General Directorate of Customs Services (DGA) has kept paper, ink, and other newspaper materials in Nicaragua. As it was informed, the government committed to release the paper and other supplies for the newspapers,<sup>1324</sup> and the Customs and Administrative Tax Court [*Tribunal Aduanero y Tributario Administrativo*] (TATA) ruled in favor of the newspaper *La Prensa* and *El Nuevo Diario*, ordering the delivery of their confiscated supplies. Nevertheless, according to the information available, the DGA would ignore the ruling in favor of these newspapers, without providing any explanation about it<sup>1325</sup>. Due to this lack of material, it was reported that several newspapers had to reduce their format, such as *La Prensa* and *Hoy*; or close, like the *Nuevo Diario*, its associated newspaper *Metro* and the digital media *Maje*. In this regard, civil society organizations claim that through this administrative censorship the government would seek to affect the operability of newspapers and restrict their operation<sup>1326</sup>.

953. With regards to *La Prensa*, it was indicated that in order to continue with its print publication, it reduced its number of pages from 36 to 8, and it went from having 100 journalists to 35. Likewise, this newspaper reported that as of October 13, its Sunday version would become tabloid in order to save paper<sup>1327</sup>. Likewise, the newspaper *Hoy*, which would also be of the La Prensa Publishing Group, started circulating with 6 pages and its digital version was closed in October<sup>1328</sup>. In this regard, they informed that "the print version of the newspaper maintains its circulation and digital news can be found on the [*La Prensa*] website"<sup>1329</sup>. In addition, in October, the printed edition of *El Azote*, a weekly satirical supplement, was closed due to lack of paper. As reported, on October 6, this magazine indicated that "After almost 25 years, the weekly *El Azote* reaches its last

<sup>1320</sup> La Mesa Redonda. June 12, 2019. [Glen Slate sobre asesinato de Ángel Gahona: "Todo el pueblo de Nicaragua sabe que no fuimos nosotros"; La Prensa. September 9, 2019. \[Tribunal de Apelaciones de Managua cierra el caso del asesinato del periodista Ángel Gahona.\]\(#\)](#)

<sup>1321</sup> Despacho 505. April 21, 2019. [Exigen justicia para Ángel Gahona, a un año de su asesinato](#); Onda Local. April 21, 2019. [Un año después, asesinato del periodista Ángel Gahona continúa impune](#); La Prensa. April 21, 2019. [Padre del periodista Ángel Gahona, asesinado hace un año, sigue demandando justicia.](#)

<sup>1322</sup> *Confidencial*. June 13, 2019. [Confidencial: seis meses bajo asalto y confiscación.](#)

<sup>1323</sup> IACHR. June 12, 2019. [IACHR Expresses Concern Over the Passing of the Amnesty Law in Nicaragua.](#)

<sup>1324</sup> *El Nuevo Diario*. April 26, 2019. [Alianza Cívica: El Gobierno de Nicaragua se ha burlado de los acuerdos](#); La Prensa. March 29, 2019. [Régimen orteguista firma acuerdo que restablece los derechos ciudadanos en Nicaragua.](#)

<sup>1325</sup> Nicaragua Investiga. October 12, 2010. [La Prensa reduce a tamaño tabloide su edición dominical](#); *Confidencial*. October 13, 2019. [La Prensa reduce su tamaño ante bloqueo de materias primas](#); The San Diego Union-Tribune/Associated Press. October 17, 2019. [Medios críticos al gobierno de Daniel Ortega en agonía.](#)

<sup>1326</sup> Inter American Press Association (IAPA). January 16, 2019. [SIP condena censura administrativa contra diarios en Nicaragua.](#)

<sup>1327</sup> Nicaragua Investiga. 12 de octubre de 2010. [La Prensa reduce a tamaño tabloide su edición dominical](#); *Confidencial*. 13 de octubre de 2019. [La Prensa reduce su tamaño ante bloqueo de materias primas](#); The San Diego Union-Tribune/Associated Press. 17 de octubre de 2019. [Medios críticos al gobierno de Daniel Ortega en agonía.](#)

<sup>1328</sup> La Prensa. August 4, 2019. [Washington Post: "Ortega estrangula a LA PRENSA"; 100% Noticias. October 7, 2019. \[Periódico HOY en Nicaragua cierra versión digital\]\(#\); La Vanguardia/EFE. October 7, 2019. \[Diario popular de Nicaragua apaga su versión digital, ahogado por la crisis\]\(#\); The Washington Post. August 4, 2019. \[Nicaragua's Ortega is strangling La Prensa, one of Latin America's most storied newspapers.\]\(#\)](#)

<sup>1329</sup> Hoy. October 7, 2019. [Diario HOY suspende publicación en su sitio web.](#)

edition" claiming that its closure is a result of "the crisis caused by the excessive ambition of power and money from the couple"<sup>1330</sup>.

954. In turn, with respect to *El Nuevo Diario*, its associated newspaper *Metro* and the digital media *Maje*, these announced their definitive closure on September 27. Through a statement on its Twitter account, *El Nuevo Diario*, which would be 40 years old in 2020, informed that "it has decided to discontinue its publication, due to economic, technical, and logistical difficulties that make its operation unsustainable"<sup>1331</sup>. As reported, in July, only 20% of the confiscated paper and some other supplies would have been delivered, which would have been insufficient for its maintenance<sup>1332</sup>. As reported, due to the closure, more than 100 workers of the newspaper would have become unemployed<sup>1333</sup>. Previously, in December 2018, the popular newspaper *Q'Hubo* would also have closed due to lack of paper<sup>1334</sup>.

955. On the other hand, it was informed that the Nicaraguan government would maintain the practice of discriminatory allocation of government advertising, which would be exclusively destined to the Ortega family media; the media also would be discriminated against with the granting of operating licenses, as well as the use of tax control and social security as an economic pressure mechanism against these independent media<sup>1335</sup>. In addition, in June, journalist Carlos Fernando Chamorro, would have denounced that his program "Esta Semana" and *Confidencial Nica* would have been victims of an attempt of censorship in social networks. According to Chamorro, *Canal 13*, which reportedly belonged to Daniel Ortega's family, would have accused them of an alleged violation of their property rights<sup>1336</sup>.

956. Given the foregoing, the IACHR recalls that, in accordance with Article 13.3 of the American Convention, the right to freedom of expression "may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions".

957. Additionally, the IACHR reiterates that Principle 5 of the Declaration of Principles states that "prior censorship, direct or indirect interference in, or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression." In turn, Principle 13 indicates that "the exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and the media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law".

## E. Internet and freedom of expression

958. The Office of the Special Rapporteur observes that social networks and the Internet continue to be an alternative means through which people can disseminate information of public interest and express ideas and opinions of all kinds. Particularly in the context that Nicaragua is going through, that is of vital importance, considering that several Nicaraguan journalists are in exile and use these digital initiatives to continue informing

<sup>1330</sup> Diario Las Américas. October 7, 2019. [Revista satírica del diario La Prensa en Nicaragua deja de circular por falta de papel](#); Infobae. October 6, 2019. [Censura en Nicaragua: el diario La Prensa cerró su suplemento de humor porque el régimen de Daniel Ortega tiene retenido su papel](#).

<sup>1331</sup> Knight Center. September 27, 2019. [Nicaraguan editorial group closes El Nuevo Diario and two other newspapers due to economic difficulties](#); Twitter account of El Nuevo Diario (@elnuevodiario). [September 26, 2019](#); Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA. Nicaragua](#). October 3, 2019; El País. September 27, 2019. [El segundo periódico más importante de Nicaragua echa el cierre agobiado por la crisis política](#).

<sup>1332</sup> Alianza Metropolitan News/EFE. September 27, 2019. [Dos periódicos y un medio digital dejan de circular por las presiones de Ortega](#); El Nuevo Diario. September 2, 2019. [PEN Internacional pide a gobierno de Nicaragua entregar papel y tinta retenida a El Nuevo Diario](#).

<sup>1333</sup> Nicaragua Investiga. September 27, 2019. [Más de 100 trabajadores al desempleo debido a cierre de El Nuevo Diario en Nicaragua](#); 100% Noticias. September 27, 2019. [La despedida de los periodistas de El Nuevo Diario en la sala de redacción](#); La Prensa. September 27, 2019. [Los periódicos El Nuevo Diario y Metro anuncian su cierre](#); 100% Noticias. September 30, 2019. [Cardenal Brenes lamenta cierre de El Nuevo Diario](#); Confidencial. September 28, 2019. [Cierre total de El Nuevo Diario y Metro: "Nos tomó por sorpresa"](#).

<sup>1334</sup> Alianza Metropolitan News/EFE. September 27, 2019. [Dos periódicos y un medio digital dejan de circular por las presiones de Ortega](#); Confidencial. September 28, 2019. [Cierre total de El Nuevo Diario y Metro: "Nos tomó por sorpresa"](#); El Nuevo Siglo. December 21, 2018. [Diario Q'Hubo de Nicaragua cierra por falta de materia prima](#).

<sup>1335</sup> Report for the Nicaragua Universal Periodic Review by Coalición IFEX-ALC, AMARC-ALC y SIP dated September 15, 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA. Nicaragua](#). October 3, 2019; El Nuevo Diario. June 13, 2019. [SIP: Devuelvan insumos a los periódicos](#); Voa Noticias. September 30, 2019. [¿Qué sucede con los medios independientes en Nicaragua?](#)

<sup>1336</sup> Confidencial. June 19, 2019. [Carlos F. Chamorro: Dictadura intenta censurar medios digitales](#); El Nuevo Diario. June 20, 2019. [Carlos Fernando Chamorro denuncia intento de censura](#).

Nicaragua, as is the case of *Despacho 505* that would report from Spain and *Nicaragua Actual* from Costa Rica<sup>1337</sup>. As indicated, from Costa Rica there are reportedly currently be 23 initiatives or information platforms<sup>1338</sup>.

959. Despite the important role that these digital initiatives have developed, this Office of the Special Rapporteur notes that in 2019 these and the websites of the independent media in Nicaragua would continue to be subject to cyber-attacks. In this regard, it was reported that *Notimatv* in Matagalpa, *La Costeñísima* in the city of Bluefields, *Trinchera de la Noticia*, *La Prensa*, *Radio Corporación*, and *El Nuevo Diario* had been subject to such attacks in 2019<sup>1339</sup>. In this regard, in May, the newspaper *La Prensa* reported a cyber-attack against its website, which, according to the information available, would be a “[a] massive attack that is known as DDOS’ which generates thousands of robots or fake users who try to enter the attacked page in order to block the entrance of legitimate users and collapse the site”. According to the available information, the attacks would also have been directed to the newspaper *Hoy*, as well as to *LA PRENSA Club*<sup>1340</sup>. Additionally, in July, the journalist Sergio León of *La Costeñísima* would have been under cyber-attacks, and the *Nicaragua Actual* platform had reported *Viva Nicaragua Canal 13* for trying to block their Facebook account<sup>1341</sup>.

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

## F. Prohibition and illegality of protests

961. The IACHR and its Office of the Special Rapporteur also express their grave concern about the persistence of restrictions on the exercise of the social protest of the Nicaraguan population and the repression of those who exercise their right to peaceful assembly. On the matter, it was informed that on March 23, the police reissued a public statement in which it banned any type of protest demonstration, noting that the “National Police will not allow any activity that alters public order or threatens the constitutional right to work, free mobilization, the physical integrity of people, families, and public and private property”<sup>1342</sup>. Additionally, this year, information was also received on reporters and journalists who had been subjected to attacks while covering social protests in the country. Below are some of the cases that were reported.

962. On March 16, in the framework of the march for the release of all the people detained in the protests in Nicaragua, journalist Marlen Chow was arrested and members of the Directorate of Special Operations or anti-riot police had attacked journalists and protesters who were inside the parking lot of the FISE Bank of Managua, where they would have taken refuge. In this context, the reporter Cinthya Torres, of the newspaper *La Prensa*, would have been physically and verbally assaulted by the agents, who tried to snatch and destroy her phone, at the time she recorded live on her social network; the cameraman of *Canal 12*, Luis Alemán and his partner Marcos Medina would also have been attacked by a group of uniformed men. Likewise, the graphic reporter of the international *AFP* agency, Luis Sequeira, would have been beaten by anti-riot agents, who would have stripped him of his camera, which they would have thrown on the ground and broken, while he was recording one of the arrests<sup>1343</sup>. On the other hand, it was informed that on April 17, the *Artículo 66* journalist, Abixael Mogollón, would have been detained by the police while covering a demonstration in Managua. He would have also been beaten and robbed<sup>1344</sup>. The journalist would have been released later<sup>1345</sup>.

963. On the matter, the IACHR recalls that holding meetings, demonstrations, and protests is a central activity of many associations and organizations. And in this regard, the States have a duty to provide the necessary

<sup>1337</sup> Nicaragua Investiga. February 4, 2019. [Periodistas nicas exiliados en España informan a través de nuevo sitio web](#); Voa Noticias. July 29, 2019. [Periodistas nicaragüenses exiliados rompen la censura](#); Confidencial. August 22, 2019. [Las voces que vencen la censura desde Costa Rica](#).  
<sup>1338</sup> Confidencial. August 22, 2019. [Las voces que vencen la censura desde Costa Rica](#); YouTube/ República 18. August 19, 2019. [Voces que vencen la censura: República 18](#).

<sup>1339</sup> Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA, Nicaragua](#). October 3, 2019; La Prensa. May 19, 2019. [Maras cibernéticas: así son los ciberataques que el orteguismo usa en Nicaragua](#).

<sup>1340</sup> El Periódico. May 5, 2019. [Diario La Prensa de Nicaragua denuncia ataque cibernético contra su sitio web](#); La Prensa. May 5, 2019. [Atacan sitio web del diario La Prensa](#); Confidencial. May 5, 2019. [Diario La Prensa sigue bajo ataque cibernético](#).

<sup>1341</sup> La Prensa. July 26, 2019. [El periodista Sergio León denuncia ciberataque al sitio web de La Costeñísima](#); Despacho 505. July 27, 2019. [Ciberataque del régimen contra medios críticos, Nicaragua Actual y La Costeñísima denuncian boicot](#); Deybi Zamora Aráuz/Facebook. July 28, 2019. [Nicaragua Actual denuncia el boicot que hace Viva Nicaragua Canal 13](#).

<sup>1342</sup> Policía Nacional de Nicaragua. [Nota de Prensa No. 09-2019](#). March 23, 2019; IACHR. April 5, 2019. [Press Release 090/19 IACHR Condemns Continuing Acts of Repression in Nicaragua during Negotiating Table Talks](#).

<sup>1343</sup> IACHR. April 5, 2019. [Press Release 090/19 IACHR Condemns Continuing Acts of Repression in Nicaragua during Negotiating Table Talks](#).

<sup>1344</sup> La Prensa. April 17, 2019. [Así te contamos la manifestación "Todos somos abril"](#); Radio Corporación. April 17, 2019. [Liberan a periodista de Artículo 66 tras ser secuestrado por la Policía Orteguita](#).

<sup>1345</sup> La Prensa. April 22, 2019. [Policía Orteguita golpeó, persiguió y reprimió en Semana Santa](#); Facebook/ Artículo 66. No date. [#ENVIVO Liberan a nuestro periodista de Artículo 66, Abixael Mogollón, quien había sido secuestrado cuando cubría una manifestación cívica. #Artículo66 #DerechoAlinformar](#); Confidencial. April 18, 2019. [Periodista de Artículo 66 denuncia robo y tortura de parte de la Policía](#); El Nuevo Diario. April 17, 2019. [Periodista de Artículo 66 denuncia robo y golpiza por la Policía](#).

means to carry out their activities freely; protect them when they are threatened to avoid attacks on their life and integrity; refrain from imposing obstacles that impede the performance of their work, and seriously and effectively investigate violations committed against them, fighting impunity<sup>1346</sup>. The IACHR has considered that the exercise of the right of assembly through social protest should not be subject to authorization by the authorities or to excessive requirements that hinder its realization<sup>1347</sup>. Legal requirements that provide a basis for a meeting or demonstration to be prohibited or limited, for example, through the requirement of a prior permit, are not compatible with the right of assembly<sup>1348</sup> or freedom of expression under the legal inter-American framework. Similarly, spontaneous demonstrations and protests must not be prohibited by law and must be exempted from any notification regime.

964. In this regard, the IACHR reiterates that "in democracy, States must act on the basis of the legality of public protests or demonstrations and on the assumption that they do not constitute a threat to public order." In this regulatory context, restrictions on the right to participate in meetings and public demonstrations must be considered exceptional and subject to strict compliance with certain requirements, in accordance with Articles 13, 16, and 23 of the American Convention. This presumption of legitimacy of public protests must be clearly and explicitly established in States' legal systems and applied to all without discrimination. If the legal provisions are not clear, they should be clarified or, where appropriate, interpreted in favor of those who exercise the right to freedom of peaceful assembly and freedom of expression<sup>1349</sup>.

### **G. Access to public information**

965. Según el Informe "Situación actual del derecho humano de acceso a la información pública", publicado en octubre por la organización Transparencia Nicaragua, existiría en Nicaragua un progresivo deterioro del derecho de acceso a la información. En este sentido, fue reportado que, de las 64 instituciones que habrían sido analizadas, solamente tres cumplirían "medianamente" los requerimientos establecidos en la Ley de Acceso a la Información Pública. Afirmó que este derecho, que ya sería violentado, principalmente, desde 2007, vendría empeorando desde el año 2018<sup>1350</sup>.

966. Al respecto, la CIDH recuerda al Estado de Nicaragua que el principio 4 de la Declaración de Principios sobre Libertad de Expresión de la CIDH establece que "[e]l acceso a la información en poder del Estado es un derecho fundamental de los individuos. Los Estados están obligados a garantizar el ejercicio de este derecho. Este principio sólo admite limitaciones excepcionales que deben estar establecidas previamente por la ley para el caso que exista un peligro real e inminente que amenace la seguridad nacional en sociedades democráticas".

<sup>1346</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. 161

<sup>1347</sup>IACHR. [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 129.

<sup>1348</sup>In said report, the IACHR found as a restriction incompatible with the right to assemble legislation that required a police permit that had to be requested ten days prior to any public event, assembly, election, conference, parade, congress or sport, cultural, artistic or family event. Cfr. CIDH, Informe Anual 1979-1980, October 2, 1980, ps. 119- 121.

<sup>1349</sup>IACHR. [Annual Report 2018. 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. 30. March 17, 2019. Paras. 800-8011.

<sup>1350</sup>100% Noticias. October 31, 2019. [Dictadura continúa violando ley de acceso a la información pública](#); La Prensa. 31 de octubre de 2019. [Régimen orteguista continúa violando Ley de Acceso a la Información Pública, denuncia Transparencia Nicaragua](#)



## 25. PANAMA

967. During 2019, the Office of the Special Rapporteur observed a constant use of criminal and civil proceedings against journalists and the media that investigate and publish acts of alleged corruption, which could generate a climate of self-censorship for the press. Along these lines, this Office has accounted for around 40 directors, journalists and press personnel with legal proceedings. Likewise, it has taken note of the validity of article 195 of the Criminal Code that punishes with deprivation of liberty, or its equivalent in fine days, the crimes of libel and slander when they are committed through a media outlet, spoken or written, or using a computer system. In addition, there would be no limit for civil compensation claims for these causes.

### A. Progress

968. On December 13, 2018, following the lawsuit filed by *Televisora Nacional* (TVN Media) against article 254 of the Electoral Code, the Supreme Court of Justice of Panama declared unconstitutional the prohibition of publications on opinion polls within 20 calendar days before the general elections<sup>1351</sup>. The Electoral Court reduced the ban to 48 hours before the elections<sup>1352</sup>.

969. The Office of the Special Rapporteur has previously held that norms that prevented the publication of surveys 10 days before the elections constituted instances of prior censorship, incompatible with the provisions of article 13 (2) of the Convention.<sup>1353</sup> In this regard, the Office of the Special Rapporteur has stated that “the norms that regulate the criteria under which the surveys are governed should always tend to strengthen the free flow of information”<sup>1354</sup>.

### B. Attacks, threats, and intimidation against journalists and the media

970. The Epasa editorial group, which prints the *Panamá América*, *Critica*, and *Día a Día* newspapers, reported being a victim of pressure and threats of raids by the Public Prosecutor's Office after that editorial group exposed in its publications the violation to the right of access to information of citizen's given the lack of response by the State entity to their requirements<sup>1355</sup>. On September 20, the Public Prosecutor's Office would have denied the above through a statement<sup>1356</sup>.

971. On January 2, Ecuadorian journalist Ligia Arreaga was arrested upon leaving the Puerto Armuelles police station and detained for 24 hours after trying to interview the justice of peace Ulzana Valdés, who asked her to hand over her photographic equipment while she covered an event of high public interest in the province of Chiriquí<sup>1357</sup>. According to the information available, so far the Ombudsman would keep her case open<sup>1358</sup>.

972. On March 17, the photographer of the digital platform “Claramente”, Mauricio Valenzuela, reported having been physically assaulted and part of his equipment destroyed by supporters of the Cambio Democrático party and the president of the National Assembly, Yanibel Ábrego, during the coverage of an electoral event in the community of Cirí de Los Sotos, in Capira<sup>1359</sup>.

<sup>1351</sup> TVN Noticias. December 13, 2018. [Corte declara inconstitucional la veda electoral en la publicación de encuestas](#); La Estrella de Panamá. February 15, 2019. [TE debe establecer plazo de veda electoral, dice la Corte](#).

<sup>1352</sup> La Estrella de Panamá. April 1, 2019. [Panamá presenta su informe ante la SIP](#); La Prensa. February 16, 2019. [TE fija veda para encuestas a 48 horas de las elecciones](#); “We begin the period of reflection and absence of electoral propaganda, prior to, and during, the day of the #PanamaElections”. Twitter account of Tribunal Electoral @tepanama. [May 3, 2019- 1:05AM](#); En segundos. May 3, 2019. [Panamá entra en veda y periodo de reflexión previo a las elecciones de 5 de mayo](#).

<sup>1353</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Report on the Situation of Freedom of Expression in Panama](#). OEA/Ser.L/V/II.117 – 2003, para. 113. The Office of the Special Rapporteur referred in this report to articles 177 and 178 of the Panamanian Electoral Code that stated, respectively, the obligation to register polls on electoral preferences in the Electoral Tribunal before their disclosure, and the prohibition of publishing said polls 10 days before the election or electoral consultation.

<sup>1354</sup> CIDH. Relatoría Especial para la Libertad de Expresión. [Informe sobre la situación de la libertad de expresión en Panamá](#). OEA/Ser.L/V/II.117 – 2003, párr. 113. La Relatoría hizo referencia en este informe a los artículos 177 y 178 del Código Electoral panameño que establecían, respectivamente, la obligación de registrar las encuestas sobre preferencias electorales en el Tribunal Electoral antes de su divulgación, y la prohibición de publicar dichas encuestas 10 días antes de la elección o consulta electoral.

<sup>1354</sup> IACHR. Special Rapporteurship for Freedom of Expression. [Report on the Situation of Freedom of Expression in Panama](#). OEA/Ser.L/V/II.117 – 2003, para. 111.

<sup>1355</sup> IAPA. October 5, 2019. [Report to the 75th General Assembly of the IAPA. Panama](#); La crítica. September 20, 2019. [Procuradora de Panamá quiere silenciar diarios de Epasa](#).

<sup>1356</sup> Ministerio Público. Comunicado. September 20, 2019. Available at ; <https://ministeriopublico.gob.pa/mp-no-pretende-realizar-allanamiento-a-medios/>; IAPA. October 5, 2019. [Report to the 75th General Assembly of the IAPA. Panama](#).

<sup>1357</sup> DW. January 3, 2019. [Detienen a una periodista en Panamá por grabar a una juez](#); “#Alert | Ecuadorian journalist Ligia Arreaga was arrested on January 2 for 24 hours in the district of Barú, # Panama, while conducting investigations into the alleged violation of #hhrr due to the arrival of the transnational @DelMonte to the country”. Twitter account of Fundamedios @FUNDAMEDIOS. [January 7, 2019 10:39AM](#).

<sup>1358</sup> Monitor Cívico. January 20, 2019. [Expresión](#); DW. January 4, 2019. [Liberan en Panamá a la periodista Ligia Arreaga](#); Telemetro. January 2, 2019. [Jueza de Paz de Barú ordenó el arresto de periodista ligia Arreaga](#).

<sup>1359</sup> La Prensa. March 18, 2019. [Seguidores de Yanibel Ábrego atacan a periodistas](#); “Fórum de Periodistas por las libertades de Expresión e Información on the assault against journalist Mauricio Valenzuela in the Community of Cirí de Los Sotos, Capira during the coverage of a political event of deputy Yanibel Ábrego” Twitter account of Fórum de periodistas @fperiodistaspa. [March 17, 2019 9:05AM](#); La Estrella de Panamá. March 17, 2019. [Fotógrafo denuncia puesta agresión de presuntos activistas de la diputada Yanibel Ábrego](#); TVN Noticias.

973. According to the information available, on April 26, the director of *Radio Panamá*, Edwin Cabrera, denounced that he would have received racist attacks by the deputy of the National Assembly, Mayín Correa, after he refused to grant an interview to the station<sup>1360</sup>.

974. On August 20, the representative of the National Assembly of Panama, Zulay Rodríguez, during an interview accused the staff of the newspaper *La Prensa* of being involved in the cover-up of former President Juan Carlos Varela and various members of the Public Prosecutor's Office, regarding their possible participation in the case of the construction company Odebrecht<sup>1361</sup>. Subsequently, Rodríguez would have continued issuing opinions on her social networks discrediting the work of the *La Prensa* media<sup>1362</sup>.

975. According to public information, on October 31, alleged conversations of former President Juan Carlos Varela (2014-2019) came to light on the *Verelaleaks.com* page, in which his participation in an operation between government officials to carry out attacks against journalists and media executives who criticized his mandate would be exposed<sup>1363</sup>. Among the affected journalists are Álvaro Alvarado, Atenógenes Rodríguez, Sabrina Bacal, and the commentator Juan Carlos Tapia. As well as others of the television network *TVN*, who would have been identified by the negative coverage made on the government of the former president<sup>1364</sup>.

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

977. With regard to violence against journalists and other persons due to the exercise of freedom of expression, the Office of the Special Rapporteur has emphasized, based on inter-American doctrine and jurisprudence, the importance of three positive obligations emanating from the rights to life, to personal integrity, and freedom of expression. Namely: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and sanction those responsible for these crimes. As the Office of the Special Rapporteur has pointed out, these obligations complement each other: in order for a free, robust, and unrestricted democratic debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and prosecution<sup>1365</sup>.

### C. Subsequent Liabilities

978. This Office has received information that on May 10, the 4th sub-regional Primary Care Prosecutor's Office admitted the complaint filed by Carlos Pimentel against the newspaper *Mi Diario* belonging to the *La Prensa* corporation, due to the alleged commission of crime against honor, following the publication of this media of the death of a minor<sup>1366</sup>.

979. According to available information, between March and July of this year, the fourth sub-regional Primary Care Prosecutor opened nine complaints for the alleged commission of crimes against honor in its slander and insults modality presented by former President Ricardo Martinelli against around 40 communicators<sup>1367</sup>, executives, and owners of the Corporation La Prensa (Coprensa), of the newspaper *La Estrella*<sup>1368</sup> and *Radio Panama*<sup>1369</sup>, owned by the Spanish conglomerate Grupo Prisa, which would be awaiting sentencing<sup>1370</sup>. The sum amounts to US\$5 million for provisional amount for the damage.

March 18, 2019. [Mauricio Valenzuela interpondrá denuncia tras ser agredido por activistas de Yanibel Ábrego](#) ; *La Prensa*. March 17, 2019. [Equipo de “Claramente” denuncia que fue agredido por activistas de Yanibel Ábrego](#).

<sup>1360</sup> Twitter account of Edwin Cabrera @EdwinECabreraU. [April 26, 2019](#).

<sup>1361</sup> Monitor Civicus. September 5, 2019. [Asociaciones de periodistas advierten de las decisiones políticas que afectan la libertad de expresión en Panamá](#).

<sup>1362</sup> Twitter account of Consejo Nacional de Periodismo @CNP\_Panama [August 22, 2019 7:47AM](#).

<sup>1363</sup> Prensa Latina. November 7, 2019. [Varelakeaks, nuevo escándalo de alto perfil estremece Panamá](#).

<sup>1364</sup> Knight Center for Journalism in the Americas. November 26, 2019. [Leaked messages allegedly show former Panamanian president tried to influence media coverage through executives](#). Twitter account of Consejo Nacional de Periodismo @CNP\_Panama. [November 21, 2019 11:31AM](#).

<sup>1365</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31.

<sup>1366</sup> Estudio Jurídico Mejía y Asociados. Report for Office of the Special Rapporteur 2019.

<sup>1367</sup> *The media and individuals sued are: Corporación La Prensa, Mi Diario, Radio Panamá, Hilde Sucre, Mariel Ledezma, Annette Planells, Mariano Mena, Alberto Velásquez, Sabrina Bacal, Rolando Rodríguez, Rita Vásquez, Diego Quijano, Cesar Tribaldos, Lorenzo brego, Sonia Navarro, Martha Concepción, Enrique Breathwite, Juan Manuel Díaz, Guillermo Chapman, Horacio Icaza, Aurelio Barria, Olmedo Rodríguez, Eliana Morales, Rafael Luna, Rodrigo Noriega, Juan Luis Batista, Cecilia Fonseca, Victoria Isabel Cardiel, Maria Mercedes de Corró, Mónica Palm, Ricardo Bermúdez, Carlos Vargas, Aleida Samaniego, Rafael Calvo, Yolanda Saldoval, Daniel Domínguez, Juan Carlos Planells, Carolina Sánchez, Mary Triny Zea and Ereida Prietto.*

<sup>1368</sup> La Estrella de Panamá. March 21, 2019. [Martinelli se querrela contra periodistas de 'La Estrella'](#)

<sup>1369</sup> EFE. December 6, 2019. [Un expresidente de Panamá demanda a radio del Grupo Prisa por 5 millones dólares](#).

<sup>1370</sup> Estudio Jurídico Mejía y Asociados. Report for Office of the Special Rapporteur 2019. *La Prensa*. September 4, 2019. [CNP y Fórum rechazan amenazas a periodistas](#). Forum de Periodistas. December 12, 2019. [Informe sobre la libertad de expresión en Panamá](#).

980. According to the available information, the complaints made against the journalists Mariano Mena, Alberto Velásquez, Mariela Ledezma, Annette Planells, as well as the one initiated against the vice president of Informative Affairs of *TVN Media*, Sabrina Bacali, would continue pending processing. All of the complaints are for the alleged commission of the conduct provided for in article 195 of the Criminal Code against Martinelli<sup>1371</sup>.

981. Different regional civil society organizations reiterated their rejection against harassment of journalists and expressed concern about the trend of criminalization and abuse of the judicial system through criminal and civil means as a method of self-censorship of the media and their operators<sup>1372</sup>.

982. On November 15, the Office of the Special Rapporteur was part of a conference organized by the National Journalists Association and the Forum of Journalists of Panama where the Special Rapporteur expressed grave concern about the use of criminal lawsuits to prosecute and harass members of the press in Panama. He also recalled the inter-American standards on the matter<sup>1373</sup>.

983. The Inter-American Court has established, as regards the possible civil liability, that civil sentences regarding freedom of expression must be strictly proportioned so as not to cause an inhibitory effect on this freedom, since “the fear of a civil sanction, given the claim [...] of an extremely high civil reparation, it can clearly be as or more intimidating and inhibiting for the exercise of freedom of expression as a criminal sanction, since it has the potential to compromise the personal and family life of who denounces a public official, with the obvious and disvaluable result of self-censorship, both for the affected and for other potential critics of the actions of a public servant”<sup>1374</sup>.

984. The Inter-American Commission and the Inter-American Court determined that in a democratic society public officials must have a higher threshold of tolerance for criticism, because “they have voluntarily exposed themselves to more demanding scrutiny and because they have an enormous capacity to dispute information through their power of public reach”<sup>1375</sup>. In this regard, the Inter-American Commission stated that “[the] type of political debate that gives rise to the right to freedom of expression will inevitably generate certain critical or even offensive speeches for those who hold public office or are intimately linked to the formulation of public policy”<sup>1376</sup>.

985. Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, “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”. That is, the use of criminal mechanisms to punish the discourse in matters of public interest, and especially related to public or political officials, does not respond to a pressing social need that justifies it, is unnecessary and disproportionate, and can be a means of indirect censorship, given its discouraging effect on the debate on matters of public interest.

#### D. Social Protest

986. According to public information, on March 20, a group of retired persons were attacked by members of the Crowd Control unit of the National Police during the clashes that took place in the context of the protests in demand of the increase in labor benefits offered by the government<sup>1377</sup>.

987. On October 22, a group of students and employees of the University of Panama would have been attacked by elements of the Riot Police while protesting against the constitutional reform that would modify the operation of the higher education system<sup>1378</sup>.

988. In the following days, various civil society groups representing the rights of the LGBTI community, unions, and independent politicians, who demanded the withdrawal of constitutional reforms, would have joined the protests and a broad and participatory process would be promoted<sup>1379</sup>. On October 30, attacks with

<sup>1371</sup> IAPA. October 5, 2019. [Report to the 75th General Assembly of the IAPA. Panama.](#)

<sup>1372</sup> TV Noticias. November 7, 2019. [SIP muestra preocupación por múltiples demandas contra periodistas panameños.](#)

<sup>1373</sup> Acento. November 16, 2019. [La libertad de expresión, en el centro de la crisis latinoamericana.](#)

<sup>1374</sup> I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 27, 2009. Serie C No. 193, Para.129.

<sup>1375</sup> I/A Court H. R., *Case of Kimel v. Argentina.* Judgment of May 2, 2008. Serie C No. 177, para. 86-88; I/A Court H. R., *Case of Palamara Iribarne v. Chile.* Judgment of November 22, 2005. Serie C No. 135, Para. 83; I/A Court H. R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile.* Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R., *Case of IvcherBronstein v. Peru.* Judgment of February 6, 2001. Serie C No. 74, para. 152 and 155; I/A Court H. R., *Case of Ricardo Canese v. Paraguay.* Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica.* Judgment of July 2, 2004. Serie C No. 107, para. 125 - 129; I/A Court H. R., *Case of Claude Reyes et al v. Chile.* Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 27, 2009. Serie C No. 193, Para. 115

<sup>1376</sup> IACHR. *Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights.* OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995..

<sup>1377</sup> TCN Noticias. March 20, 2019. [Jubilados se enfrentan con unidades de la PN por aumento.](#)

<sup>1378</sup> Twitter account of Telemetro Reporta @TRreporta. [October 22, 2019.](#) ; Prensa Latina. October 22, 2019. [Protestas en Panamá por subsidios a universidades privadas.](#)

<sup>1379</sup> The San Diego Union Tribune. November 8, 2019. [AP Explica: Protestas ante reforma constitucional en Panamá.](#)

chemical agents were reportedly used against protesters of the same cause<sup>1380</sup>. The deputy director of the National Police would ensure at a press conference that the police did not use firearms to deal with the situation<sup>1381</sup>. According to public information, by November 2, at least 93 arrests of protesters would have been recorded, using excessive force by state agents<sup>1382</sup>.

989. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical political and social expression of the activities of the authorities. The Commission has pointed out that “it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly” and that “the exercise of the right of assembly through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its realization”<sup>1383</sup>.

## E. Legal Reforms

990. On March 29, Law No. 81 "On personal data protection" was published<sup>1384</sup>. The law regulates the principles, rights, obligations, and procedures regarding the protection of personal data and includes measures to prevent cybercrime<sup>1385</sup>.

991. On July 30, the draft bill 063 was presented to the National Assembly, which seeks to impose sanctions on those who disseminate visual material of traffic accidents, quarrels, or tragedies on social networks<sup>1386</sup>.

992. The Office of the Special Rapporteur recalls that in the 2011 joint declaration on freedom of expression and the Internet, the Special Rapporteurs of the UN, OSCE, IACHR, and ACHPR mentioned that “States have the obligation to promote universal Internet access to guarantee the effective enjoyment of the right to freedom of expression. Internet access is also necessary to ensure respect for other rights, such as the right to education, health care and work, the right of assembly and association, and the right to free elections”<sup>1387</sup>.

## F. Freedom of expression in electoral contexts

993. On May 5, general elections took place to elect around 1,721 positions of popular election. According to the information available, the electoral process took place peacefully and in a civic environment<sup>1388</sup>.

994. According to the information available, the Electoral Court would have announced in a meeting with journalists on May 3 its decision to restrict the coverage of candidates when they exercise their right to vote, informing that it would be their press team who would be responsible for supplying the media evidence of said event<sup>1389</sup>.

995. The Electoral Court denounced on March 22 that it would have received complaints from candidates in the general elections to whom various media outlets demanded payment to be interviewed in regular broadcasts on the grounds of the prohibition of donating electoral advertising<sup>1390</sup>. In this regard, the Electoral Court said

<sup>1380</sup> Monitor Cívico. October 31, 2019. [Las reformas constitucionales incitan a las protestas en Panamá](#); Telesur. October 30, 2019. [Policía de Panamá reprime protestas contra reformas](#); Xinhuanet. October 30, 2019. [Persisten tensiones tras aprobación de proyecto para reformar Constitución de Panamá](#).

<sup>1381</sup> Twitter account of Policía Nacional @Protegeryservir. [October 31, 2019](#); Telemetro. October 31, 2019. [La Policía Nacional asegura que no utilizó armas de fuego durante protesta](#).

<sup>1382</sup> Nodal. November 2, 2019. [Panamá: continúan las protestas contra las reformas constitucionales](#); France 24. November 1, 2019. [Las reformas a la Constitución de Panamá que causan rechazo en la ciudadanía](#); VOA Noticias. October 31, 2019. [Protestas en Panamá contra reformas constitucionales](#); EFE. November 1, 2019. [Otra jornada de protesta con detenidos contra la reforma constitucional en Panamá](#); El periódico. November 7, 2019. [Miles de panameños salen a protestar en contra de la reforma constitucional](#).

<sup>1383</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. 139.

<sup>1384</sup> El Capital. March 30, 2019. [Promulgan Ley 81 de Protección de datos personales en Panamá](#).

<sup>1385</sup> Asamblea Nacional. Proyecto de Ley 665. Available at: [https://www.accessnow.org/cms/assets/uploads/2018/10/2018\\_P\\_665.pdf](https://www.accessnow.org/cms/assets/uploads/2018/10/2018_P_665.pdf)

<sup>1386</sup> Asamblea Nacional. Proyecto de Ley 063. Available at [https://www.asamblea.gob.pa/APPS/SEG\\_LEGIS/PDF\\_SEG/PDF\\_SEG\\_2010/PDF\\_SEG\\_2019/2019\\_A\\_063.pdf](https://www.asamblea.gob.pa/APPS/SEG_LEGIS/PDF_SEG/PDF_SEG_2010/PDF_SEG_2019/2019_A_063.pdf). Panamá América. August 2, 2019. [Censurar a “taquilleros” atentaría contra la libertad de expresión](#); En segundos. July 31, 2019. [Questionan anteproyecto que busca censurar publicaciones en redes](#)

<sup>1387</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. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

<sup>1387</sup> OEA. Comunicado de prensa. Misión de Observación electoral de la OEA felicita al pueblo y a las autoridades electorales panameños por una jornada electoral exitosa. Available at: [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=C-023/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-023/19).

<sup>1388</sup> OEA. Comunicado de prensa Misión de Observación electoral de la OEA felicita al pueblo y a las autoridades electorales panameños por una jornada electoral exitosa. Disponible para consulta en: [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=C-023/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-023/19)

<sup>1389</sup> Panamá América. May 4, 2019. [Restrungen labor periodística para las elecciones](#).

<sup>1390</sup> Tribunal Electoral. Comunicado Aclaración para los medios de comunicación y comunicadores sociales. Available at: [https://www.tribunal-electoral.gob.pa/aclaracion-para-los-medios-de-comunicacion-y-comunicadores-sociales/?utm\\_source=dlyr.it&utm\\_medium=Twitter](https://www.tribunal-electoral.gob.pa/aclaracion-para-los-medios-de-comunicacion-y-comunicadores-sociales/?utm_source=dlyr.it&utm_medium=Twitter)

that both during the ban and during the campaign period, candidates can offer interviews without breaking the electoral rules<sup>1391</sup>.

996. The Office of the Special Rapporteur recalls that “electoral processes are closely linked to freedom of expression and information, since in order for citizens to carry out their decisions at the time of voting it is essential that they have as much information as possible. For this, it is crucial that facts, ideas, and opinions circulate freely. Without a doubt, the most common way for citizens to inform themselves today is through the mass media”<sup>1392</sup>.

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<sup>1391</sup> En segundos. March 22, 2019. [TE advierte sobre comunicadores que piden cómplices a candidatos.](#)

<sup>1392</sup> IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter VI Freedom of Expression and the Electoral Process: The Case of Opinion Polls and Exit Polls. OEA/Ser.L/V/II.124 Doc. 77 February, 2006. Para. 2

## 26. PARAGUAY

997. Throughout 2019, the Office of the Special Rapporteur observed a context of political polarization in Paraguay that led to the development of social protests, in which there were incidents between protesters and State security agents, as well as attacks against journalists who provided coverage. This Office documented speech by high level authorities of the State that seeks to delegitimize the protests against the government and link them with alleged destabilization plans. It draws the attention of this office the increase in threats, intimidation, aggressions and legal actions aimed at criminalizing the work of journalists who disseminate information of high public interest. Similarly, the Office of the Special Rapporteur noted with concern the dismissals of media journalists. Finally, this Office highlights the advances in the protection of the right of access to information, although it observed regulatory reforms that could be regressive in this area.

### A. Attacks, threats, and intimidation against journalists and the media

998. The Office of the Special Rapporteur has noted a tendency to commit aggression against journalists in Paraguay during the coverage of events, which occurs in the context of a marked political polarization of great controversy over issues of public interest<sup>1393</sup>. This pattern extends to threats to journalists for publications or opinions, both by state actors and individuals<sup>1394</sup>, as well as attacks during the coverage of social protests or events where the Police deploys the use of force<sup>1395</sup>.

999. Among the documented cases are: on March 19, Denilso Sánchez, mayor of the city of Captain Bado, department of Amambay, interrupted in the cabin of the *Ñu Vera* Radio and verbally assaulted the radio host Milciades Ruíz while he was conducting his program, for a series of criticisms against the municipal administration. Also, the radio host denounced that the Mayor carried a weapon on his waist<sup>1396</sup>.

1000. This Office also documented the aggressions suffered by journalists of *ABC Color* on June 6 when they attempted to interview the then Senator Dionisio Amarilla outside of Congress, in a context in which he was being subjected to a process of "loss of endowment" for alleged traffic of influence. Several followers of the then congressman assaulted the journalists with shoves, blows, and spitting<sup>1397</sup>.

1001. Another event that is of particular concern to this Office are the statements of the Ombudsman, Miguel Godoy, published on March 10 in his social network, against the journalist Enrique Vargas Peña, of *ABC Cardinal*, suggesting a physical confrontation to "take out" the "anger". This publication would have been the result of a verbal crossover that both would have had in a radio interview on March 7, where the journalist would have questioned him strongly for his performance in a particular case, while the official would have also replied with harsh words. Subsequently, Godoy would have indicated that the intention of his statements was to demonstrate that the journalist, and the media in which he works, have the intention to remove him from office<sup>1398</sup>.

1002. In turn, according to the information received by the Office of the Special Rapporteur, between January and June 2019, a total of 11 episodes of violation of freedom of the press were recorded, which consisted of physical aggressions, threats, harassment through social networks, and of legal actions that have been initiated with the purpose of criminalizing the dissemination of information of high public interest. The information emphasizes the participation of public officials in these violations, as well as political supporters<sup>1399</sup>.

1003. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "[t]he murder, kidnapping, intimidation of, and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of

<sup>1393</sup> CDEHOT. January 20, 2019. [Llaman de vendido y agreden a patadas a periodista](#); C9N. January 29, 2019. [Periodista del C9N fue agredido en la sesión de CDE](#); ABC Color. June 9, 2019. [Intentan agredir a periodista](#); RDN. August 21, 2019. [Fuerte cruce verbal entre titular de la UIP y periodista](#); RDN. May 29, 2019. [Senador confiesa querer golpear a periodista y niega soborno](#); Vanguardia. March 29, 2019. [Kelembu hostiga a trabajadores de prensa](#); Vanguardia. April 9, 2019. [Edil hostiga a periodistas](#).

<sup>1394</sup> Hoy. February 12, 2019. [Tras polémica entrevista a TheFenders, Sebas denuncia amenazas: "Te voy a romper la cara"](#); EPA. February 13, 2019. [Sebas Rodríguez asegura que recibe amenazas](#); ABC Color. April 23, 2019. [Amenazan al corresponsal](#); Nordeste Ahora May 10, 2019. [Denuncian ataque a una radio de Mayor Otaño](#); ABC Color. October 10, 2019. [Patoteros de intendente de Otaño atacan una emisora](#).

<sup>1395</sup> ABC Color. March 6, 2019. [Policías y reportero heridos en desalojo en Luque](#); Última Hora. March 6, 2019. [Policías agreden a fotógrafo de Última Hora durante desalojo](#).

<sup>1396</sup> Extra. March 20, 2019. [Intendente de Capitán Bado entró armado a una radio y amenazó a periodista](#); ABC Color. March 19, 2019. [Intendente de Capitán Bado atropelló radio, según radialista](#); Telefuturo. March 20, 2019. [Intendente entró armado a una radio y amenazó a periodista](#).

<sup>1397</sup> ABC Color. June 6, 2019. [Seguidores de Amarilla agreden a periodistas](#); cn9. June 6, 2019. [Seguidores de Dionisio Amarilla agreden a colega de ABC](#); RDN. June 6, 2019. [Seguidores de Amarilla agreden a periodistas](#); ABC Color. June 7, 2019. [Repudian agresión de hurreros a periodistas](#).

<sup>1398</sup> ABC Color. March 11, 2019. [Defensor amenaza con "hacer pelota" a periodistas](#); Ñanduti. March 11, 2019. [Defensor del Pueblo lanzó desafío a EVP para "probar" complot en su contra](#); Hoy. March 10, 2019. [Defensor del Pueblo vuelve al "fulcontac" y desafía a EVP: "Avisame y nos sacamos la acumulación de bronca"](#).

<sup>1399</sup> Sindicato de Periodistas del Paraguay. Registro de ataques a la libertad de prensa del SPP. Information sent on October 30, 2019. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1399</sup> Tiempo central. August 13, 2019. [Violenta represión sobre Acceso Sur es tendencia en Twitter](#); 780am. October 1, 2019. [Defensores del Jardín Botánico denuncian represión policial](#); NPY. October 16, 2019. [Dirigente de paseros es arrestada en Encarnación](#); ADN Paraguayo. October 16, 2019. [Represión a tomateros: "El garrote es la respuesta que el gobierno nos da y esa no es la solución"](#); Radio1000. October 22, 2019. [Ministro justifica reacción policial: 'no son budas con solpán'](#); ABC Color. October 28, 2019. [Con marchas en 8 departamentos, FNC protesta contra medidas del Gobierno](#).

expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.”

## B. Social Protest

1004. The Office of the Special Rapporteur documented a series of social protests in different months of the year in contexts of political polarization in Paraguay, where there were incidents between the Police and protesters that led to attacks and detentions<sup>1400</sup>. Of particular concern is the violence against journalists by protesters and by State security agents.

1005. As of July 25, within the framework of a political controversy after an agreement between the governments of Paraguay and Brazil that would have been signed secretly went public, several protests were carried out in different cities in the country in demand for a political trial of President Mario Abdo Benítez. On July 25, several groups of young people protested at night in front of the residence of the President of the Republic where the police repressed and detained some protesters who were released hours later<sup>1401</sup>. Also, in the context of these protests, other incidents were registered in August where repressions by the Police were also reported<sup>1402</sup>.

1006. The Office of the Special Rapporteur is concerned about a statement issued by the Ministry of Interior, indicating the intention to file a criminal complaint against protesters for resorting to violence against the Police. In particular, the statement points to the name of Stiben Patron, who, according to what was published, "physically and verbally assaulted a police officer." Also, the then Minister of the Interior, Juan Ernesto Villamayor, said in the statement that the complaint would be directed "against those who have called for the uprising, for the armed uprising, who have called on the armed forces to stand up in arms and the police forces as well. Here there are already crimes committed and the Attorney General's Office has to intervene..."<sup>1403</sup>. As well, the Office of the Special Rapporteur has observed that President Abdo holds a speech aimed at questioning social protests under the assumption that there is a "destabilization plan" of the opposition, which would seek to overthrow him<sup>1404</sup>.

1007. On the other hand, in the context of a protest by the taxi drivers' union, held in July, the Office of the Special Rapporteur was informed that journalists were injured by gunshot shots by state security agents, as well as attacks by protesters against journalists who were doing the coverage. In this sense, a chronicler named Dalma Benítez reported having been the victim of sexual assault by one of the protesters<sup>1405</sup>. Likewise, it was reported that eight of the taxi drivers were charged in the framework of the protest for "disturbance to public peace" and "resistance"<sup>1406</sup>.

1008. The Office of the Special Rapporteur was informed of a resolution issued on September 27 by Rubén Rojas, mayor of the city of Hernandarias, department of Alto Paraná, who sought to reject and prevent a march of the LGTBI collective in Paraguay. However, the police said they did not have the power to prevent the march<sup>1407</sup>. On September 29, the march took place and there were incidents and acts of violence by so called "pro-life" groups<sup>1408</sup>.

1009. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical political and social expression of the activities of the authorities. The Commission has pointed out that "it is inadmissible, in principle, the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of

<sup>1400</sup> Última Hora. July 25, 2019. [Aprehendidos tras manifestación frente a Mburuvicha Róga](#); La Nación. [Acuerdo de Itaipú: Repudio y represión frente a Mburuvichá Róga](#); RDN. July 26, 2019. [Reprimen a jóvenes manifestantes frente a Mburuvicha Róga](#); Extra. July 26, 2019. [Guará por acuerdo del Gobierno con Brasil](#).

<sup>1401</sup>

<sup>1402</sup> Hoy. August 12, 2019. [Alta tensión: pro y anti juicio político embarcan a peligroso martes 13 de protestas](#); Telefuturo. August 12, 2019. [Incidentes en manifestación contra acuerdo sobre Itaipú](#); Telefuturo. August 14, 2019. [Violenta represión a manifestantes en Ciudad del Este](#); La Unión. August 14, 2019. [Represión a manifestantes en Ciudad del Este](#); Ñandutí. August 14, 2019. [Represión policial en CDE: "Ellos pararon porque se quedaron sin balas"](#); Guía del Este. August 21, 2019. [Policía detiene a dos manifestantes contra el Gobierno en CDE](#). República del Paraguay. Ministerio del Interior. August 12, 2019. [Ministerio del Interior presentará denuncia contra agresores de policías y promotores de violencia](#).

<sup>1404</sup> Última Hora. October 26, 2019. [Presidente acusó que adversarios buscan un muerto para tumbarla](#); ABC Color. October 25, 2019. [Desde el Gobierno insisten con plan de desestabilización](#).

<sup>1405</sup> Extra. July 24, 2019. [Protesta de los taxistas dejó policías y periodistas heridos](#); Paraguay.com. July 23, 2019. [Varios periodistas agredidos y heridos en medio de manifestación](#); La Nación. July 23, 2019. [Reportero del Grupo Nación fue herido con balines de goma](#); EFE. July 23, 2019. [La Fiscalía paraguaya imputa a taxistas detenidos en las protestas contra Uber](#); Fopep/Facebook account. July 23, 2019. Available at: <https://www.facebook.com/194659127214966/posts/2889905281023657?s=1133997416&sfns=mo>

<sup>1406</sup> RDN. July 23, 2019. [Imputan a taxistas por perturbación de la paz pública y resistencia](#); 780am. July 24, 2019. [Taxistas con arresto domiciliario](#); ABC Color. July 24, 2019. [Juez decreta arresto domiciliario para ocho taxistas](#).

<sup>1407</sup> Última Hora. September 28, 2019. [Polémica por prohibición de marcha LGBT en Hernandarias](#); ABC Color. September 27, 2019. [Intendente prohíbe una marcha LGBT en Hernandarias](#).

<sup>1408</sup> ABC Color. September 30, 2019. [Marcha LGBT: intendente justificó agresión de los "provida"](#); Hoy. September 29, 2019. [Amedrentan y agreden a activistas durante marcha LGBTI en Hernandarias: hay heridos](#).

assembly”<sup>1409</sup> and that “the exercise of the right of assembly through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its realization”<sup>1410</sup>.

1010. Likewise, the 2013 Joint Declaration on violence against journalists in the framework of social demonstrations indicates that the rights of assembly and freedom of expression “are fundamental and their guarantee is a necessary condition for existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations in order to ensure their peaceful development or disperse those that become violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, dispersing a demonstration must be justified by the duty to protect people, and the safest and least harmful measures for protesters should be taken. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances in accordance with internationally recognized principles”<sup>1411</sup>.

### C. Protection Mechanisms

1011. Although in 2016 a bill to protect journalists was presented, the last study of this initiative was in September 2017<sup>1412</sup>. However, this Office takes note of a meeting that took place due to an incident in which a journalist was assaulted at the time he was covering a judicial eviction on March 6 in the city of Luque, which led to Government authorities and representatives of the journalistic union to agree to strengthen the institutional framework of the Interinstitutional Bureau for the Protection of Journalists<sup>1413</sup>.

1012. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for protection mechanisms to be effective. For example, to emphasize: 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 prosecution; 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>1414</sup>.

### D. Stigmatizing statements

1013. The Office of the Special Rapporteur documented some stigmatizing statements against the work of the press and particularly against some journalists and media outlets covering various topics of public interest<sup>1415</sup>. In particular, Senator Paraguayan Cubas denounced in an interview that several journalists receive money to silence acts of corruption<sup>1416</sup>.

1014. According to the information received, a councilor from the municipality of Ciudad del Este, named Celso Miranda, would have been the protagonist of various situations of stigmatization against journalists covering the sessions of the Municipal Board. As published, he constantly threatens to initiate legal actions against journalists, disqualifies the press, prevents them from fulfilling their work, and asks officials not to give public information to the digital media *Vanguardia*, which at different times published complaints of corruption in the municipal administration<sup>1417</sup>.

1015. The existence of a context of marked confrontation, in which there are constant disqualifications and stigmatization, creates a climate that prevents a reasonable and plural deliberation on all public affairs. While it is true that the tension between the press and governments is a normal phenomenon that derives from the natural function of the press and that occurs in many States, it is also true that an acute polarization closes the spaces for calm debate, and it does not help neither the authorities nor the press to better fulfill their role in a

<sup>1409</sup>IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197..

<sup>1410</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. 139.

<sup>1411</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>1412</sup>República del Paraguay. Sistema de Información Legislativa. [D-1642344](#).

<sup>1413</sup>IP. April 5, 2019. [Gobierno garantiza a gremios voluntad de fortalecer protección a trabajadores de prensa](#).

<sup>1414</sup>IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81; IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 712.

<sup>1415</sup>In the context of protests carried out in July in the country’s capital against the operation of electronic platforms for alternative transport services, a taxi union leader said that journalists who allegedly were in favor of these platforms should be shot for being “inhuman”; also, in that same context, he made several statements in favor of a local guerrilla group. 780am. July 10, 2019. [Taxista alaba al EPP y pide fusilamiento a periodistas](#); Hoy. July 10, 2019. [Taxistas hacen loas al EPP, escrachan a concejala y piden fusilar a periodistas](#)

<sup>1416</sup>RDN. July 16, 2019. [Payo afirma que periodistas reciben dinero de la Corte y de políticos](#); El Trueno. June 16, 2019. [Payo afirma que periodistas reciben dinero de la Corte y de políticos](#).

<sup>1417</sup>ABC Color. April 17, 2019. [Kelembú, más prepotente que nunca con periodistas](#); Vanguardia. April 9, 2019. [Edil hostiga a periodistas](#).



vigorous, deliberative, and open democracy. In these cases, it is the State's task, given its national and international responsibilities, to contribute to a climate of greater tolerance and respect for the ideas of others, even when they are offensive or disturbing<sup>1418</sup>.

1016. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that with their statements they are not damaging the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media, and human rights defenders organizations, and must take into account the context in which they express themselves to ensure that their expressions do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who intend to contribute to public deliberation through the expression and diffusion of their thought"<sup>1419</sup>.

### E. Subsequent Liabilities

1017. The Office of the Special Rapporteur notes that the use of criminal law continued to be recurrent during 2019 in Paraguay as a measure to self-censor the press and journalists from the free exercise of their work. Likewise, this Office documented situations in which public officials were reprimanded for statements that the government would perceive as contrary or not in accordance with the truth<sup>1420</sup>. Likewise, this Office notes with deep concern the launching, at the end of October, of a criminal judicial action for defamation and slander by Pedro Chávez, mayor of the city of Mayor Otaño, Itapúa department, against a youth leader who publicly denounced a series of acts of alleged corruption of the Mayor<sup>1421</sup>.

1018. Former Senator Dionisio Amarilla initiated a criminal complaint at the end of May against the journalist of *ABC Color*, Juan Carlos Lezcano, for alleged acts of defamation, insult, and slander. The complaint was filed after the journalist published a video recording where the former official appeared along with a group of businessmen who would have bribed Lezcano to stop publishing a series of complaints against the managers of a company that tendered with the State. This publication also motivated the political prosecution and removal of the then Senator Amarilla. In the context of the legal action presented, he requested that the media stop publishing on the facts related to his person in the performance of his duties as a parliamentarian<sup>1422</sup>.

1019. Similarly, the president of Conmebol, Alejandro Domínguez, initiated a criminal complaint for defamation, slander, and insult in June, against journalist Marcos Velázquez, for a series of public complaints made by the communicator, among which he described the representative as "corrupt"<sup>1423</sup>.

1020. The Office of the Special Rapporteur was informed of the presentation of a criminal complaint against journalist Jorge Emmanuel Cabral for the dissemination of a video of an interview conducted by the journalist to a child that unleashed a series of jokes on social networks against the minor. Likewise, in accordance with what has been published, the Office of the Ombudsman for Children would have required a precautionary measure against journalists and against any person sharing that filming, images, or data that lead to the identification of the child<sup>1424</sup>.

1021. On the other hand, this Office was informed that the Public Ministry, through its Specialized Unit of Computer Crimes, issued a statement on April 2 warning that the "misuse" of social networks could lead to criminal proceedings. After the enunciation of different assumptions, the press release indicated, in regards to "shared content", that although freedom of expression is guaranteed, it is not an "exception" that allows "to violate the rights of others, for example: when contents that harm third parties are sent or forwarded, whether in person, family or company"<sup>1425</sup>.

<sup>1418</sup> IACHR. [Annual Report 2014](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 65.

<sup>1419</sup> I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

<sup>1420</sup> Hoy. July 19, 2019. [Por tuitear "desastre ko Marito" fue sancionada: "Es un eñecalma", dice la castigada](#); La Nación. No date. [Sanción para funcionaria que comentó "Desastre ko Marito"](#); RDN. August 28, 2019. [Ministro justifica destitución de directora](#); Última Hora. August 28, 2019. [Mazzoleni acusa a directora destituida de mentir sobre falta de insumos](#); ABC Color. September 25, 2019. [Sargento de Aviación arrestada por publicar un meme del Presidente](#).

<sup>1421</sup> ABC Color. October 29, 2019. [Intendente y seccionalero de Otaño querellan a menor, líder estudiantil](#).

<sup>1422</sup> ABC Color. May 29, 2019. [No logró "desinflar" y ahora recurre a querella](#); Última Hora. May 29, 2019. [Dionisio Amarilla querella a periodista por calumnia](#); Nandutí Diario Digital. May 29, 2019. [Dionisio Amarilla presenta querella contra el periodista 'Juanki' Lezcano](#); ABC Color. May 29, 2018. [Dionisio Amarilla pide censura a la prensa](#); Escrito de querella del senador Dionisio Amarilla contra periodista Juan Carlos Lezcano. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; ABC Color. June 3, 2019. [Amarilla íntima por videos](#).

<sup>1423</sup> RDN. June 22, 2019. [Presidente de la Conmebol querella a periodista](#).

<sup>1424</sup> Paraguay Noticias. May 22, 2019. [Periodista afronta denuncia penal por difusión de video de un menor](#); ABC Color. May 23, 2019. [Presentan denuncia contra video de entrevista a niño](#); RDN. May 23, 2019. [Niño es víctima de bullying a causa de video viralizado](#); Vanguardia. May 24, 2019. [Imputarían a bloguero por exponer a escolar](#); Radio1000. May 23, 2019. [Presentan denuncia ante la Fiscalía contra un hombre que grabó video a menor de edad](#).

<sup>1425</sup> República del Paraguay. Ministerio Público. April 2, 2019. [Mal uso de las redes sociales y la tecnología puede derivar en procesos penales](#)

1022. In October, the Office of the Special Rapporteur received information about the detention made to a citizen who shouted “traitor” to President Abdo Benítez by the National Police in Ciudad del Este. The agents justified this proceeding by arguing that the person would not have identified himself when he was required to show his identity document. However, after a few hours he was released<sup>1426</sup>.

1023. Finally, the Office of the Special Rapporteur learned of the Agreement and Judgment No. 89 of October 14 issued by the Constitutional Chamber of the Supreme Court of Justice of Paraguay that resolved to reject an unconstitutionality action promoted by the newspaper *ABC Color* against two judicial decisions issued in 2010 and 2011 respectively that condemned the media to a sum of money of more than thirty-five thousand dollars for a publication that criticized a sentence handed down by Judge Carmelo Castiglioni in a case of public interest, that initiated a civil action of damages in 2007<sup>1427</sup>.

1024. Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR states that “privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person, or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

1025. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest and violates the right to freedom of expression<sup>1428</sup>.

## F. Censorship of journalistic material / Prior censorship / Direct and indirect censorship

1026. The Office of the Special Rapporteur documented some worrying situations in which attempts were made to take down from the Internet publications referring to the defense of the rights of the LGTBI<sup>1429</sup> collective and matters of high public interest. Among the reported situations, this Office received information that a group of journalists from the editorial office of the newspaper *Última Hora* rejected through a press release an instruction from the publishing house that led to the removal of an article related to the march of LGTBI pride from social networks<sup>1430</sup>. However, this Office observes that the article “March of LGTBI Pride in Asunción will defend the plurality of families”, dated June 25, 2019, is available on the online page of the indicated media<sup>1431</sup>.

1027. On the other hand, according to the information received, on June 13 in the capital of the country a group violently broke up the development of a play called “The Madness of the Marshal”, considering that it contains scenes offensive to a historical figure from the country<sup>1432</sup>. Also, the main actor of play reported having received death threats<sup>1433</sup>.

1028. Also, the Office of the Special Rapporteur observes that in the context of the mass protests against the Government during the month of August, authorities responsible for the security of the President of the Republic proceeded to dismantle the filming cameras of the Grupo Nación that were located in a nearby downtown building to the President’s government premises for security reasons. After the fact went public, the decision was reversed<sup>1434</sup>.

<sup>1426</sup> 780am. October 22, 2019. *Gritó “vende patria” a Abdo y fue detenido por la policía*; La Unión. October 23, 2019. *Joven critica que por gritar ‘vendepatria’ a Abdo policías lo hayan tratado como delincuente*.

<sup>1427</sup> República del Paraguay. Poder Judicial. Corte Suprema de Justicia. Acción de inconstitucionalidad en el Juicio: “Carmelo Augusto Vicente Castiglioni Alvarenga C/ AbcoColor y Otros S/ Indemnización”. Año: 2011 - N° 1602.-. Available at: <https://www.csj.gov.py/jurisprudencia/#>; ABC Color. October 16, 2019. *Corte condena a ABC por criticar fallo judicial que blanqueó a expresidente*;

<sup>1428</sup> IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

<sup>1429</sup> Hoy. February 1, 2019. *Última Hora censura y luego recula: reponen comentario de periodista sobre discriminación*; “It is the second time in the year that Última Hora daily censors in a public way. The first was an article about Bristol, by FerBoccia. This position is inconceivable for a medium that suffered prohibitions, censorship and even closure during the dictatorship. Aren't they ashamed?”. Twitter account of Eduardo Quintana @EdQuintana. [June 28, 2019](https://twitter.com/EdQuintana); ABC Color. August 27, 2019. *Denuncian censura al género en la enseñanza pública*.

<sup>1430</sup> Facebook account of PeriodistasÚH. June 28, 2019. Available at <https://www.facebook.com/UHNoSeCalla/photos/a.1376185052466912/2300144963404245/?type=3&theater>; El Trueno. No date. *Periodistas de Última Hora rechazan decisión editorial de eliminar noticia sobre ‘orgullo gay’*; Hoy. June 28, 2019. *Periodistas de Última Hora acusan ‘censura’ de Dirección sobre tema LGTBI*; Hoy. June 30, 2019. *Disidencia entre periodistas de Última Hora sobre ‘censura’ de nota LGTBI*.

<sup>1431</sup> Última Hora. June 25, 2019. *Marcha del Orgullo LGTBI en Asunción defenderá la pluralidad de las familias*.

<sup>1432</sup> Última Hora. June 14, 2019. *Pese a incidentes, actor seguirá con la obra teatral Las locuras del Mariscal*; ABC Color. June 14, 2019. *Incidentes en estreno de la obra teatral “Las locuras del Mariscal”*.

<sup>1433</sup> Crónica. June 14, 2019. *Amenazaron al “Mariscal”*; La Nación. June 14, 2019. *Polémica por la obra de teatro “Las Locuras del Mariscal”*; Extra. June 13, 2019. *Irrumpen obra de teatro “Las locuras del Mariscal” por considerarla una ofensa*.

<sup>1434</sup> Hoy. August 23, 2019. *El Gobierno aplica censura y ataca la libertad de expresión*; La Nación. August 23, 2019. *Censura a GEN: ¿Quién ordenó? Asesor dice que no fue el presidente*.

1029. Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. Additionally, principle 5 of the Declaration of Principles on Freedom of Expression enshrines that “[p]rior censorship, direct or indirect interference in, or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information, and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

### G. Access to public information

1030. The Office of the Special Rapporteur learned of the publication, on August 7, 2019, of Law 6355 that modifies the legal framework that regulates the presentation of affidavits on properties, assets, and income of public officials in Paraguay. The regulations stipulate in its Art. 12 that the publication of the data contained in the document that states the affidavit can only be “obtained the respective jurisdictional authorization”<sup>1435</sup>. This Office noted that the enactment of this law occurred in a context in which a legal action to access public information on affidavits of senior public officials resulted in a favorable judicial decision was filed<sup>1436</sup>. Likewise, the Supreme Court of Justice of Paraguay must resolve an action of unconstitutionality presented previously on the publicity of the affidavits<sup>1437</sup>.

1031. The Office of the Special Rapporteur welcomes the approval and enforcement of Law 6299, which establishes the obligatory nature of the publicity and live broadcast of the sessions of the Supreme Court of Justice, the Council of the Judiciary, the Jury for the Judgment of Judges, and the Council of Ministers of the Executive Power<sup>1438</sup>. However, this Office received information on the development of a session of the Council of the Judiciary on June 10 in which the score for the election of a list for the highest judicial instance of the country had to be evaluated; the session was declared reserved, claiming the protection of the honorability of the candidates. This led to lawyers from the Institute of Environmental Law and Economics [*Instituto de Derecho y Economía Ambiental*] (IDEA) to take legal action so that the proceedings or the film's records are made public. Although the judicial decision issued a precautionary measure for the publicity of the records, the measure would not have been complied with as required<sup>1439</sup>.

1032. In addition, the implementation of the aforementioned law would have encountered difficulties in the Supreme Court of Justice since the live transmission of all sessions of the Constitutional Chamber would impede the efficient study of all pending cases<sup>1440</sup>, a situation that prompted Minister Gladys Bareiro de Mónica to request to the legal secretariat of the Judicial Branch the presentation of an action of unconstitutionality against the law with so that said law would not be mandatory for the Constitutional Chamber. Nevertheless, after an action of the IDEA civil society organization that requested a political trial of the minister who proposed the measure<sup>1441</sup>, the Court gave up the filing of the action of unconstitutionality<sup>1442</sup>.

1033. The Office of the Special Rapporteur received information on a series of judicial decisions favorable to access to information<sup>1443</sup>. Some of the issues resolved were sworn statements of senior public officials<sup>1444</sup> and the lifting of bank secrecy obligations<sup>1445</sup>. In addition, this Office documented a series of judicial decisions

<sup>1435</sup> República del Paraguay. Gaceta Oficial. [Ley 6355](#). August 7, 2019.

<sup>1436</sup> Última Hora. July 12, 2019. [Revelan las declaraciones juradas de Benigno y Correa vía judicial](#); ABC Color. June 26, 2019. [Fallo ordena publicar DDJJ](#).

<sup>1437</sup> Última Hora. June 30, 2019. [La CSJ debe resolver recusaciones y tema declaración jurada](#); ABC Color. July 14, 2019. [La Corte sigue sin resolver sobre declaraciones juradas](#); La Nación. September 2, 2019. [Esperan pronunciamiento de la Corte sobre declaración jurada](#).

<sup>1438</sup> República del Paraguay. Gaceta Oficial. [Ley 6299](#). May 2, 2019.

<sup>1439</sup> Instituto de Derecho y Economía Ambiental (IDEA). No date. [Campaña «la transparencia se pelea»](#); Última Hora. June 14, 2019. [Consejo elabora terna, pero debe publicar sesión secreta](#); ABC Color. June 12, 2019. [Piden actas sobre “cocinada” en la sesión secreta de terna para la Corte](#); ABC Color. June 28, 2019. [Apelan rechazo de amparo contra terna oficialista para la Corte](#).

<sup>1440</sup> República del Paraguay. Poder Judicial. July 18, 2019. [Resoluciones del Acuerdo de la Sala Constitucional](#).

<sup>1441</sup> Instituto de Derecho y Economía Ambiental (IDEA) / Twitter account. “From IDEA we ask for the impeachment of Gladys Bareiro de Mónica and we officially make this statement to the public, because we work for transparency in Paraguay and we believe that we should not take a step back in the construction of a fair and democratic country”. @InstIDEA. [July 17, 2019](#); Judiciales.net. July 17, 2019. [Corte accionará contra transmisión de sesiones](#).

<sup>1442</sup> Última Hora. July 23, 2019. [Corte desiste de presentar acción contra sesiones en vivo](#); La Nación. No date. [Televisación de sesiones continuará, la Corte desiste de acción](#).

<sup>1443</sup> República del Paraguay. Poder Judicial. Dirección de Transparencia. Available at: <https://www.pj.gov.py/transparencia-documentos>; ABC Color. March 11, 2019. [Fallo pro acceso a la información](#).

<sup>1444</sup> República del Paraguay. Poder Judicial. Dirección de Transparencia. Available at: <https://www.pj.gov.py/transparencia-documentos>; Última Hora. July 12, 2019. [Revelan las declaraciones juradas de Benigno y Correa vía judicial](#); ABC Color. June 26, 2019. [Fallo ordena publicar DDJJ](#).

<sup>1445</sup> República del Paraguay. Poder Judicial. Dirección de Transparencia. Available at: <https://www.pj.gov.py/transparencia-documentos>; 5 Días. July 9, 2019. [Deberán dar datos sobre caso Ara.](#)

contrary to this<sup>1446</sup>. Of particular concern is a judicial decision that denied the claim of the head of the civil society organization Tedic, Maricarmen Sequera, on information regarding the processing of personal data by the agencies responsible for the security of persons after the enforcement of a biometric surveillance system by the Police<sup>1447</sup>. The Office of the Special Rapporteur was informed that the Constitutional Chamber of the Supreme Court of Justice is pending resolution of the case<sup>1448</sup>.

1034. On the other hand, the Office of the Special Rapporteur takes note of a series of activities carried out in the Judiciary that aim to constantly train judicial magistrates in the field of freedom of expression, access to public information, and protection of journalists<sup>1449</sup>. Likewise, civil society continues to collaborate with these types of activities, which has contributed to the introduction of inter-American standards in judicial decisions in cases of high public interest<sup>1450</sup>.

1035. Finally, the Office of the Special Rapporteur notes the increasing use of the law on access to public information in Paraguay, with more than 22,000 requests for public information since it was put into operation in 2015<sup>1451</sup>. However, it is observed that various public institutions continue with unfounded or arbitrary refusals, whether due to lack of response, incongruous or partial responses, which leads to those affected having to file legal actions<sup>1452</sup>. Regarding the various consultations made during 2019, this Office learned of request No. 24122 of August 30 which was answered on September 23 related to "Data on violence against journalists" in which the Public Ministry informed that during 2019 there were: 3 reports of aggression against journalists; 10 accusations for crimes of "disturbance to public peace and resistance", "disturbance to public peace and coercion"; and 4 journalists "protected" by the "Witness Protection and Protection Victims Program"<sup>1453</sup>.

## H. Other relevant situations

1036. According to the information received, at the end of April a group of journalists were fired after the disclosure of a list of names of journalists who would have received money from a public agency of the customs sector to cover up acts of corruption. This caused several of the communicators to be fired from their jobs<sup>1454</sup>. On the other hand, at least 22 journalists would have been fired in August from *ABC Color*, without prior notice and arbitrarily. According to what was reported, several of the communicators dismissed would have been reaching the 10-year work seniority that grants stability<sup>1455</sup>.

<sup>1446</sup> República del Paraguay. Poder Judicial. Dirección de Transparencia. Available at: <https://www.pj.gov.py/transparencia-documentos>

<sup>1447</sup> República del Paraguay. Poder Judicial. Dirección de Transparencia. Available at: <https://www.pj.gov.py/transparencia-documentos>; ABC Color. August 31, 2019. *Rechazan amparo contra MDL*.

<sup>1448</sup> Tedic. September 16, 2019. *¿Quién vigila al vigilante? reconocimiento facial en Asunción*.

<sup>1449</sup> República del Paraguay. Poder Judicial. March 12, 2019. *Decisiones de la plenaria de la Corte Suprema de Justicia*; República del Paraguay. Corte Suprema de Justicia. June 25, 2019. *Decisiones de la plenaria de la Corte Suprema de Justicia*; República del Paraguay. Corte Suprema de Justicia. July 18, 2019. *Capacitan a jueces y operadores en Caacupé*.

<sup>1450</sup> República del Paraguay. Ministerio de Justicia. March 19, 2019. *Buscan perfeccionar portal de acceso a la información pública*; República del Paraguay. Poder Judicial. March 21, 2019. *Conversatorio sobre Acceso a la Información Pública*; República del Paraguay. Poder Judicial. May 30, 2019. *Decisiones de la plenaria de la Corte Suprema de Justicia*; República del Paraguay. Poder Judicial. Dirección de Transparencia. Available at: <https://www.pj.gov.py/transparencia-documentos>

<sup>1451</sup> República del Paraguay. *Portal Unificado de Información Pública*.

<sup>1452</sup> Alianza Regional para la Libre Expresión e Información. *Saber Más X: Desafíos y restricciones del Acceso a la Información Pública*. September 28, 2019.

<sup>1453</sup> Portal Unificado de Información Pública. Solicitud #24122. Available at: <https://informacionpublica.paraguay.gov.py/portal/#!/ciudadano/solicitud/24122>

<sup>1454</sup> La Nación. April 30, 2019. *Filtraron nombres de periodistas que aparecieron en una agenda*; Última Hora. April 29, 2019. *Filtran lista de periodistas que estarían implicados en esquema de corrupción*; Hoy. May 2, 2019. *Tras escándalo de supuesta "lista coimera" el SNT deja sin pantalla a Mario Bracho*; Hoy. April 30, 2019. *Rajan a Víctor Pesoa y Gabriela León de Telefuturo*; EPA. May 4, 2019. *Gaby León confirmó su desvinculación de Telefuturo*.

<sup>1455</sup> La Nación. August 9, 2019. *"Basta de despidos", reclaman periodistas*; El Trueno. 9 de agosto de 2019. *Denuncian despidos masivos en ABC Color*; Ñanduti. August 9, 2019. *Denuncian masivos despidos injustificados en ABC Color*; Ñanduti. August 12, 2019. *Masivos despidos injustificados son "ilegales", denuncian sindicalistas*.

## 27. PERU

1037. Throughout 2019, the Office of the Special Rapporteur has taken note of the constant use of judicial harassment against investigative journalism in Peru through criminal law figures (slander, insult and defamation) as a mechanism to pressure journalists and communicators, which could have an inhibitory effect. Among other cases, several criminal actions against the journalists Paola Ugaz, Pedro Salinas and the site Ojo Público stand out. 1038. Likewise, the removal of the director of the National Institute of Radio and Television (IRTP) aroused concern in journalists and organizations as a possible attempt at greater governmental influence from the public media. In addition, the Office of the Special Rapporteur received information on bills presented in Congress that would seek to establish state controls on information and conditions to the press, as well as other attempts to regulate and sanction digital communication and the flow of information in social networks, impose the so-called right to be forgotten in different circumstances and regulate the use of personal data.

### A. Progress

1038. On April 10, the liberal bench of the Congress of the Republic of Peru presented the bill "Law for establishing civil procedures of rectification and punishment for infringements against honor", which would seek to decriminalize crimes against honor, repealing Title II of the Criminal Code, so that the sanction is exclusively economic and not prison, allowing the establishment of civil procedures for the right of reply and rectification<sup>1456</sup>. Up until the close of this Annual Report, the legislative initiative would remain pending debate at the Justice Commission of Parliament<sup>1457</sup>.

1039. On May 21, the Committee on Transportation and Communications approved the pre-opinion on seven bills, by which they propose the "Law regulating government advertising" to regulate contracts of government advertising with private media<sup>1458</sup>. Up until the close of this Annual Report the initiative would be pending presentation by congress<sup>1459</sup>.

1040. According to public information, on August 1, the Sixth Criminal Chamber for Released Prisoners Proceedings acquitted journalist Rafael Romero of the crime against honor, in the form of aggravated defamation, against businessman Baruch Ivcher, for the statements made in his publication "Captura internacional para Baruch Ivcher", in which he linked the media director to alleged acts of money laundering<sup>1460</sup>.

### B. Impunity

1041. The Permanent Criminal Chamber of the Supreme Court of Justice declared void the sentence that acquitted Daniel Urresti of the murder of journalist Hugo Bustíos and ordered a new oral trial<sup>1461</sup>. On October 4 of 2018, the National Criminal Chamber acquitted Urresti of being co-author of the crimes against life, physical integrity, health, and murder with great cruelty by explosion, to the detriment of journalist Hugo Bustíos, and murder in degree of attempt to the detriment of Eduardo Rojas Arce. According to different human rights organizations, the murder of Bustíos -during the time of terrorism in 1988- has gone unpunished for 31 years.

1042. After 35 years, the murder of the journalist of *La República*, Jaime Ayala, who disappeared at a base in the Peruvian Navy after filing a claim for the raid of his mother's house during the time of terrorism, would still be unpunished. Ayala entered the Navy base, but never left. Several witnesses, including former marines, would have declared that Ayala was tortured and killed<sup>1462</sup>.

1043. In addition, this Office has received information about impunity in the murder of journalist David Choquepata, murdered in 2016 in his own radio booth. The prosecution would have archived the investigation of the crime<sup>1463</sup>.

### C. Attacks and assaults on journalists and the media

1044. On December 10, the National Press Association of Peru denounced the assassination of radio *Laser* of San Lorenzo broadcaster, Sonia Alvarado for causes possibly linked to her journalistic work. The body of the

<sup>1456</sup> Proyecto de Ley. Ley que establece los procedimientos civiles de rectificación y de sanción de las infracciones contra el honor. Expediente No 4184/2018-CR. Available at: <http://www.congreso.gob.pe/pley-2016-2021>

<sup>1457</sup> Senado del Perú. Proyecto de Ley No. 4184/2018-CR. La Republica. July 17, 2019. [Consejo de la Prensa Peruana destaca Proyecto para fortalecer la libertad de expresión](#) ; El Comercio. April 25, 2019. [Presentan proyecto de ley para despenalizar los delitos contra el honor](#) ; Ideele Radio. April 11, 2019. [La Bancada Liberal presenta un proyecto para sacar los delitos de opinión del Código Penal](#).

<sup>1458</sup> Senado del Perú. Proyectos de Ley 3100/2017-CR, 3107/2017-CR, 3109/2017-CR, 3142-2017-CR, 3223/2018-CR, 4147/2018-CR y 4258/2018-CR. Dictamen 2018-2019. Comisión de transportes y Comunicaciones. May 2019. Available at: <http://www.congreso.gob.pe/Docs/comisiones2018/Transportes/files/expedientep3107/predictamenpublicidadestatalv02.pdf>

<sup>1459</sup> Perú 21. May 23, 2019. [Consejo de la Prensa Peruana saluda el dictamen que busca regular la publicidad estatal](#) : El Comercio. May 22, 2019. [Ley que regula la publicidad estatal en manos del pleno del Congreso](#) : La Republica. May 22, 2019. [Consejo de la Prensa Peruana aclara que a libertad de expresión no ha sido alterada](#).

<sup>1460</sup> Expreso. August 21, 2019. [Poder Judicial absuelve a periodista Romero](#).

<sup>1461</sup> Andina. April 12, 2019. [Corte Suprema anula absolución de Urresti por caso Bustíos y ordena nuevo juicio](#).

<sup>1462</sup> Ojo Público. September 10, 2019. [Reporte a la SIP 2019: Congreso, querrelas e impunidad judicial son enemigos de la prensa](#). Crónica Viva. August 4, 2019. [Jaime Ayala, la incesante lucha de Rosa Pallqui por justicia y verdad](#).

<sup>1463</sup> Ojo Público. September 10, 2019. [Reporte a la SIP 2019: Congreso, querrelas e impunidad judicial son enemigos de la prensa](#).

communicator was collected with traces of blows and strangulation in the province of Datem del Marañón, department of Loreto (northeast of the country). The reporter was missing since Saturday, December 7. Although the Police of Peru does not know the motive for the murder, according to information provided by the investigators, the main suspect would be her ex-partner, Felipe Cáceres Rodríguez, with whom she had problems and who had threatened her several times. The national newspaper *La República* said Alvarado was investigating a timber traffic network in the region, in which her ex-partner would be involved. He would have already been detained<sup>1464</sup>.

1045. The Office of the Special Rapporteur urges the Peruvian State to investigate these crimes in a complete, effective, and impartial manner, clarify their motives, and judicially determine the relationship they might have to the investigations that this journalist carried out. In this sense, it is essential that the authorities investigate these facts without ruling out the hypothesis of the link to journalistic activity and freedom of expression.

1046. According to public information, on March 5, the journalist of the *Correo* newspaper, Ericka Alvarado, would have been attacked by a member of the National Police of Peru (PNP), who would have confiscated her work equipment preventing her from covering the events that occurred outside the North Police Station in Chiclayo<sup>1465</sup>.

1047. On March 27, Carlos Orozco García, director of the magazine “La Hualina” in the province of Huarochirí, reported having been the victim of harassment by the mayor of San Lorenzo de Quinti, Jesús Lozano Sotil, after he published his research on the illiteracy rate in the San Lorenzo de Quinti district. According to the available information, the mayor would have demanded that the journalist withdraw the published information, given the refusal of this request, individuals close to the local authority would have started to threaten the journalist by telephone and on social networks<sup>1466</sup>.

1048. On April 5, journalist Juan Manuel Valerio Luyo reported having been attacked by the sister of the mayor of the province of Cañete, Maritza Adela Díaz De la Cruz, due to his publications about the work of the provincial mayor of Cañete, Segundo Constantino Díaz de la Cruz. During the attack, the woman would have threatened the journalist and his family, insisting that she would initiate criminal proceedings against him<sup>1467</sup>.

1049. On May 7, the journalist of the magazine *Alerta Región Ica*, Alfredo Jaime Magallanes, denounced the attack by an unknown individual after attempting to interview the provincial mayor of Chinchá, Armando Huamán Tasayco. According to the information available, during the assault against the journalist, the individual would have said multiple times: “don’t mess with the mayor”<sup>1468</sup>.

1050. On May 15, the graphic reporter of the newspaper *El Comercio*, Alessandro Currarino, denounced the excessive use of force and chemical agents by elements of the Special Services Unit (USE) of the PNP, while covering the transfer of the former mayor of Lima, Susana Villarán, to the Criminal Prison Annex for Women of Chorrillos<sup>1469</sup>.

1051. The Office of the Special Rapporteur has taken note of the aggressions and threats towards the journalists of *Panamericana TV*, Elizabeth Chambi Mamani and Fredy Puma Mamani and the journalist of *Fama TV*, Máximo Lanza, in the province of San Román (Juliaca), presumably due to their investigations on irregularities in the management of the Puno government. According to the information available, on May 21, the mobile line of the channel would have received messages accusing Chambi of acting on behalf of certain power groups, while on May 23 a defamation campaign against the journalist via Facebook was denounced<sup>1470</sup>.

1052. According to information from different Peruvian media, on June 14 people from the “La Resistencia” movement started a protest in front of the Institute of Legal Defense, IDL-Reporters facilities [*Instituto de Defensa Legal IDL-Reporteros*] to harass the journalist and media director, Gustavo Gorriti, regarding the investigations of the Lava Jato and the National Council of the Magistracy (CNM) cases. According to the report of the journalist, this would not be the first time he would have been harassed, since in April Peruvian authorities and various public officials such as the congressman, Héctor Becerril and the former Foreign Minister, Luis González, had made statements blaming him for the suicide of former president Alan García, which occurred on April 17<sup>1471</sup>.

1053. On October 18, *Panamerican Television* correspondent Luigi Alberto Rodríguez Tasso denounced ill-treatment and obstruction of possible coverage, abuse, and impediment of information coverage by the PNP

<sup>1464</sup> ANP. December 10, 2019. [ANP expresa consternación y exige justicia para Isabel Alvarado, periodista asesinada en Loreto](#). *Reporters Without Borders (RSF)*. December 13, 2019. [Radio journalist murdered in northeastern Peru](#).

<sup>1465</sup> TV Cosmos/ Youtube. March 6, 2019. [Chiclayo: Periodistas protestan por agresión a colega](#); Diario Ecos Huacho/ Facebook. March 6, 2019. [Policía arrebató teléfono celular a periodista](#).

<sup>1466</sup> Crónica viva. March 27, 2019. [ANP exige el cese de hostigamiento a periodista en Huarochiri](#).

<sup>1467</sup> Crónica Viva. May 27, 2019. [ANP rechaza ataques y amenazas a periodistas de Juliaca](#).

<sup>1468</sup> Sétima Revista. December 9, 2019. [ANP condena agresión a periodista y demanda no quede impune](#).

<sup>1469</sup> Crónica Viva. May 21, 2019. [ANP rechaza el abuso policial contra reportero gráfico en lima](#).

<sup>1470</sup> Crónica Viva. 27 de mayo de 2019. [ANP rechaza ataques y amenazas a periodistas de Juliaca](#).

<sup>1471</sup> Knight Center for Journalism in the Americas. April 1, 2019. [Defense of the journalistic investigation can be more complex than the investigation itself, says journalist Gustavo Gorriti](#). IDL. November 5, 2019. [‘La Resistencia’ agredió a periodista tras audiencia por caso Arbitrajes](#). *La República*. March 16, 2019. [Gustavo Gorriti denunciará ataque a la libertad de prensa ante organismos internacionales](#).

mayo, Jenny Linares González, while covering the celebrations for the anniversary of the Chincha province, in the district of Pueblo Nuevo<sup>1472</sup>.

1054. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[t]he murder, kidnapping, intimidation, of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

1055. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression.

#### D. Social Protest

1056. The Office of the Special Rapporteur has taken note of the excessive use of force by agents of the National Police of Peru (PNP) towards journalists and communicators who would be covering social protests.

1057. Among the cases reported to this Office are the following. On May 30, during the demonstrations against the tolls of the Panamerican Highway in the Lima district of Lima, the journalist of the *Diario Municipal* digital site, Xiomara Soto, was attacked by police officers from the green squad while covering the violent actions of the PNP. According to the information received by this Office, Soto would have been taken to a mobile unit making excessive use of public force with the aim of transferring her to the Police Station in the area and proceeding to her detention, where she was held for four hours<sup>1473</sup>.

1058. On July 15 in Arequipa, within the framework of protests against the execution of the Tía María mining project, different journalists reported the excessive use of force by the Police but also denounced attacks by the protesters, who harassed them by telling them: “*Sold out press, corrupts*”<sup>1474</sup>, on July 25, in the same protests, the journalist of radio *La Ribereña*, radio *La Luz*, and *Canal 8*, Jhony Castro Quispe, and Juan José Santy, denounced the confiscation of their work material by the PNP.

1059. Also, in demonstrations in the context of the mining project Tía María, on August 5, the journalistic team of *Radio Yaraví*, formed by Alexander Cornejo and Juan Cervantes, as well as the communicators of the newspaper *La República*, Robert Orihuela and Oswald Charca, would have been threatened by protesters<sup>1475</sup>.

1060. According to public information, on August 9, journalists and photojournalists of the newspaper *La República* John Reyes Mejía, *Caretas* magazine, Fabiola Granda and Adrián Moscoso Arriola, *Diario Exitosa*, Diego Vertiz, and *Canal N* and *América Televisión*, Lourdes Paucar, would have been attacked by PNP agents while they were covering the outdoor demonstrations at the headquarters of the Judiciary in Lima when they were in covering the hearing in which the Permanent Criminal Chamber of the Supreme Court would evaluate the appeal filed by Keiko Fujimori, Jaime Yoshiyama, Pier Figar, and Luis Mejía Lecca<sup>1476</sup>.

1061. On September 10, according to public knowledge, the movement of protesters “La Resistencia”, would have attacked the director of IDL, Glatzer Tuesta and the legal team headed by Carlos Riverael, within the framework of the protests organized before the development of the first defamation complaint hearing filed by the IDL legal team against Javier Villa Stein<sup>1477</sup>.

1062. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical political and social expression of the activities of the authorities. The Commission has pointed out that “it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of assembly” and that “the exercise of the right of assembly through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its realization.”

1063. The 2013 Joint Declaration on violence against journalists in the framework of social demonstrations, notes that the rights of assembly and freedom of expression “are fundamental and their guarantee is a necessary condition for the existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations in order to ensure their peaceful development or disperse those that become violent, provided that such limits are governed by the principles of legality, necessity and proportionality. In addition,

<sup>1472</sup> ANP Perú. November 19, 2019. [ANP exige respeto al trabajo de la prensa en Chincha](#).

<sup>1473</sup> Union de Trabajadores de Prensa de Buenos Aires. June 1, 2019. [Detienen a la periodista Xiomara Soto Portillo](#) : Mano Alzada. May 30, 2019. [Periodista es detenida ilegalmente en protesta por peajes](#).

<sup>1474</sup> *La República*. June 29, 2019. [Tía María, la otra cara del conflicto](#).

<sup>1475</sup> *La República*. August 10, 2019. Tía María: [Asociación de Periodistas respalda a comunicadores agredidos durante protestas](#). *La República*. June 29, 2019. [Tía María, la otra cara del conflicto](#).

<sup>1476</sup> *Crónica Viva*. June 10, 2019. [APN rechaza agresiones a periodistas en exteriores del Poder Judicial en Lima](#).

<sup>1477</sup> IDL reporteros. September 11, 2019. [Encuentros con La Pestilencia](#). IDL reporteros. June 16, 2019. [La pestilencia](#).

dispersing a demonstration must be justified in the duty of protection of people, and the safest and least harmful measures for protesters should be used. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances in accordance with internationally recognized principles.<sup>1478</sup>

### E. Subsequent Liabilities

1064. On April 4, the 15th. Criminal Court of Lima, presided by Judge Isabel Aurora Flores, opened a criminal proceeding and ordered the preventive embargo of property owned by the executive director of the investigative journalism site, *Ojo-Público.com*, Óscar Castilla and of the journalist from *La República*, Edmundo Cruz, for the alleged commission of the crime of defamation against Miguel "Eteco" Arévalo, after the publication of a series of investigations that linked him to the organization of drug trafficking networks and possible money laundering in Alto Huallaga<sup>1479</sup>. This would constitute the fourth process initiated by Arévalo against both journalists, and the tenth against various journalists and media directors<sup>1480</sup>.

1065. This Office recalls that, of the four legal proceedings raised by Eteco since 2016, three were rejected. On December 13, the judiciary acquitted journalists Castilla and Cruz in the libel suit filed by Árevalo Ramírez. Along these lines, a criminal proceeding would still be ongoing since 2018, the most important, as reported by those affected, which would correspond to the *OjoPúblico* embargo and the defendant's assets. In the same case, the director of *La República*, Gustavo Mohme, and the journalists César Romero and Ricardo Uceda, also sued by Arévalo, were also acquitted<sup>1481</sup>.

1066. On April 22, the First Unipersonal Court of Piura issued a conviction that would require the payment of a monetary amount for civil reparation against the journalist Pedro Salinas for the alleged crime of defamation, after the Archbishop of Piura and Tumbes and member of the Sodalicio de Vida Cristiana (SVC), José Antonio Eguren Anselmi, had filed a criminal complaint against Salinas for the publication of an investigation and the statements made by the journalist in interviews in which he linked the Archbishop to the commission of crimes of a sexual nature and traffic of goods<sup>1482</sup>. On April 24, the archbishop would have withdrawn the complaint<sup>1483</sup>.

1067. The Office of the Special Rapporteur has received information that on May 17 the first hearing was held against the director of the *barranca.pe* portal, Yofre López, who was sued for the crime of defamation by Superior Judge Juana Caballero García, after the journalist questioned the judge's decision to revoke the pre-trial detention of a high-ranking public figure<sup>1484</sup>.

1068. On March 8, the secretary of the Fifth Civil Court of Chiclayo, Karim Sánchez Mendoza, filed a defamation complaint against the journalist and director of the weekly *Expresión*, Rosa Chambergo Montejo, due to a journalistic investigation that would present the relationship of the secretary of the court to facts of alleged falsification of documents<sup>1485</sup>. According to available information, on May 14 the defense of Chambergo Montejo would have presented its discharges before the court. Until the closing of this annual report, no response would have been recorded<sup>1486</sup>.

1069. The Office of the Special Rapporteur has received worrisome information about the situation of the journalist Paola Ugaz Cruz, who would be the subject of a preliminary investigation by the Provincial Deputy Prosecutor Hedy Huaylinos Silva, of the Third Provincial Corporate Criminal Prosecutor's Office of Piura, who would have indicated that Ugaz would have incurred in the commission of the crime of false declaration in court after having denied having a professional link to the Al Jazeera chain, that produced the report "The sodalium scandal"<sup>1487</sup>. On the matter, the complaint was presented by the then general manager of the Miraflores Perú (IMP S.A.C.) real estate agency, Carlos Alberto Gómez, since the production of the documentary investigation would link some members of the religious community to the commission of crimes of a sexual nature and would

<sup>1478</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>1479</sup> Ojo Público. April 21, 2019. [Case "Eteco": juez dicta embargo de Ojo Público y amenaza con órdenes de captura](#); La República. April 20, 2019. [Caso "Eteco": juzgado dicta embargo de periodistas de Ojo público y La Republica](#).

<sup>1480</sup> Knight Center for Journalism in the Americas. April 24, 2019. [Judge gives order to freeze assets of Peruvian media outlet Ojo Público and two investigative journalists](#); SERVINDI. April 24, 2019. [¿Persecución a la prensa? Dictan embargo contra periodista](#).

<sup>1481</sup> Ojo Público. December 13, 2019. [Poder Judicial absuelve a periodistas de OjoPúblico y La República en demanda de acusado de narcotráfico](#). La República. December 13, 2019. [Absuelven a periodistas querrelados por denunciar a acusado de narcotráfico](#).

<sup>1482</sup> Perú 21. December 2, 2019. [Pedro Salinas: "Caso Sodalicio es una herida abierta"](#); Aciprensa. April 9, 2019. [Perú: condenan a periodista Pedro Salinas por difamar a arzobispo de Piura](#).

<sup>1483</sup> Knight Center for Journalism in the Americas. April 24, 2019. [Archbishop withdraws complaint after Peruvian journalist is sentenced for defamation due to opinion column](#).

<sup>1484</sup> Prensa al día. May 16, 2019. [Magistrada querrela a periodista en su propio distrito judicial](#).

<sup>1485</sup> Instituto Prensa y Sociedad. May 30, 2019. [Perú: secretaria de juzgado querrela a periodista Rosa Chambergo](#).

<sup>1486</sup> El Comercio. September 9, 2019. [SIP: los principales puntos del informe sobre intento de afectación a la libertad de expresión](#)

<sup>1487</sup> La Razón. December 7, 2019. [MML niega tener información acerca de Ugaz en sus archivos](#); WALAC. April 25, 2019. [Arzobispo de Piura también desiste querrela contra la periodista Paola Ugaz](#)



argue that the real estate company was linked to the Sodalicio de Vida Cristiana with an alleged land trafficking<sup>1488</sup>. She would also have been sued by the Fuerza Popular parliamentarian, Luciano Revoredo for alleged aggravated defamation.

1070. In August, former president Ollanta Humala's lawyer, investigated for corruption offenses under the Lava Jato case, said he would call media executives as witnesses in the event of a possible trial against him. Humala is investigated for money laundering for allegedly receiving Odebrecht campaign contributions from the illegal "Caja2": "Almost 85% was spent on TV and newspaper advertising. If the tax hypothesis is that money was laundered," said the lawyer<sup>1489</sup>.

1071. Also, according to public knowledge information, on October 27, the journalist of *Radio Programas de Perú*, Josefina Townsend, would have been dismissed from the media without justification. Along these lines, the media banned her from admission, claiming that various social sectors would have made known their disagreement with the interviews made by the journalist in her program that would touch on political issues about militants of the Fujimorist bloc in Peru<sup>1490</sup>.

1072. This Office has received information on the dismissal of the president of the National Institute of Radio and Television (IRTP), Hugo Coya, on December 1<sup>1491</sup>. According to public information, the dismissal would have arisen on the orders of the Minister of Culture, Francisco Petrozzi, due to his dissatisfaction with the material broadcasted by the *TV Perú* channel after the decision of the Constitutional Court of Peru to release Keiko Fujimori<sup>1492</sup>. To this dismissal would be added the resignations of Carolina Leonor Albornoz Falcón, who was a member of the Board of Directors and David Ponce de León Gómez, who would chair the Press Management of the IRTP<sup>1493</sup>.

1073. The IACHR and the Inter-American Court have repeatedly pointed out that States have a more limited scope to impose restrictions on the right to freedom of expression "whenever it concerns expressions pertaining to the State, to matters of public interest, to public officials in exercise of their functions or candidates who will hold public positions, or to individuals voluntarily involved in public affairs, as well as to political discourse and debate"<sup>1494</sup>. These are subjected to a greater degree of public scrutiny and criticism, which is justified by the public interest nature of the activities they carry out, because they have voluntarily exposed themselves to more demanding scrutiny and because they have an enormous capacity to dispute the information through their power of public reach"<sup>1495</sup>.

## F. Stigmatizing statements

1074. The Fuerza Popular legislator and president of the Constitutional Commission of Congress, Rosa Bartra, during her participation in an event of the "La Resistencia" movement (known for its demonstrations in favor of Fujimorism) said that the congress would resume complaints against some members of the independent press, attacking the columnist of the newspaper *La República* and RTV journalist, Rosa María Palacios, due to her statements about certain political actors related to Fujimori. According to the available information, the legislator would urge the members of the group to continue their attacks against the opposition and the press, calling them "terrorists"<sup>1496</sup>.

<sup>1488</sup> IPYS. April 12, 2019. *Caso Sodalicio: Juicio contra periodista Paola Ugaz es trasladado a Lima*. Café viena. September 26, 2019. [Paola Ugaz y su corona judicial](#); Crónica viva. June 20, 2019. *ANP exige cese de hostigamiento fiscal y judicial a periodista Paola Ugaz*;

<sup>1489</sup> Inter American Press Association (IAPA). *Report to the 75th General Assembly of the IAPA*. Peru October 2019. Coral Gables, Florida..

<sup>1490</sup> La Republica. March 30, 2019. *Medio local indica que salida de Josefina Townsend fue 'estrategia'*; Utero.Pe. March 30, 2019. *Los últimos días de Josefina Townsend en RPP, la historia detrás del reciente escándalo de censura en el Perú*; Educación en Red. March 29, 2019. *JOSEFINA TOWNSEND: RPP retira a periodista tras hacer pasar incómodos momentos a políticos poderosos*

<sup>1491</sup> Boletín de Normas Legales del diario El Peruano. Resolución Suprema N° 019-2019-MC. Available at: <https://busquedas.elperuano.pe/download/url/dan-por-concluida-designacion-y-designan-miembro-del-consejo-resolucion-suprema-n-013-2019-mc-1832420-1>

<sup>1492</sup> La República. December 2, 2019. *Petrozzi tras cesar a Hugo Coya de IRTP: "El presidente no me lo ha ordenado"*; Gestión. December 1, 2019. *Destituyen a Hugo Coya de la presidencia ejecutiva del IRTP y designan en su reemplazo al periodista Eduardo Guzmán*.

<sup>1493</sup> La República. December 2, 2019. *Funcionaria del IRTP presenta su renuncia tras destitución de Hugo Coya*; El Comercio. December 3, 2019. *Relator de la CIDH: "Es preocupante que la motivación haya sido de algún modo imponer una línea más gobiernista"*

<sup>1494</sup> IACHR. *Annual Report 1994*. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995; IACHR. Office of the Special Rapporteur for Freedom of Expression. *Annual Report 2009*. Ser.L/V/II. Doc. 51. December 30, 2009. Para. 100; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74.; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135; I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177.

<sup>1495</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Annual Report 2009*. Ser.L/V/II. Doc. 51. December 30, 2009. Para. 40.

<sup>1496</sup> La República. July 20, 2019. *"Salgan a las calles", exige Bartra a grupo de choque fujimorista*. July 20, 2019. *Fujimorista Rosa Bartra a 'La Resistencia': "Ustedes no son trolls y no han venido por un táper"*. Informato Perú. July 20, 2019. *"¡Salgan más a las calles!", exige Rosa Bartra a grupo de choque fujimorista*.

1075. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that with their statements they are not damaging the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media, and human rights organizations, and must pay attention to the context in which they express themselves to ensure that their expressions do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who intend to contribute to public deliberation through the expression and diffusion of their thought”.

### G. Legal reforms

1076. According to public information, on May 3, a member of the parliamentary group Cambio 21 presented to the Congress of the Republic of Peru the draft Law regulating the misuse of social networks, which would seek, among other things, to increase to four years the minimum penalty and seven the maximum for the crime of defamation, and aggravate it if it is committed through books, press, social networks, and other similar means. According to the information available, the project is still pending discussion by Congress<sup>1497</sup>.

1077. In September, the Fuerza Popular parliamentary group encouraged the signing of the agreement for the Commission of Control of Congress that would involve the creation of a work team to investigate the pollsters about the methodology they use, with the aim of determining if there are payments prior to conducting these survey studies that could influence the final results, confirm the anonymity of the respondents, and supervising their general functioning to detect possible cases of advertising manipulation<sup>1498</sup>.

1078. The Office of the Special Rapporteur emphasizes that all restrictions on freedom of expression, including those affecting expression on the Internet, must be established clearly and precisely by law, be proportional to the legitimate objectives sought, and based on a judicial determination through contradictory procedures.

1079. In accordance with principles 10 and 11 of the Declaration of Principles on Freedom of Expression of the IACHR, this Office recalls that “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” because public officials “are subject to greater scrutiny by society.” In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression.

### H. Censorship

1080. On April 2, the *HBA* news reporter, Juan José Santy Cusiátán, reported having been censored at the premises of the Regional Government of Arequipa by an employee of the unit that would have ordered security agents to stop the journalist’s recording while covering a fire. Subsequently, the staff of the Regional Government of Arequipa would have asked *HBA* news to remove the video of the events from its publications<sup>1499</sup>.

1081. Principle 5 of the Declaration of Principles on Freedom of Expression of the IACHR states that “prior censorship, direct or indirect interference, in or pressure exerted upon any expression, opinion, or information transmitted through any means of oral, written, artistic, visual, or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

<sup>1497</sup> Congreso de la Republica del Perú. Proyecto de ley No. 4275. Available at: [http://www.leyes.congreso.gob.pe/Documentos/2016\\_2021/Proyectos\\_de\\_Ley\\_y\\_de\\_Resoluciones\\_Legislativas/PL0427520190503.pdf](http://www.leyes.congreso.gob.pe/Documentos/2016_2021/Proyectos_de_Ley_y_de_Resoluciones_Legislativas/PL0427520190503.pdf) ; Gestión. May 9, 2019. *SIP rechaza iniciativa en Perú para penalizar difamación en redes sociales*.

<sup>1498</sup> Gestión. September 4, 2019. *Consejo de la Prensa Peruana expresa preocupación por investigación a encuestadoras* ; Perú 21. September 4, 2019. *Comisión de Fiscalización aprobó investigar metodología de empresas encuestadoras*.

<sup>1499</sup> Cronica Viva. April 3, 2019. *ANP condena agresión a periodista en Arequipa*

## 28. DOMINICAN REPUBLIC

1082. The Office of the Special Rapporteur highlights the Special Rapporteur received information on threats against journalists from criminal groups linked to drug trafficking. The office notes that on the instructions of the Executive Branch and the coordination of the Attorney General's Office, all the necessary protection would have been offered to the journalists involved. Also, a television journalist denounced, through a letter, that the attorney general would be conducting a campaign of harassment against him for the publication of public procurement contracts that would involve him. This Office also wish to emphasize that the Constitutional Court (TC) of the Dominican Republic declared unconstitutional some of the articles contained in the Law on Political Parties, Groups and Movements, and the Electoral Law, which contained provisions which threaten the freedom of expression in electoral contexts as it contemplated sentences of up to 10 years in prison for crimes of defamation and libel against candidates and political parties and 3 to 10 years for violations of ethical, legal and constitutional norms on the use of print media , electronic and digital.

### A. Impunity

1083. Along these lines, this Office has taken note of the judgment issued on June 21 by the Collegiate Court of the Monseñor Nouel province, in which those accused of participating in the murder of journalist Blas Olivo, perpetrated on April 13, 2015, were sentenced to 30 and 20 years in prison<sup>1500</sup>.

### B. Progress

1084. The Office of the Special Rapporteur has taken note of different judgments issued by the TC that annulled legal provisions that contained strong penalties and restrictions on the exercise of freedom of expression.

1085. According to public information, on May 21, the TC resolved the unconstitutionality action filed on August 13, 2018 by Namphi A. Rodríguez, Héctor Herrera Cabral, and the Press and Law Foundation, considering that section six of article 44 of the Law of Political Parties, which sanctions the dissemination of “negative messages” against candidates through the Internet “is unnecessary and excessively burdensome”, since it presents social networks as more risky than other media, considering penalties higher than those established by crimes of defamation and insult in the “offline world”<sup>1501</sup>. Along the same lines, on September 16, the TC resolved the unconstitutionality action filed on March 19 by the Press and Law Foundation, declaring article 284 of the Organic Law No. 15-19 of the Electoral Regime, not in accordance to the Constitution, which established a penalty of three to 10 years in prison for defamation crimes against politicians<sup>1502</sup>.

1086. On July 22, the TC declared the unconstitutionality of article 45, paragraph III of the Law on Political Parties, reaffirming the right of association of the parties by establishing the statutes as the primary source of the internal order of political organizations<sup>1503</sup>. On August 21, by means of judgment TC-0332/19, it ratified the criteria of the previous ruling<sup>1504</sup>. On August 28, through the press release 39/19, the TC declared the unconstitutionality of eight provisions of the Law on Political Parties, considering that “they undermined the rights to free expression and dissemination of thought, free association, and equal conditions, as well as the violation of the principles of reasonableness, of association, of equity, of internal democracy of the parties and their militants, and the right to vote and to stand for election”<sup>1505</sup>.

1087. On November 29, the TC reportedly declared during the public hearing held in the Supreme Court of Justice (SCJ), the state of deliberation of the pending files relating to Law 33-18 and Organic Law 15-19 of Electoral Regime, declaring them in a state of urgency<sup>1506</sup>.

<sup>1500</sup> Knight Center for Journalism in the Americas. June 25, 2019. [Six men sentenced in murder of Dominican journalist who was killed in 2015](#). Sétima Revista. June 21, 2019. [República Dominicana: Condenan a 6 acusados de la muerte de periodista Blas Olivo](#). Sarah Pepen. June 21, 2019. [¡Justicia! 20 y 30 años de prisión para acusados de matar al periodista Blas Olivo](#). Contacto hoy. June 21, 2019. [Condenan a seis acusados de la muerte de un periodista dominicano](#).

<sup>1501</sup> Tribunal Constitucional. May 21, 2019. Sentencia TC/0092/19. Available at: <https://www.tribunalconstitucional.gob.do/consultas/secretar%C3%ADa/sentencias/tc009219/>. El Nacional. May 27, 2019. [TC cuestiona penas delitos electrónicos por difamación](#).

<sup>1502</sup> Tribunal Constitucional. September 16, 2019. Sentencia TC /0348/19. Available at: <https://www.tribunalconstitucional.gob.do/consultas/secretar%C3%ADa/sentencias/tc034819/>. Diario Libre. September 30, 2019. [Tribunal Constitucional declara inconstitucional artículo de Ley Electoral castigaba con prisión la difamación a políticos](#); Diario Libre. June 10, 2019. [Interponen recurso inconstitucionalidad contra Ley de Régimen Electoral](#); Ahora Noticias RD. March 25, 2019. [Fundación Prensa y Derecho recurre ante el Tribunal Constitucional la nueva Ley Electoral](#)

<sup>1503</sup> Tribunal Constitucional. July 22, 2019. Sentencia TC/0214/19. Available at: <https://www.tribunalconstitucional.gob.do/consultas/secretar%C3%ADa/sentencias/tc021419/>

<sup>1504</sup> Tribunal Constitucional. August 21, 2019. Sentencia TC/0332/19. Available at: <https://www.tribunalconstitucional.gob.do/consultas/secretar%C3%ADa/sentencias/tc033219/>

<sup>1505</sup> Tribunal Constitucional. August 28, 2019. Comunicado 39/19. Available at: <https://www.tribunalconstitucional.gob.do/consultas/secretar%C3%ADa/comunicados-casos-aprobados/3919/>

<sup>1506</sup> Tribunal Constitucional. November 29, 2019. [TC declara de urgencia expedientes sobre Ley de Partidos, Agrupaciones y Movimientos Políticos](#); Telediario América. November 29, 2019. [TC declara de urgencia expediente sobre Ley de Partidos, Agrupaciones y Movimientos Políticos](#).

1088. Finally, on August 30, 2019, the Second Chamber of the Superior Administrative Court of the Dominican Republic, issued a ruling in favor of the Dominican Association of Broadcasting Companies, Inc (ADORA) whereby it would order the Central Electoral Board (JCE) to allow advertising messages of a political nature in radio and television media during the current pre-campaign or internal campaign period<sup>1507</sup>.

### C. Attacks, threats, and intimidation against journalists and the media

1089. According to public information, on May 10, the journalist of the newspaper *El Día*, Teresa Casado, reported having complained against the alleged drug trafficker, Sidney Rafael Matías Pérez, who would have sent threatening emails after the communicator questioned the decision of a judge granting him freedom and imposing periodic presentation as a precautionary measure to Matías Pérez<sup>1508</sup>.

1090. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[t]he murder, kidnapping, intimidation of, and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation”<sup>1509</sup>.

### D. Social Protest

1091. According to public knowledge information, on June 24, within the framework of the protests called by the Partido de la Liberación Dominicana (PLD) against a possible constitutional reform that would allow President Danilo Medina to opt for a third consecutive term, violent clashes reportedly occurred among agents of the National Police, the Armed Forces (FFAA) and protesters<sup>1510</sup>. In this regard, eight people were injured by chemical elements, including Congress Deputy Henry Merán, who reported being affected by the chemical agents used by the National Police and the Ministry of Defense<sup>1511</sup>. On July 23, President Medina would announce the repeal of the constitutional reform project<sup>1512</sup>.

1092. On September 18, an excessive use of force was reported as a result of the use of chemical agents, gunshot and pellets wounds in the framework of the demonstrations of the “Unidos por un Seibo mejor” movement, headed by the priest Miguel Ángel Gullón, in the community of Candelaria, to demand improvements in health, education, and construction work in the community<sup>1513</sup>; which left a balance of 12 protesters injured and five arrested. According to public information, on October 31, Dominican missionary Miguel Ángel Gullón and volunteer María Moreno were arrested in front of the National Palace<sup>1514</sup>. Subsequently, on November 4, new repressions were reported against protesters at the hands of the Police and the armed forces of the country<sup>1515</sup>.

1093. The IACHR has reiterated that social protest is a fundamental tool for defending human rights, and essential for the critical political and social expression of the activities of the authorities. The Commission has pointed out that “it is inadmissible in principle the criminalization in itself of demonstrations on public roads when they are carried out within the framework of the right to freedom of expression and the right of

<sup>1507</sup> Gobernanza Digital. August 21, 2019. [TRIBUNAL ORDENA A LA JCE PERMITIR LA PUBLICIDAD POLÍTICA EN RADIO Y TELEVISIÓN](#); Acento. September 3, 2019. [El Tribunal Superior Administrativo y la libertad de comunicación](#); En segundos. August 20, 2019. [Tribunal Superior Administrativo ordena a la JCE permitir publicidad en radio y tv](#); Hoy Digital. August 20, 2019. [Tribunal Superior Administrativo ordena a la JCE permitir publicidad política en radio y tv](#);

<sup>1508</sup> El Diario. May 10, 2019. [Narco dominicano amenaza a periodista, y autoridades toman drástica medida](#); El día. May 10, 2019. [Un narcotraficante amenaza a periodista de EL DÍA](#); Al momento. May 11, 2019. [Autoridades disponen protección para periodista es amenazada por narco](#); El Nuevo Diario. May 10, 2019. [Periodista se querrela contra narcotraficante la amenazó por correo electrónico](#); El Caribe. May 10, 2019. [SNTP repudia amenaza de supuesto narco a periodista Teresa Casado](#)

<sup>1509</sup> IACHR. [Declaration of Principles on Freedom of Expression](#). 2000.

<sup>1510</sup> NODAL. June 27, 2019. [Rep. Dominicana: nueva marcha contra reforma constitucional para la reelección de Medina](#); Resumen Latinoamericano. July 21, 2019. [República Dominicana. Protestan contra reforma que permitiría reelección](#); La Prensa. June 26, 2019. [Cientos de dominicanos salen a las calles a protestar contra la reelección de Medina](#).

<sup>1511</sup> Listin Diario. June 24, 2019. [Disturbios en el Congreso: al menos un diputado afectado por gases lacrimógenos](#); Canal de Noticias de los Dominicanos. June 25, 2019. [FINJUS califica de inaceptables las acciones frente al Congreso Nacional](#); NODAL. June 25, 2019. [República Dominicana: protestas, represión y división en el oficialismo por posible reforma constitucional para la reelección de Medina](#); EFE. June 25, 2019. [Lesionan a diputados dominicanos en una protesta contra la reforma de la reelección](#).

<sup>1512</sup> NODAL. July 23, 2019. [Rep. Dominicana: presionado por las protestas, Medina desiste de la reforma para la reelección](#); Monitor Civicus. October 21, 2019. [REPÚBLICA DOMINICANA: REFORMA CONSTITUCIONAL SUSCITA PREOCUPACIÓN POR LAS INSTITUCIONES DEMOCRÁTICAS](#); Noticias SIN. July 17, 2019. [Proyecto de reforma constitucional no fue depositado hoy en el Senado](#)

<sup>1513</sup> El nuevo Diario. September 18, 2019. [Anuncian cese de huelga en El Seibo y liberación de cinco jóvenes](#); Listin Diario. September 18, 2019. [Primer día de huelga por 48 horas afecta comercio en El Seibo](#); Diario libre. September 18, 2019. [Doce heridos en ataque a hombazos a sacerdote y grupo de manifestantes en El Seibo](#); Diario Libre. September 17, 2019. [Enfrentamientos entre policías y manifestantes dejan 11 heridos durante huelga en El Seibo](#)

<sup>1514</sup> Vide Nueva Digital. October 31, 2019. [El misionero español Miguel Ángel Gullón ha sido detenido por defender a los indígenas de El Seibo](#); Religión Digital. November 1, 2019. [El misionero español Miguel Ángel Gullón y varias familias campesinas, desalojados por la fuerza en Dominicana](#)

<sup>1515</sup> CLACSO. November 1, 2019. [Los desalojados de El Seibo](#); Canal de Noticias de los Dominicanos. November 4, 2019. [Peregrinos de El Seibo continúan protesta hasta recibir respuesta de las autoridades](#); Acento. October 31, 2019. [Campesinos de El Seibo fueron trasladados por la fuerza a las 2:30 de la madrugada](#)

assembly”<sup>1516</sup> and that “the exercise of the right of assembly to through social protest must not be subject to authorization by the authorities or to excessive requirements that hinder its materialization”<sup>1517</sup>.

1094. The 2013 Joint Declaration on violence against journalists in the framework of social demonstrations indicates that the rights of assembly and freedom of expression “are fundamental and their guarantee is a necessary condition for existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations in order to ensure their peaceful development or disperse those that become violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, dispersing a demonstration must be justified in the duty of protection of people, and the safest and least harmful measures for protesters should be used. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances in accordance with internationally recognized principles”<sup>1518</sup>.

### E. Subsequent Liabilities

1095. This Office was informed in September, about the closure of the “El Jarabe” program of journalist Marino Zapete, who denounced the interference of the judicial body due to pressures from the Attorney General of the Republic, Jean Alain Rodríguez, and his sister, Maybeth Rodríguez. In December, Zapete denounced, through a letter, that the prosecutor would be carrying out a campaign of harassment against him, after the publication by the journalist on TV of contracts between the Attorney General’s sister, Maybeth and the Ministry of Public Works, in violation of what is established by the Public Procurement and Contracting Law<sup>1519</sup>. On December 11, the conciliatory hearing would have been postponed due to lack of due notice<sup>1520</sup>.

1096. Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, indicates that “[t]he protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official”. That is, the use of criminal mechanisms to punish the discourse in matters of public interest, and especially related to public or political officials, does not respond to a pressing social need that justifies it, is unnecessary and disproportionate, and can be a means of indirect censorship, given its chilling effect on the debate on matters of public interest.

1097. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” In addition, the IACHR has repeatedly held that the application of criminal law to sanction expressions related to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression.

### F. Freedom of expression in electoral contexts

1098. The Office of the Special Rapporteur has taken note of the creation by the plenary of the Central Electoral Board (JCE), on February 22, of the Electoral Observatory of Social Networks, created for the purpose of monitoring deliberate misinformation related to electoral processes<sup>1521</sup>. According to the information available, the Communications Department determined that the observatory would identify proselytizing publicity and attempts to disseminate deliberate misinformation on electoral processes<sup>1522</sup>.

1099. The Office of the Special Rapporteur recalls that “[e]lectoral processes are closely linked to freedom of expression and information, since in order for citizens to carry out their decisions at the time of voting it is essential that they have as much information as possible . For this, it is crucial that facts, ideas, and opinions circulate freely. Without a doubt, the most common way for citizens to inform themselves today is through the mass media”<sup>1523</sup>

<sup>1516</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197

<sup>1517</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. 139

<sup>1518</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>1519</sup> El faro. October 5, 2019. [Cierre del programa de Marino Zapete es presentado en la Asamblea 75 de la SIP](#); El día. October 7, 2019. [Caso de Marino Zapete y amenazas a Casado son presentados en la SIP](#); Diario Libre. September 27, 2019. [Marino Zapete anuncia salida del aire de su programa por supuestas “presiones”](#)

<sup>1520</sup> Hoy Digital. December 11, 2019. [Posponen audiencia contra Marino Zapete por demanda de hermana del Procurador](#) ; Listin Diario. December 11, 2019. [Aplazan para el 19 de diciembre audiencia por demanda contra Marino Zapete](#); Canal de Noticias de los Dominicanos. December 11, 2019. [Cuarta Sala Penal DN aplaza demanda a Marino Zapete por difamación](#)

<sup>1521</sup> Junta Central Electoral. February 22, 2019. Acta 07/2019. Available at: [https://jce.gob.do/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=12346&Command=Core\\_Download&language=es-ES&PortalId=1&TabId=190](https://jce.gob.do/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=12346&Command=Core_Download&language=es-ES&PortalId=1&TabId=190)

<sup>1522</sup> Acento. March 25, 2019. [Internet Society afirma Observatorio de Redes Sociales vulneraría libertad de expresión](#); Digital Policy Law. March 26, 2019. [Sociedad de Internet en RD rechaza Observatorio de Redes Sociales de la JCE](#); Diario Libre. March 17, 2019. [Observatorio Electoral solo vigilará las redes sociales](#); Diario Libre. March 15, 2019. [JCE crea un Observatorio Electoral de Redes Sociales](#)

<sup>1523</sup> IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI Freedom of Expression and the Electoral Process: The Case of Opinion Polls and Exit Polls. OEA/Ser.L/V/II.124 Doc. 77 February, 2006. Para. 2

## 29. SAINT KITTS AND NEVIS

1100. Although the Freedom of Information Act was passed in 2018, it would not have been implemented yet. According to the government, this is due to the lack of resources for the development of protocols and the hiring of personnel. On the other hand, the Supreme Court of Justice declared in March 2019 that rules 26 and 38 of the Law on Public Service were contrary to the Constitution and, therefore, invalid, since they prevent the participation of public officials in political party activities.

### A. Access to public information

1101. In a May 18 interview with the *St. Kitts and Nevis Observer*, Attorney General Vincent Byron explained why the Freedom of Information Act, enacted in 2018,<sup>1524</sup> has still not been implemented, citing a lack of government funding to develop protocols and hire staff. He additionally stated that a “profound cultural change” among public servants in the area of government transparency was needed to ensure the proper implementation of the law.<sup>1525</sup>

1102. This Office reiterated that “The State has a duty to implement access laws adequately. This [entails] at least three actions. First, the State must design a plan that allows for the real and effective satisfaction of the right of access to information within a reasonable time period. This obligation [entails] a duty to budget the necessary funds to be able to progressively meet the demand that the right of access to information will generate.”<sup>1526</sup> “Second, the State must adopt laws, policies, and practices to adequately preserve and manage information.”<sup>1527</sup> “Third [...], the State should adopt a systematic policy for training the public officials who will be satisfying the right of access to information in all of its facets.”<sup>1528</sup>

1103. It additionally notes that Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

### B. Censorship

1104. According to information gathered by the Office of the Special Rapporteur, on May 14 security staff from the Basseterre Magistrate’s Court barred the press from covering a hearing in the case of Alkiviades David, a Greek businessman accused of drug trafficking, possession, and intent to distribute. A reporter from the *St. Kitts and Nevis Observer* stated that journalists were denied entry to the hearing, and that he had been “physically pushed out of the building by an employee.”<sup>1529</sup>

1105. According to Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

1106. Additionally, Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression may not be subject to prior censorship; and Principle 5 of the Declaration of Principles on Freedom of Expression establishes that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

<sup>1524</sup> IACHR. [Annual Report 2018. 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. 30. March 17, 2019. Para. 948.

<sup>1525</sup> *St. Kitts & Nevis Observer*. May 18, 2019. [EXCLUSIVE: Cultural change needed with Freedom of Information: AG](#).

<sup>1526</sup> IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The right of access to public information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 313.

<sup>1527</sup> IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The right of access to public information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 314.

<sup>1528</sup> IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The right of access to public information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 315.

<sup>1529</sup> *St. Kitts & Nevis Observer*. May 14, 2019. [Media barred from Alki David hearing](#); WIC News. May 15, 2019. [St. Kitts and Nevis journalists locked out of court hearing involving Greek billionaire](#).

### C. Other relevant situations

1107. During 2019, there was also a debate on the constitutionality of the Public Service Act of 2011, due to the possible violation of the rights to freedom of expression and association. Rule 38 of that law stipulates that, “a public officer shall not engage in party political activity at any time.”<sup>1530</sup>

1108. Leon Natta Nelson, a Ministry of Finance employee, filed a lawsuit claiming that rules 36 and 38 of the Public Service Code prevented him from participating in a political organization and running as a candidate for the St. Kitts-Nevis Labour Party, thereby violating his constitutional rights. The High Court of Justice ruled on March 25 that rules 36 and 38 of the Public Service Code were inconsistent with the Constitution of St. Kitts and Nevis and were therefore null and void.<sup>1531</sup> On April 3, Attorney General Vincent Byron stated that they would take the necessary actions to revise the Public Service Act.<sup>1532</sup>

<sup>1530</sup> ILO. Saint Kitts and Nevis. [Public Service \(Conduct and Ethics of Officers\)](#). May 15, 2014.

<sup>1531</sup> High Court of Justice. [Leon Natta-Nelson v. The Attorney General of Saint Christopher and Nevis](#). March 25, 2019..

<sup>1532</sup> Times Caribbean. April 4, 2019. [St. Kitts-Nevis Team Unity Government commences review of unconstitutional “Douglas Law” Public Service Act of 2011](#); St. Kitts & Nevis Observer. April 4, 2019. [Public Service Act of 2011 may be unconstitutional](#)

### 30. SAINT VINCENT AND THE GRENADINES

1109. An alleged corruption case involving the highest authorities resulted in a series of requests for financial compensation and threats of legal action against members of the opposition and the press.

#### A. Subsequent liability

1110. An alleged case of corruption reportedly involving Prime Minister Ralph Gonsalves led to a series of civil actions against members of the opposition and the press.<sup>1533</sup> According to the information gathered, as of the date of closure of this report, the Prime Minister has not gone to court on any matter.

1111. This Office of the Special Rapporteur recalls that Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

1112. The Inter-American Commission and the Inter-American Court have established that in a democratic society public officials must have a higher threshold of tolerance for criticism, because "they have exposed themselves voluntarily to heightened scrutiny, and because they have an enormous capacity to call information into question through their power to appeal to the public."<sup>1534</sup> In this regard, the Inter-American Commission has said that, "The sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of, and even offensive to those who hold public office or are intimately involved in the formation of public policy."<sup>1535</sup> Therefore, as affirmed in Principle 10 of the Declaration of Principles on Freedom of Expression, "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."

<sup>1533</sup> Searchlight. November 22, 2019. [PM demands apology and compensation from leader of the opposition](#); News 784. August 2, 2019. [LAWSUIT: SVG opposition leader could add to Gonsalves retirement fund](#).

<sup>1534</sup> I/A Court H. R., Case of Kimel v. Argentina. Judgment of May 2, 2008. Serie C No. 177, para. 86-88; I/A Court H. R., Case of Palamara Iribarne v. Chile. Judgment of November 22, 2005. Serie C No. 135, Para. 83; I/A Court H. R., Case of "The Last Temptation of Christ" (Olmedo Bustos et al) v. Chile. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R., Case of IvcherBronstein v. Peru. Judgment of February 6, 2001. Serie C No. 74, para. 152 and 155; I/A Court H. R., Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R., Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Serie C No. 107, para. 125 - 129; I/A Court H. R., Case of Claude Reyes et al v. Chile. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

<sup>1535</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.



## 31. SAINT LUCIA

1113. During 2019, the Office of the Special Rapporteur received complaints about the use of the defamation figure as a strategy of senior public officials to persecute journalists, television media and members of civil society in Saint Lucia.

### A. Subsequent liability

1114. During 2019, the Office of the Special Rapporteur has received complaints about the use of defamation as a strategy to persecute journalists and members of civil society in Saint Lucia. Television host Richard Frederick accused Prime Minister Allen Chastanet of trying to silence him, after the Prime Minister filed a defamation lawsuit against Frederick and television channel *MBC*. In a press release dated November 12, the Prime Minister's communications officer, Nicole McDonald, denied these allegations, explaining that Chastanet went to court to defend her name and reputation following remarks Frederick had made on the program *How can I help you?* According to the information available, at the time of writing this report, the case had not been adjudicated.<sup>1536</sup> As noted in the 2016 annual report of this Office of the Special Rapporteur, Prime Minister Chastanet had already threatened journalists with defamation suits in the past.<sup>1537</sup>

1115. Also, on December 5, 2018, Castries Mayor Peterson Francis filed a defamation lawsuit against *Choice News Now* and Christopher Hunte, host of *Politically Incorrect*, after Hunte accused the mayor of corruption.<sup>1538</sup> On 17 April, the High Court of Justice ruled on certain procedural issues, dismissing both parties' motions.<sup>1539</sup> However, according to the information available, the case has still not been adjudicated on the merits.

1116. This Office recalls that Principle 10 of the IACHR's Declaration of Principles on Freedom of Expression establishes that "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

1117. The IACHR has repeatedly held that the application of criminal law to punish speech about public officials is disproportionate when it concerns protected speech, such as information or speech on matters of public interest, and violates the right to freedom of expression.<sup>1540</sup> It has also stressed that the use of criminal law to punish specially protected speech is not only a direct limitation on freedom of expression, but can also be seen as an indirect method of restricting expression due to its inhibiting effect on the free flow of ideas, opinions, and information that may be critical or offensive. The simple threat of criminal prosecution for critical expressions on matters of public interest can give rise to self-censorship because of its chilling effect. In the words of the IACHR, "Considering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence. [...] use of its coercive powers to restrict speech lends itself to abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions. Laws that criminalize speech which does not incite lawless violence are incompatible with freedom of expression and thought guaranteed in Article 13, and with the fundamental purpose of the American Convention of allowing and protecting the pluralistic, democratic way of life."<sup>1541</sup>

1118. The Office of the Special Rapporteur recalls that criminal law is the most restrictive and severe means of establishing liability for unlawful conduct, particularly when custodial sentences are imposed. Therefore, the use of criminal proceedings must comply with the principle of minimum intervention, due to the nature of criminal law as a last resort. In a democratic society, punitive power can be exercised only to the extent strictly necessary to protect essential legally protected interests from the most serious attacks that might undermine or

<sup>1536</sup> Saint Lucia News Now. November 12, 2019. [Communications Officer denies PM on campaign to silence Richard Frederick](#); Pride News. November 13 2019. [St Lucia Government defends PM's decision to take legal action against television talk show host](#); St. Lucia Times. November 12, 2019. [Communications Officer denies PM on campaign to silence Richard Frederick](#).

<sup>1537</sup> IACHR. [Annual Report 2016. 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. Doc. 22/17. March 15, 2017. Para. 1020.

<sup>1538</sup> St. Lucia Times. December 7, 2018. [Mayor Sues Christopher Hunte, Choice TV for defamation](#); St. Lucia News Online. December 18, 2018. [Castries mayor sues talk show host](#).

<sup>1539</sup> High Court of Justice of Saint Lucia. [Peterson Francis v. Christopher Hunte and Choice News Now](#). April 17, 2019..

<sup>1540</sup> IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015..

<sup>1541</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). Title V Conclusion. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

endanger them. Anything to the contrary leads to the abusive and unnecessary exercise of the punitive power of the State.

1119. In addition, Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information."

## **B. Stigmatizing statements**

1120. According to the information available, on June 11 Economic Development Minister Guy Joseph refused to answer a question from journalist Janeka Simon about a conflict in Parliament. The minister said that he would not answer the question because he did not consider Janeka Simon to be a journalist and accused her of being a politician "posing as an objective journalist."<sup>1542</sup>

1121. The Office of the Special Rapporteur recalls that public officials have a duty to ensure that their statements do not undermine the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations, and should be sensitive to the context in which they speak, so as to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and [dissemination] of their thoughts."<sup>1543</sup>

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<sup>1542</sup>Loop. June 11, 2019. [Joseph refuses questions from reporter he claims is a politician](#); The Voice. June 13, 2019. [Guy Joseph versus politician in disguise?](#); The Star. June 16, 2019. [Did Janeka Simon's "all reporters are political actors" confirm Guy Joseph's assertions?](#); HTS. June 11, 2019. [Guy Joseph accuses news reporter of being a politician](#).

<sup>1543</sup>I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

## 32. SURINAME

1122. According to information received by the Office of the Special Rapporteur, several journalists have pointed out the need for a Law on Access to Public Information as a tool for journalists to do their job, and have denounced that political actors provide erroneous information.

### A. Access to public information

1123. In its 2018 Annual Report, this Office of the Special Rapporteur highlighted the lack of transparency and context of corruption in Suriname.<sup>1544</sup> According to the information available, on May 3, World Press Freedom Day, journalist B-Cham Chandrallal alleged that certain politicians provide misinformation to journalists and called for the enactment of a Public Access to Government Information Act [Wet Openbaarheid van Bestuur]. Carla Boetius, president of the Suriname Journalists Association [Surinaamse Vereniging van Journalisten], said the law is "an important tool for journalists to do their job."<sup>1545</sup> Nita Ramcharan, the Association's founder and former president, expressed concern over the lack of transparency in the country, and said it was an "urgent requirement" for such a law to be passed.<sup>1546</sup> At a press conference on May 16, in response to statements by journalists about limited access to government information, President Desiré Delano Bouterse promised to improve communication between the government and the press.<sup>1547</sup>

1124. In addition, the National Assembly [De Nationale Assemblée] asked the government to implement the Anti-Corruption Law, which was passed in 2017. It noted that the necessary decrees have not yet been issued and that the Anti-Corruption Committee provided for in the law has not yet been established.<sup>1548</sup>

1125. Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, que "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." In keeping with the principle of maximum disclosure, the law should ensure the broadest and most effective access to public information possible, and exceptions should not become the general rule in practice. Furthermore, exceptions should be interpreted narrowly and any doubts should be resolved in favor of transparency and access.

1126. The IACHR has stated that, "The right to access to public information and the principle of transparency of state management, protected by Article 13 of the Convention, have been recognized as one of the main tools in the fight against corruption." In this regard, it has informed the States that "the lack of transparency in public management facilitates corruption and impedes citizen oversight and scrutiny of the press on critical issues such as public procurement and budget management, in particular about expenses in infrastructure and social programs; lobbying activities; conflict of interests and public employment systems, as well as the financing of political parties and political campaigns."<sup>1549</sup>

1127. According to IACHR Resolution 1/18 on Corruption and Human Rights, the IACHR has urged the States to "Strengthen their capacities to proactively guarantee access to public information, essential to the fight against corruption, and strengthen their active transparency and accountability mechanisms in relation to expenditures and investments in infrastructure, financing of election campaigns and transparency in the operations of political parties." It has also recommended creating active transparency obligations for information needed for effective accountability and the fight against corruption, particularly in relation to: (a) systems for public sector vacancy announcements, hiring, employment and salaries; (b) conflict of interest prevention mechanisms; (c) government contracting, budget management and infrastructure investments; (d) lobbying; (e) identity of corporations and individuals involved in private sector corporate governance and corporate ownership; and (f) the financing of election campaigns and the operations of political parties.<sup>1550</sup>

<sup>1544</sup> IACHR. [Annual Report 2018. 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. 30. March 17, 2019. Para. 965.

<sup>1545</sup> DWT Online. May 4, 2019. ['Persvrijheid onder druk'](#);

<sup>1546</sup> DWT Online. November 22, 2019. ['Journalistiek heeft iets te verdedigen'](#); Suriname Herald. November 22, 2019. [Ramcharan: "Suriname is gewoon braak terrein voor journalisten om te werken"](#).

<sup>1547</sup> Suriname Herald. May 21, 2019. [Boutersehelooft verbetering communicatie met pers](#).

<sup>1548</sup> Suriname Herald. March 25, 2019. [DNA vraagt invulling te geven aan Anticorruptiewet; benoeming anticorruptiecommissie blijft op zich wachten..](#)

<sup>1549</sup> IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018

<sup>1550</sup> IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018.

### 33. TRINIDAD AND TOBAGO

1128. The Inter-American Commission on Human Rights (IACHR) and its Special Rapporteur have noted with concern the validity in the legal system of Trinidad and Tobago of the Sedition Law, sanctioned in 1920 by the British colonial government. This Office has received information on the application of said law on different occasions as a way to hinder the exercise for freedom of expression and the work of the press, trade unions and civil society, accusing them of committing “seditious acts” or having “Seditious intentions.”

#### A. Subsequent liability

1129. During 2019, Trinidad and Tobago saw a renewed debate surrounding the validity of the Sedition Act,<sup>1551</sup> which punishes any person or publication for committing “seditious acts” or communicating with “seditious intent.”<sup>1552</sup> According to available information, police appeared at the radio station Jaagrition April 18 with a search warrant to verify the authenticity and obtain a copy of a recording that had been broadcast by the station on April 16, on suspicion of possible sedition. Maharaj, the radio station’s general manager, brought a legal action to challenge the law, claiming that it violates the rights to freedom of thought and expression, freedom of the press, and the expression of political opinions.<sup>1553</sup> This Office observes that, at the time of this writing, the case has not yet been adjudicated.

1130. At the same time, the minority leader of the Tobago House of Representatives, Watson Duke, was arrested on August 26 and charged with violating the Sedition Act. His arrest was prompted by his November 16, 2019 speech to union members at TSTT, the national telecommunications company, regarding possible layoffs at the Water and Sewerage Authority (WASA). Duke had reportedly said that, “the day they come for us in WASA, we are prepared to die and the morgue would be picking up people.” Duke was ultimately released by the Port-of-Spain Magistrates’ Courton August 31 on a bond of TT\$ 250,000 (approximately US\$ 36,000).<sup>1554</sup>

1131. On the anniversary of Trinidad and Tobago’s independence, August 31, the Media Association of Trinidad & Tobago (MATT) called for the repeal of the Sedition Act, claiming that it is used by the State to restrict freedom of expression. According to the MATT, the law defines the term “seditious intent” broadly, “potentially criminalizing journalists, media houses, public interest activists, trade unionists, artists, bloggers and assorted social media commentators.” MATT notes that invoking the Sedition Act in such cases “already serves to intimidate into silence those wishing to express strong opinions on the social, economic and political circumstances of the society.”<sup>1555</sup>

1132. Regarding this matter, Prime Minister Keith Rowley stated on August 28 that the police have taken an oath requiring them to comply with all the laws of the country, no matter how old those laws are.<sup>1556</sup> However, on September 5, at a post-Cabinet news briefing, Rowley stated that he was open to amending the law.<sup>1557</sup> Attorney General Faris Al-Rawi later announced that the law is under review by the Law Revision Committee, but clarified that it should not be repealed.<sup>1558</sup>

1133. This Office of the Special Rapporteur recalls that Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘*desacato* laws,’ restrict freedom of expression and the right to information.”

1134. In their 2010 “Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade,” the Special Rapporteurs of the UN, IACHR, OSCE, and ACHPR, stated that, “The retention of antiquated legal rules—such as sedition laws or rules against publishing false news—which penalise criticism of government,” are illegitimate “mechanisms of government control over the media.”<sup>1559</sup>

<sup>1551</sup> Trinidad & Tobago Guardian. September 2, 2019. [Should free speech boundaries be extended?](#); Trinidad & Tobago Newsday. September 1, 2019. [MATT: State using Sedition Act to constrain free speech](#); Global Voices. September 9, 2019. [Sedition charge against union leader sparks debate about freedom of speech in Trinidad and Tobago](#);

<sup>1552</sup> Ministry of the Attorney General and Legal Affairs. [Sedition Act](#), 1920.

<sup>1553</sup> Trinidad & Tobago Guardian. April 18, 2019. [Sat under investigation for sedition](#); Global Voices. September 9, 2019. [Sedition charge against union leader sparks debate about freedom of speech in Trinidad and Tobago](#); Trinidad & Tobago Guardian. September 17, 2019. [No support for Sat’s sedition challenge](#).

<sup>1554</sup> Global Voices. September 9, 2019. [Sedition charge against union leader sparks debate about freedom of speech in Trinidad and Tobago](#); Trinidad and Tobago Guardian. August 28, 2019. [DPP weighs case against Duke](#); Saturday Express. August 27, 2019. [Under police guard, Duke gets visitors](#).

<sup>1555</sup> Trinidad and Tobago Newsday. September 1, 2019. [MATT: State using Sedition Act to constrain free speech](#); Wired 868. August 31, 2019. [MATT: Sedition Act potentially criminalises journalists, activists, etc; gov’t should review and repeal](#).

<sup>1556</sup> Trinidad & Tobago Guardian. August 31, 2019. [PM suggests repealing all old laws](#); Loop. August 31, 2019. [Rowley on Sedition Act: TTPS must carry out the law as it exists](#).

<sup>1557</sup> Trinidad and Tobago Newsday. September 7, 2019. [Ramesh: Govt must review sedition act](#); Trinidad & Tobago Guardian. September 5, 2019. [Rowley “open” to amending the Sedition Act](#).

<sup>1558</sup> Trinidad & Tobago Guardian. September 17, 2019. [Govt begins review of Sedition Act](#); Global Voices. September 30, 2019. [Gobierno de Trinidad y Tobago reconsiderará ley de sedición](#).

<sup>1559</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

1135. Additionally, in their 2015 Joint declaration on freedom of expression and responses to conflict situations, de 2015, the Special Rapporteurs of the UN, IACHR, OSCE, and ACHPR said that, “All criminal restrictions on content – including those relating to hate speech, national security, public order and terrorism/extremism – should conform strictly to international standards, including by not providing special protection to officials and by not employing vague or unduly broad terms.”

## B. Access to public information

1136. The government of Trinidad and Tobago proposed an amendment to the Freedom of Information Act (FOIA) on June 7, extending the deadline for responding to requests for information from 30 to 90 days. In response, a number of organizations held a forum on June 15, where they said that such an amendment would frustrate the work of the free press and prevent the public from “accessing information in a timely manner.”<sup>1560</sup>The government ultimately withdrew the proposed FOIA amendment on June 17.<sup>1561</sup>

1137. Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” In keeping with the principle of maximum disclosure, the law should ensure the broadest and most effective access to public information possible, and exceptions should not become the general rule in practice. Furthermore, exceptions should be interpreted narrowly and any doubts should be resolved in favor of transparency and access.

## C. Social protest

1138. The Office of the Special Rapporteur received information about the arrest of two protesters at Scarborough Market on June 21, during a demonstration calling for Keith Rowley’s administration to step down. According to available information, the two people were released on bond. The police chief justified the arrests by stating that the necessary permits for the demonstration had not been obtained.<sup>1562</sup>

1139. Also, on October 18, activist Nazma Muller was arrested while demonstrating outside Parliament, calling for the enactment of medical marijuana legislation. Muller was reportedly arrested under section 49 of the Summary Offences Act for the use of “violent language” and “breach of the peace.”<sup>1563</sup>The activist was released on bond that night.

1140. The IACHR has reiterated that social protest is a fundamental tool for the work of defending human rights, and essential for expressing political and social criticism of the activities of public authorities. The Commission has stated that, “It is, in principle, inadmissible to punish demonstrations in public places as such when they are held in the framework of the rights to freedom of expression and of assembly”<sup>1564</sup>and that “The exercise of the right to freedom of assembly through social protest must not be subjected to a permit from the authorities or to excessive requirements that prevent it from happening.”<sup>1565</sup>

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Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. February 3, 2010. [Tenth anniversary joint declaration: ten key challenges to freedom of expression in the next decade.](#)

<sup>1560</sup> Global Voices. June 19, 2019. [Public pressure forces Trinidad & Tobago government to drop amendment to Freedom of Information Act](#); Trinidad & Tobago Guardian. June 11, 2019. [Govt backs down on FOIA changes](#); Trinidad & Tobago Newsday. June 9, 2019. [Ramesh for forum on freedom of information.](#)

<sup>1561</sup> Global Voices. June 19, 2019. [Public pressure forces Trinidad & Tobago government to drop amendment to Freedom of Information Act](#); Trinidad & Tobago Guardian. June 11, 2019. [Govt backs down on FOIA changes](#); Trinidad & Tobago Newsday. 18 de junio. [Govt removes FOIA clause](#); Stabroek News. June 19, 2019. [Trinidad gov’t backs down on freedom of info changes.](#)

<sup>1562</sup> Loop. June 23, 2019. [Two arrested in Tobago during protest](#); Trinidad & Tobago Guardian. June 22, 2019. [Two arrested at Kia’s Tobago protest](#); Loop. June 26, 2019. [Top Cop: Protests permitted in T&T once within the law.](#)

<sup>1563</sup> Global Voices. October 25, 2019. [Cry of “Free the \[bleeping\] weed” leads to arrest of Trinidadian cannabis advocate](#); Trinidad & Tobago Newsday. October 19, 2019. [Marijuana activist charged for obscene language outside Parliament](#); Trinidad & Tobago Guardian. October 20, 2019. [Ganja activist on obscene language charge.](#)

<sup>1564</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>1565</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. 139.

## 34. URUGUAY

1141. The Office of the Special Rapporteur noted that, within the framework of the presidential and parliamentary elections in Uruguay, complaints were made regarding the dissemination of deliberate disinformation campaigns.<sup>1566</sup> Along these lines, around 70 media, institutions and civil society organizations launched an information verification program called Verificado.uy, which played a leading role in the verification of information.

1142. Likewise, the Office of the Special Rapporteur has taken note of the approval of the decree that approves the Open Government Action Plan, which would propose reforms to Law No. 18.381 on the Right to Access to Public Information (UAIP) to update the obligations of transparency of government and non-state public agencies.

1143. This Office also highlights the progress regarding several judicial decisions that protected freedom of expression and ordered to file criminal complaints for and a right of reply requested by political actors against various media outlets within the framework of a debate on the participation of these leaders in the military dictatorship (1973-1985).

### A. Progress

1144. The Office of the Special Rapporteur has received information on progress in jurisprudential matters. For example, on January 7, the presidency of the Republic of Uruguay issued the decree approving the Open Government Action Plan, which would propose reforms to Law No. 18.381 of Right of Access to Public Information, through a participatory process between public, private institutions, academia, and civil society<sup>1567</sup>. The Action Plan indicates that the Unit for Access to Public Information (UAIP) and civil society have detected “difficulties that hinder the exercise of the law, which are directly related to the scope of the norm, exceptions, and institutional design of the control body, and that must be analyzed in a participatory and consensual way”<sup>1568</sup>.

1145. On May 22, Judge Carlos Negro issued a resolution ordering to archive the criminal defamation complaint that the Commander in Chief of the Army, General Claudio Feola<sup>1569</sup>, initiated on May 11 against *Sarandí* Radio journalist Gabriel Pereyra, due to the opinion issued by the communicator about the general's statements regarding those arrested and disappeared during the military dictatorship<sup>1570</sup>. In this regard, the Prosecutor's Office understood that Pereyra's comments are framed within freedom of the press and referred to a topic of “obvious public interest”<sup>1571</sup>.

1146. The Inter-American Commission on Human Rights (IACHR) and its Office of the Special Rapporteur have taken note of the “Seminar on the Impacts of the Friendly Settlement Procedure before the IACHR in the national regulatory development of Uruguay”<sup>1572</sup>. On June 11, the Uruguayan State sent information on compliance with the friendly settlement and the approval by the IACHR, which would comply with one of the points of the friendly settlement agreement between the government and journalist David Rabinovich, who filed a petition because his right to access public information was affected<sup>1573</sup>. This Office recalls that, Rabinovich's case was key in the process to pass a Law on Access to Public Information. In October 2007, the IACHR received a petition presented by Rabinovich, with the support of the Uruguayan Press Association (APU) and the Institute of Legal Studies of Uruguay (IELSUR), arguing that his freedom of expression and access to public information had been violated. Rabinovich had requested, as a journalist, access to the minutes and transcripts of recordings of a session of the Budget Commission of the San José Departmental Board. The information was not provided<sup>1574</sup>.

1147. On November 4, the Criminal Court of Appeals resolved favorably the appeal made by the newspaper *La República*, *Montevideo Portal*, and *Radio Uruguay*, against the decision of the Judge of Criminal First Instance, Dolores Sánchez, on a right of reply requested by the security adviser of the *Cabildo Abierto* party, Antonio Romanelli, who accused the newspaper for the dissemination of a public letter from 41 former political

<sup>1566</sup> Inter American Press Association (IAPA). [Report to the 75th General Assembly of the IAPA. Uruguay](#). October 3, 2019. Verificado Uruguay. December 4, 2019. [Verificado.uy, primera fase culminada](#). El país. June 21, 2019. [Las 'fake news' ensucian la campaña electoral en Uruguay](#).

<sup>1567</sup> Dirección Nacional de Impresiones y Publicaciones Oficiales. January 24, 2019. Decreto N° 1/19. Available at: <https://www.impo.com.uy/bases/decretos-originales/1-2019>

<sup>1568</sup> Centro de Archivos y Acceso a la Información. May 3, 2019. [Cinco años de amenazas, obstáculos y juicios a periodistas](#).

<sup>1569</sup> IFEX. May 14, 2019. [Uruguay: Jefe del Ejército denuncia por difamación a periodista](#).

<sup>1570</sup> Fiscalía General de la Nación. Comunicado. May 23, 2019. Available at: <http://www.fiscalia.gub.uy/innovaportal/file/8145/1/feola-pereira-definitivo.pdf>; IFEX. May 14, 2019. [Uruguay: Jefe del Ejército denuncia por difamación a periodista](#)

<sup>1571</sup> Centro de Archivos y Acceso a la Información. May 24, 2019. [CAinfo saluda decisión de fiscalía de archivar juicio contra periodista](#); La diaria. May 23, 2019. [Archivan denuncia de Feola contra Gabriel Pereyra](#). Centro de Archivos y Acceso a la Información. May 14, 2019. [CAinfo repudia denuncia penal por difamación presentada por el Jefe del Ejército contra periodista](#).

<sup>1572</sup> Centro de Archivos y Acceso a la Información. August 27, 2019. [La CIDH homologó acuerdo entre el Estado Uruguayo y el periodista Rabinovich sobre acceso a la información pública](#).

<sup>1573</sup> IACHR. Special Rapporteurship for Freedom of Expression. June 12, 2019. [Press Release 148/19 IACHR Welcomes Progress Made by Uruguay to Comply with Friendly Settlement Concerning Petition 1227-07, David Rabinovich](#).

<sup>1574</sup> IACHR. July 16, 2019. [Report No. 103/19 Petition 1224-07 Friendly Settlement Report David Rabinovich Uruguay](#).

prisoners, in which they indicated the treatment they suffered when he was a guard in the Libertad prison between 1978 and 1979<sup>1575</sup>. According to the information available, the Court revoked the first instance judgment and gave the reason to the defendant media, arguing that in the case there are no grievances, inaccuracies, falsehoods, or contempt, nor was the intention to harm the complainant in his person or in his activity<sup>1576</sup>.

### **B. Attacks, threats, and intimidation against journalists and the media**

1148. On January 3, the *Canal 10* journalist, Willam Daliuto, reported having been blocked from covering an activity convened on violence against women, at the Valizas bus station (Rocha)<sup>1577</sup>. On March 12, the *Cerro Largo* journalist, Silvia Techera, would have reported labor harassment and verbal aggressions by the coordinator of the Melo Carnival organization linked to various activities of the Departmental Administration, Juan Pimental<sup>1578</sup>.

1149. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[t]he murder, kidnapping, intimidation of, and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation”.

### **C. Legal Reforms**

1150. The Office of the Special Rapporteur expresses its concern that the Uruguayan Senate once again rejected the bill that regulates government advertising, which has been presented as a complex issue to resolve in the country. For their part, civil society organizations have condemned the fact, since they expressed that it would be appropriate that in Uruguay there is a legal framework that regulates the production, planning, contracting, distribution, and allocation of government advertising so that in this way the country can meet international standards on freedom of expression. Likewise, the initiative seeks to eliminate the discrimination suffered by the media in the interior of the country that would receive a very small percentage of government advertising<sup>1579</sup>.

1151. Principle 13 of the Declaration of Principles states that “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising, and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The media has the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.

<sup>1575</sup> Centro de Archivos y Acceso a la Información. October 1, 2019. [CAinfo expresa preocupación por el fallo judicial que atenta contra la libertad de expresión](#); Sudestada. September 30, 2019. [Medios apelan fallo judicial que hizo lugar a derecho de réplica de asesor de Manini](#)

<sup>1576</sup> Montevideo Portal. November 4, 2019. [Tribunal de Apelaciones revocó sentencia y dio razón a medios denunciados por Romanelli](#)

<sup>1577</sup> CAinfo. IFEX. PADF. May 2019. [Periodismo y libertad de expresión en Uruguay Quinto Informe de Monitoreo de Amenazas](#). Montevideo Portal. May 3, 2019. [En un año hubo 18 amenazas a la libertad de expresión de los periodistas en Uruguay](#).

<sup>1578</sup> Diario Uruguay. March 14, 2019. [La periodista Silvia Techera fue hostigada en el carnaval de Melo y la APU no calla ante inadmisibles acoso laboral](#). CAinfo. IFEX. PADF. Mayo 2019. [Periodismo y libertad de expresión en Uruguay Quinto Informe de Monitoreo de Amenazas](#).

<sup>1579</sup> CAinfo. September 10, 2019. [CAinfo lamenta que Senado no aprobó proyecto sobre publicidad oficial](#). La Diaria. September 11, 2019. [Proyecto sobre publicidad oficial no fue aprobado en el Senado](#).

## 35. VENEZUELA

1152. Throughout 2019, the serious violations of the right to freedom of expression in Venezuela continued to deepen, in the context of an intensification of the political and social conflict. Violence against journalists and media workers, exercised in many cases by members of the security forces themselves, increased during events of public interest, such as protests, political acts or legislative debates. Numerous journalists were arbitrarily detained by members of the Police or intelligence services while carrying out their work or covering demonstrations, and were repeatedly forced to erase journalistic material. According to the information received by the Office of the Special Rapporteur, the police and military security forces would have repressed the demonstrations by using tear gas, water cannons and royal bullets to disperse the protesters, which would have resulted in hundreds of people wounded, detained, and dozens of deaths.

1153. In addition, a pattern of censorship was observed in Venezuela, through the systematic blocking of websites of news media, social networks or streaming services ordered by state authorities and executed by the public Internet provider, CANTV. In addition, there were recurring failures in internet connectivity due to damage to the telecommunications infrastructure and interruptions in the electric power service. In addition, the National Telecommunications Commission (Conatel) ordered the blocking of international news channels of television services for subscribers, ordered the closure of stations and ordered the suspension of the transmission of certain programs.

1154. The Office of the Special Rapporteur received information on several cases of arbitrary detentions, and criminal proceedings carried out against journalists in alleged reprisal for their informative work, in many cases without the guarantees of due process. Arbitrary detentions and the subsequent application of vague, ambiguous and disproportionate criminal regulations that restrict freedom of expression to silence opinions or critical information on the political and economic situation facing the country, both against journalists, State officials, politicians, opponents, or citizens who express themselves through social networks.

### A. Attacks, threats, and intimidation against journalists and the media

1155. Throughout 2019, the Office of the Special Rapporteur received information on numerous acts of physical aggression, threats<sup>1580</sup>, detentions, robberies or confiscation of communicators' work equipment, perpetrated by security forces, groups of armed civilians, or private individuals, with the intention of silencing journalists, intimidating them, or limiting their coverage in various contexts<sup>1581</sup>.

1156. On May 17, journalist Pableysa Ostos, an *AFP* correspondent, was reportedly intimidated by a security officer while collecting information about the gas shortage in Ciudad Guayana<sup>1582</sup>. On May 24, an official of the Merida State Police would have phoned and verbally harassed the director of the *Mérida Digital* information portal, Judith Vega, for having published information about the escape of prisoners, which he understood to be false<sup>1583</sup>. On June 25, a sympathizer of the ruling party would have attacked the cameraman of the *Venezolanos Por la Información* digital media, on the outskirts of the Federal Legislative Palace, during a session of the National Assembly<sup>1584</sup>.

1157. In addition, numerous attacks and harassment against journalists during the coverage of social protests would have been recorded. For example, journalist Dayana Krays, of *Venemundo Web* and *Caraota Digital*, was reportedly threatened with firearms by groups of armed civilians while covering protests in Caracas on March 31<sup>1585</sup>. Journalists Raily Luján and Gregory Jaimes and the graphic reporter Juan Peraza would have been harassed by armed civilians when they were covering a protest of oil workers who went on a hunger strike in demand of payment of wages. Journalists of the *Crónica Uno* portal, Carmen Inojosa and Luis Morillo, were also reportedly harassed<sup>1586</sup>. Reporters Marinelid Marcano, a correspondent for *El Pitazo* in Anzoátegui state, and Virginia Serrano, of *El Tigrense* newspaper, would have been intimidated by an unknown individual, who would have recorded and taken photographs of them while they were covering an opposition rally<sup>1587</sup>. On May 24, reporters Freddy Villamizar and Luzfrandy Contreras, of *Noticias TRT*, and Manuel Cardozo, of *Ecos del Torbes*,

<sup>1580</sup> Activist and president of the organization Control Ciudadano, Rocío San Miguel, reported on Twitter that she has received threats from strangers through phone calls and text messages. Espacio Público. August 13, 2019. [Amenazan vía telefónica a Rocío San Miguel](#); El Impulso. August 15, 2019. [Nuevo ciclo de amenazas recibe la doctora Rocío San Miguel #15Ago](#).

<sup>1581</sup> In September two press teams were prevented from covering hospital centers in the cities of Maracaibo and Barquisimeto. IPYS Venezuela. October 7, 2019. [Balance Semanal IPYSve | Agresiones y hechos intimidatorios fueron el patrón de la censura en septiembre](#).

<sup>1582</sup> Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [May 18, 2019](#); Espacio Público. May 18, 2019. [Intimidación a periodista Pableysa Ostos en Puerto Ordaz](#).

<sup>1583</sup> Espacio Público. May 24, 2019. [Funcionario policial hostiga a periodista Judith Vega](#).

<sup>1584</sup> Espacio Público. June 25, 2019. [Simpatizante de Nicolás Maduro ataca a periodista en la AN](#).

<sup>1585</sup> Twitter account of Dayana Krays (@Dayanakrays). [March 31, 2019](#).

<sup>1586</sup> Tal Cual. June 20, 2019. [Colectivos agreden a periodistas durante protesta de extrabajadores petroleros](#); Espacio Público. June 21, 2019. [Equipo de La Patilla fue hostigado por civiles armados durante una protesta](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [June 20, 2019](#).

<sup>1587</sup> El Pitazo. May 11, 2019. [Oriente y Guayana protestaron con poca participación](#); Espacio Público. May 14, 2019. [Intimidación a dos periodistas en Anzoátegui](#).



would have been attacked with tear gas and pellets thrown by Táchira Police officials, while covering a protest over the shortage of Gasoline in the region<sup>1588</sup>. On September 21, Jhonathan Bello, cameraman of the digital television channel *Venezolanos por la Información* (VPITV), was reportedly injured by a rock thrown by groups of civilians who attacked a march of the president of the National Assembly, Juan Guaidó, on San Martín de Caracas Avenue<sup>1589</sup>.

1158. The Office of the Special Rapporteur learned that the practice of arbitrarily detaining journalists while carrying out their informative work in social demonstrations or other events of public interest has continued. On several occasions, reporters were released after members of the security forces erased the material recorded or confiscated the work equipment<sup>1590</sup>. For example, on May 16, journalists Mayker Iriarte, Mariana de Barros, and Héctor Sánchez, of *Vivo Play* and *TV Venezuela*, Maoly Aldana, of *Venevisión*, and their cameraman and technician team, and Romel Gorosabel, producer of *Caracol TV*, would have been detained by officials of the Bolivarian National Intelligence Service [*Servicio Bolivariano de Inteligencia Nacional*] (Sebin) when they covered the news of the disappearance of Commissioner Iván Simonovis, in Caracas. The troops would have held them for more than three hours, during which they remained incommunicado and without their identity documents<sup>1591</sup>. On June 13, officials of the Bolivarian National Guard [*Guardia Nacional Bolivariana*] (GNB) would have held journalist Jhonattam Petit for a few minutes while he was covering a protest by relatives of a group of people who were missing at sea, in Falcon state. Officials would have released him after confiscating his cellphone, with images of the protest<sup>1592</sup>. Photographer Ronald Peña and driver Félix Morais, from *El Pitazo*, were reportedly arrested by Sebin officials when they were taking photographs outside the Petróleos de Venezuela headquarters in Caracas. Officials would have released them after deleting the material they had recorded<sup>1593</sup>. Officials of the Anzoátegui Regional Police would have detained journalist José Félix Millán, of *Radio Fe y Alegría*, and confiscated his cellphone when he was reporting on the shortage of gasoline in the region<sup>1594</sup>. The reporter of the channel *Venezolanos por la Información* (VPITV), Mariángel Moro, and her cameraman, would have been threatened with firearms by police officers when they covered the care of deceased or injured prisoners at the Jesús María Casal Hospital, after a riot occurred in the police dungeons of the Páez municipality, in Acarigua, Portuguesa state. Due to the intimidation, the reporters had to pull out from the place and erase the material they had recorded<sup>1595</sup>. On August 14, Colombian journalist Paula Thomas would have been detained for two hours by GNB officials, while she was taking photographs in the border area between Colombia and Venezuela<sup>1596</sup>.

1159. On August 28, journalists from *Globovisión*, *Venezolanos por la Información* (VPITV), and *Venevisión* were evicted by officials of the Bolivarian National Guard (GNB) when they were covering a protest of carriers at the headquarters of Petróleos de Venezuela (PDVSA), in Maturín, Monagas state. Reporter Ana Rodríguez and cameraman Edgar Hernández, from VPITV, were also reportedly threatened by GNB officials<sup>1597</sup>. On August 31, the security team of the opposition leader and self-proclaimed president of Venezuela, Juan Guaidó, would have

<sup>1588</sup>Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [May 24, 2019](#); 800 Noticias. May 24, 2019. [Varios periodistas heridos durante protesta por gasolina en Táchira](#).

<sup>1589</sup> Twitter account of VPITV (@VPITV). [September 21, 2019](#); IPYS. October 7, 2019. [Balance Semanal IPYSve | Agresiones y hechos intimidatorios fueron el patrón de la censura en septiembre](#).

<sup>1590</sup>On August 15, journalist Lisbeth Miquilena was reportedly detained for two hours by Bolivarian National Guard (GNB) members while taking photographs in a gym in the city of Tubores, Nueva Esparta state. The police reportedly forced her to erase the registered material. IPYS Venezuela. August 27, 2019. [Balance Semanal](#); Espacio Público. August 15, 2019. [GNB detiene a periodista por fotografiar un gimnasio vertical](#). On October 4, three individuals identified with caps of the Bolivarian National Intelligence Service (Sebin) reportedly intercepted the vehicle of the New Digital Press team and forced the reporters to get off, delete the recorded photographs and leave the area, in Puerto Ordaz, Bolívar state. Espacio Público. October 4, 2019. [Funcionarios atacan e intimidan a equipo reportero de Nueva Prensa Digital](#). In October, security personnel reportedly intimidated journalist Luisángela Delgado and photojournalist Ángel García, from Diario Primicia, when they intended to cover a traffic accident involving officers of the Special Actions Forces (Faes). Several armed officials reportedly surrounded the reporters and forced them to delete the material they had registered. Espacio Público. October 4, 2019. [Funcionarios intimidan a periodistas del Diario Primicia](#); Crítica. October 7, 2019. [Funcionarios del Faes intimidan a periodistas del Diario Primicia](#).

<sup>1591</sup> Efecto Cocuyo. May 16, 2019. [Liberan a periodistas detenidos frente a la residencia de Simonovis](#); Infobae. May 16, 2019. [El servicio de inteligencia chavista retuvo durante más de 3 horas a 5 periodistas en las puertas de la casa del preso político liberado por Juan Guaidó Iván Simonovis](#).

<sup>1592</sup>Tal Cual. June 13, 2019. [Detienen al diputado Eliezer Sirit y al periodista Jhonattam Petit en Falcón](#); Caraota Digital. June 14, 2019. [GN le quitó celular a periodista que cubría protesta de familiares de los 32 desaparecidos en alta mar](#); Espacio Público. June 17, 2019. [GNB retiene a periodista en el estado Falcón](#).

<sup>1593</sup>Espacio Público. June 12, 2019. [Sebin detiene al equipo de El Pitazo en Caracas](#).

<sup>1594</sup>El Universal. June 15, 2019. [CNP Anzoátegui denuncia agresiones de la policía contra trabajadores de la prensa](#); Espacio Público. June 14, 2019. [Funcionarios de PoliAnzoátegui detienen y roban a periodista](#);

<sup>1595</sup>800 Noticias. May 24, 2019. [Policías de Portuguesa amenazaron a equipo de VPI](#); Noticiero Digital. May 24, 2019. [Policía de Acarigua amenazó a periodista para que borrara videos](#).

<sup>1596</sup>Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [August 14, 2019](#); 2001. August 14, 2019. [GN liberó a periodista colombiana detenida en la frontera mientras tomaba fotos](#); IPYS Venezuela. August 27, 2019. [Balance Semanal IPYSve | Desconexión en telecomunicaciones venezolanas afecta flujo informativo](#).

<sup>1597</sup>El Nacional. August 28, 2019. [GNB amenazó a periodistas de VPI durante protesta de trabajadores de Pdvs](#); EsCaracas. August 28, 2019. [Lo que hizo la GNB contra periodistas de VPI durante protesta de trabajadores de Pdvs](#); Espacio Público. August 29, 2019. [GNB desaloja a periodistas durante una protesta en Pdvs](#).

assaulted several journalists covering the route he was taking in the Mercado Libre of Maracay, Aragua state<sup>1598</sup>. On September 23, a group of armed civilians would have threatened the workers of *Radio Mundial* 860 AM and *Radiodifusora Cultural del Táchira* 1190 AM in San Cristóbal, Táchira state. Agents of the National Police and of the Táchira state would have appeared at the station after the radio director denounced the situation on the air. *Radio Mundial* had been out of the air for a month after vandalism groups stole their broadcast equipment in early August<sup>1599</sup>.

1160. La Relatoría Especial reitera que el principio 9 de la Declaración de Principios sobre Libertad de Expresión de la CIDH señala que “[e]l asesinato, secuestro, intimidación, amenaza a los comunicadores sociales, así como la destrucción material de los medios de comunicación, viola los derechos fundamentales de las personas y coarta severamente la libertad de expresión. Es deber de los Estados prevenir e investigar estos hechos, sancionar a sus autores y asegurar a las víctimas una reparación adecuada”.

## B. Arbitrary detentions and judicial harassment

1161. The Office of the Special Rapporteur received information on several cases of arbitrary detentions and criminal proceedings carried out against journalists in alleged reprisal for their informative work. On February 25, *Univisión* journalist Jorge Ramos and five other members of his work team were arrested in the presidential palace of Miraflores. They were subsequently expelled from Caracas. In addition, their work equipment would have been confiscated. The team was at the headquarters of the Presidency to interview President Nicolás Maduro, but during the interview the president reportedly got angry by the questions asked, which were linked to the humanitarian crisis that the country is undergoing and the lack of democratic guarantees. Due to this, the interview was reportedly interrupted, and the reporters would have been detained, interrogated, and then expelled<sup>1600</sup>.

1162. American journalist Cody Weddle, who collaborates with the *Local 10* television channel in Miami, and the Venezuelan guide who helped him in his work, were reportedly detained on March 6 by counterintelligence agents, who would have raided their homes in Caracas. The agents would have filed a court order issued by a military court and seized Weddle work equipment. Both would have been released hours later<sup>1601</sup>.

1163. On March 12, after spending 24 hours in detention, journalist Luis Carlos Díaz, who works for the *Unión Radio* station in Caracas and produces journalistic content on social networks, was released. He would have been detained on March 11 by intelligence agents, who would have subsequently searched his home and confiscated his computers and phones. Díaz would have been accused of “instigation to commit crimes” and would be prevented from leaving the country<sup>1602</sup>. On March 29, the IACHR granted precautionary measures to Díaz and his family and urged the Venezuelan State to take the necessary measures to ensure that he can carry out his journalistic activities without fear of being a victim of intimidation or threats<sup>1603</sup>. At the end of November, the Prosecutor’s Office had not yet presented evidence supporting a formal accusation against Díaz, for which his defense would have requested the conclusion of the investigation<sup>1604</sup>. On December 9, a court decided to extend the term for the investigation of the Prosecutor’s Office for one year<sup>1605</sup>.

1164. On March 30, journalist Danilo Alberto Gil from *NotiRedVe* media was reportedly detained by police officers from Lagunillas, municipality of Zulia state, when he was covering an opposition protest. At the time of the arrest, Gil was recording images of an alleged police attack against the protesters and an attempt by police officers to arrest the opposition politician and member of the Venezuelan National Assembly Juan Carlos Velasco. Gil would have been released on April 1 after being accused of resistance to authority and would have been prevented from leaving the country<sup>1606</sup>.

<sup>1598</sup> Twitter account of Colegio Nacional de Periodistas de Aragua (@cnparagua). [August 31, 2019](#); Diario de Los Andes. September 3, 2019. [Equipo de seguridad del diputado Guaidó agredió a ocho periodistas en el estado Aragua](#); VTV. September 1, 2019. [Periodista de Aragua agredida por equipo de seguridad desmiente a Guaidó](#)

<sup>1599</sup> Twitter account of diario La Nación (@lanacionweb). [September 2, 2019](#); Efecto Cocuyo. September 23, 2019. [Civiles armados atacan torre de transmisión de radios en Táchira](#); Espacio Público. September 23, 2019. [Civiles armados amenazaron al personal de dos emisoras de radio en Táchira](#);

<sup>1600</sup> Twitter account of Univision Noticias (@UniNoticias). [February 25, 2019](#); Noticias Telemundo. February 26, 2019. [Detienen y deportan a periodista de Univisión en Venezuela](#); El País. February 26, 2019. [Venezuela retiene en Miraflores al periodista Jorge Ramos y le requisita su entrevista a Maduro](#); Committee to Protect Journalists (CPJ). [Venezuelan authorities must return equipment to Jorge Ramos, Univision crew](#);

<sup>1601</sup> Committee to Protect Journalists (CPJ). March 6, 2019. [Venezuelan counterintelligence agents detain U.S. freelancer, Venezuelan fixer](#); Local 10. March 6, 2019. [Venezuelan authorities release Local 10 reporter Cody Weddle](#); CNN. March 6, 2019. [Liberan al periodista estadounidense Cody Weddle, quien habría sido detenido por las fuerzas de seguridad venezolanas](#); EFE. March 6, 2019. [Liberan a Cody Weddle, periodista de canal de EE.UU. detenido en Venezuela](#);

<sup>1602</sup> BBC. March 13, 2019. [Luis Carlos Díaz: decretan libertad condicional al periodista venezolano detenido en Caracas por el Sebin](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [March 12, 2019](#); El Universal. March 12, 2019. [Luis Carlos Díaz fue liberado tras ser imputado por “instigación a delinquir”](#); Committee to Protect Journalists (CPJ). April 5, 2019. [Journalist Luis Carlos Díaz released from detention, banned from leaving Venezuela](#);

<sup>1603</sup> IACHR. [Medidas cautelares No. 250-19. Luis Carlos Díaz y su núcleo familiar respecto de Venezuela](#). March 29, 2019.

<sup>1604</sup> IPYS. November 21, 2019. [Exigen a la Fiscalía culminar investigación contra Luis Carlos Díaz por falta de pruebas](#)

<sup>1605</sup> Espacio Público. December 9, 2019. [Luis Carlos Díaz tendrá un año más bajo injusta investigación](#)

<sup>1606</sup> Cuenta de Twiter de Espacio Público (@espaciopublico). [1 de abril de 2019](#); Cuenta de Twitter del Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [30 de marzo de 2019](#) y [1 de abril de 2019](#); Cuenta de Twitter de NotiRedVe (@notiredve). [30 de](#)

1165. On May 21, the organizations Committee to Protect Journalists (CPJ) and Human Rights Watch called out Venezuelan authorities for the release of photojournalist Jesús Medina, who would reportedly be arbitrarily detained since August 2018 due to his journalistic work. Agents of the Bolivarian National Intelligence Service (Sebin) would have arrested Medina when he was working, together with a team of journalists, on a research project at the Caracas hospital. On August 31, Medina would have been charged with several crimes, including those of hate speech, illegal profit in acts of public administration, and association to commit crimes. Under Venezuelan law, Medina's preliminary hearing - in which the Public Ministry must justify the formal charges - should have been held within the first 45 days, international organizations denounced. However, the hearing would have been postponed eight times and would still be pending. According to the director for the Americas of Human Rights Watch, José Miguel Vivanco, "Jesus Medina's detention coincides with a pattern of arbitrary detentions and harassment of opponents, critics, and anyone who dares to tell the truth about what is happening in Venezuela"<sup>1607</sup>. On September 18, the Office of the Special Rapporteur expressed in a statement its concern about the situation in Medina and its prolonged stay in prison without being subjected to trial<sup>1608</sup>.

1166. Journalist Braulio Jatar would have been released on July 8 from his house arrest, upon receiving the official notice of a criminal court in Nueva Esparta. Jatar would have been prosecuted for the crime of money laundering. Although his arrest ended, the Court would have banned him from leaving the state of Nueva Esparta and ordered him to appear before the court every 15 days. Local and international organizations say that the process against the journalist is a reprisal for his coverage of the protests in Venezuela. Jatar was arrested in Margarita Island in 2016 by Venezuelan police after covering and photographing protests against Maduro for his news media *Reporte Confidencial*. After the arrest he was accused of money laundering, although for the moment he has not been prosecuted. The United Nations High Commissioner for Human Rights, Michelle Bachelet, had requested the release of Jatar and other notorious prisoners during her June visit to Venezuela<sup>1609</sup>.

1167. On September 4, six employees of the Venezuelan Corporation of Military Industries [*Compañía Anónima Venezolana de Industrias Militares*] (Cavim) were arrested and interrogated by officials of the General Directorate of Military Counterintelligence [*Dirección General de Contrainteligencia Militar*] (Dgcim) and the Bolivarian National Intelligence Service (Sebin) after they held a protest and report low wages and poor working conditions in the media<sup>1610</sup>.

1168. The graphic worker José Guillermo Mendoza, of the NGO Provea, was reportedly arrested on September 19 by members of the Bolivarian National Police (PNB) allegedly because he was carrying printed material from the organization that the agents valued as "subversive." On September 20, he was released after spending 18 hours in detention; The material would have been returned<sup>1611</sup>.

1169. During the search of the Entorno Digital headquarters, journalists covering the operation were also arrested<sup>1612</sup>. The correspondent Andrea Espinoza, the technicians Jhonatan Bello and Dangert Zorrilla, and the driver Jonathan Azuaje, of the digital television VPI, and the journalists Miguel Dasilva and Roger Castillo, of the newspaper Caraota Digital, were arrested by DGCIM troops, and released hours later, although his work teams and personal cell phones would have been confiscated.<sup>1613</sup>

1170. The Office of the Special Rapporteur reiterates that principle 9 of the IACHR's Declaration of Principles on Freedom of Expression establishes that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." In addition, the State "has the duty to ensure that journalists and media workers reporting on public demonstrations are not

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[marzo de 2019](#); Comité para la Protección de Periodistas (CPJ). 4 de abril de 2019. [La Policía venezolana detiene al periodista Danilo Gil mientras cubría protestas y lo acusa de resistencia a la autoridad](#).

<sup>1607</sup>Comité para la Protección de Periodistas (CPJ). 21 de mayo de 2019. [El CPJ y Human Rights Watch instan a Venezuela a liberar a Jesús Medina](#); Cuenta de Twitter del Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [31 de agosto de 2018](#).

<sup>1608</sup>IACHR. Office of The Special Rapporteur for Freedom of Expression. 18 de septiembre de 2019. [Relatoría Especial condena que comunicadores Pedro Jaimes y Jesús Medina hayan cumplido un año en prisión en Venezuela, sin ser sometidos a juicio](#)

<sup>1609</sup>Comité para la Protección de Periodistas (CPJ). 8 de julio de 2019. [El periodista venezolano Braulio Jatar recibe libertad condicional y se le prohíbe salir del país](#); Caraota Digital. 8 de julio de 2019. ["Nos sacan de las jaulas y nos tiran una cadena al cuello": Braulio Jatar tras excarcelación](#); BioBio Chile. 5 de julio de 2019. [Bachelet anuncia que Maduro liberó a periodista chileno-venezolano detenido desde 2016](#); Cuenta de Twitter de Ana Julia Jatar (@anajuljatar). [8 de julio de 2019](#).

<sup>1610</sup>El Carabobo. 4 de septiembre de 2019. [Trabajadores de Cavim detenidos por funcionarios del Sebin en Maracay](#); Espacio Público. 12 de septiembre de 2019. [Sebin detuvo a seis trabajadores de Cavim que exigían mejoras salariales](#).

<sup>1611</sup>Cuenta de Twitter de Provea (@Provea). [20 de septiembre de 2019](#); El Estímulo. 20 de septiembre de 2019. [Liberan a trabajador de Provea detenido por imprimir "material subversivo"](#); Noticiero Venevisión. 20 de septiembre de 2019. [Tras casi 24 horas detenido fue liberado José Guillermo Mendoza](#); Crónica Uno. 20 de septiembre de 2019. [Liberado trabajador que había sido detenido cuando portaba material gráfico de Provea](#).

<sup>1612</sup>Cuenta de Twitter de Hernán Porras Molina (@HernanPorras). [6 de diciembre de 2019](#); Entorno Inteligente. Sin fecha. [Belén Tovar 11 días incomunicada en la DGCIM](#); El Impulso. 25 de noviembre de 2019. [CNP denuncia que periodista Ana Belén Tovar permanece detenida "incomunicada" #25Nov](#); Espacio Público. 26 de noviembre de 2019. [Ana Belén Tovar cumple una semana incomunicada](#)

<sup>1613</sup>14ymedio. November 20, 2019. [Confiscan equipos y detienen a la gerente de un medio digital venezolano](#); VOA Noticias. 19 de noviembre de 2019. [Contrainteligencia militar de Venezuela libera a periodistas de VPI TV y Caraota Digital detenidos](#); DW. 20 de noviembre de 2019. [Confiscan equipos y detienen a gerente de medio digital en Venezuela](#)

arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.” Moreover, “the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events or the conduct of particular groups”<sup>1614</sup>.

1171. In this regard, the Office of the Special Rapporteur recalls that the American Declaration enshrines in its Article XXV the right of protection from arbitrary arrest which establishes that “no person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law”. In addition, it indicates that “every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released.” In this regard, the IACHR reiterates that a detention is arbitrary and unlawful when done outside of the grounds and the formalities prescribed by law, when it is executed without observing the procedures that the law prescribes, and when there has been an abuse of the powers of arrest, that is, when the arrest is made for purposes other than those that the law prescribes and requires. Likewise, detention for improper purposes is in itself a sort of sentence without trial, or an unlawful penalty that violates the guarantee against imposition of punishment without benefit of trial; lastly the term “arbitrary” is synonymous with irregular, abusive, or contrary to law<sup>1615</sup>.

### C. Social protest

1172. In a context where the political, social, and economic crisis is sharpening in Venezuela, mass protests by opponents and supporters of the Government of Nicolás Maduro intensified throughout the country. According to the information received by the Office of the Special Rapporteur, within the framework of these protests, police and military security forces would have repressed the demonstrations through the use of tear gas, water cannons, armored military vehicles, and real bullets to disperse opposing activists, which would have resulted in hundreds of people injured and detained, and dozens of deaths. According to the Venezuelan Human Rights Education-Action Program [*Programa Venezolano de Educación-Acción en Derechos Humanos*] (Provea), from the beginning of the year until the end of April, 54 people died in the framework of social protests; 53 of them as a result of bullet impacts. The responsibility of 80% of the deaths is attributed by the organization to police officers and military and paramilitary forces<sup>1616</sup>.

1173. On January 23, the president of the National Assembly, Juan Guaidó, proclaimed himself interim president of Venezuela. After the announcement, demonstrations against the Government of Nicolás Maduro intensified. In response, Venezuelan authorities would have raided at least three newsrooms (*Global TV*, *Noticia Al Día*, *Aventura TV*) and would have taken a television channel (*Global TV*) out of the air. In addition, two journalists would have been arrested and their journalistic equipment confiscated, and numerous reporters would have been forced to erase recorded journalistic material. Moreover, the authorities would have interrupted the Internet service<sup>1617</sup>.

1174. The repression of demonstrations by police and military forces would have resulted in hundreds of people injured and detained, and at least five dead (the number of deaths reached 16 according to the Venezuelan Observatory of Social Conflict [*Observatorio Venezolano de Conflictividad Social*])<sup>1618</sup>.

1175. In the early hours of April 30, the president of the National Assembly, Juan Guaidó, and opposition leader Leopoldo López, summoned citizens to accompany protests and actions undertaken within the framework of a plan called “Operation Freedom” [*Operación Libertad*], which would aim to remove the Government of Nicolás Maduro. The organization *Espacio Público* recorded at least 17 cases of violations of freedom of expression during the mobilization day. At least three journalists would have been injured during the coverage of the protests, and several would have been held by agents of the Bolivarian National Intelligence Service (Sebin) and the Bolivarian National Guard (GNB). Also, workers from different media outlets would have been harassed by protesters<sup>1619</sup>.

<sup>1614</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>1615</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 187.

<sup>1616</sup> Twitter account of Programa Venezolano de Educación-Acción en Derechos Humanos (@\_Provea). [April 30, 2019](#); El Pitazo. May 7, 2019. [Colectivos: la cara de la represión en 2019](#); Observatorio Venezolano de Conflictividad Social. [Muertes en protestas 2019 Provea/OVCS](#).

<sup>1617</sup> Committee to Protect Journalists (CPJ). January 24, 2019. [Raids, media shutdowns and internet disruptions amid Venezuela crisis](#); Instituto Prensa y Sociedad (IPYS). January 27, 2019. [Especial IPYSve | El 23 y 24 de enero prevaleció la censura en Venezuela](#); Espacio Público. January 23, 2019. [Cobertura el 23 de enero dejó 15 casos contra la libertad de expresión](#); Netblocks. January 23, 2019. [Major Internet disruptions in Venezuela amid protests](#).

<sup>1618</sup> BBC. January 24, 2019. [Protestas en Venezuela: los muertos y detenidos que dejaron las manifestaciones en Venezuela](#); El País. January 24, 2019. [Las protestas contra Maduro dejan al menos 26 muertos en cuatro días en Venezuela](#).

<sup>1619</sup> Espacio Público. May 1, 2019. [Resumen especial de la jornada de protestas del 30 de abril de 2019](#); Committee to Protect Journalists (CPJ). May 6, 2019. [Challenges facing journalists trying to cover latest violence in Venezuela](#)

1176. Bolivarian National Armed Forces (FANB) troops would have repressed protests in Caracas and several states in the country, and would have used tear gas, water cannons, armored military vehicles, and real bullets to disperse protesters, according to press reports<sup>1620</sup>.

1177. The repression of the security forces would have left a balance of more than 100 people injured and dozens of arrests. In addition, in a demonstration in La Victoria, Aragua state, Samuel Méndez, a 24-year-old protester, would have died. According to local pressreports, witnesses of the incident reportedly singled out as responsible armed civilian groups, who would have kidnapped, beaten, and shot Samuel Méndez in the chest<sup>1621</sup>.

1178. Several media circulated images of a tanker of the Bolivarian National Guard (GNB), allegedly intentionally running over a group of protesting citizens, and armed civilian groups firing at protesters<sup>1622</sup>.

1179. On the other hand, during the day of protests the National Telecommunications Commission (Conatel) would have ordered to block television services for subscribers of *BBC* and *CNN* international channels<sup>1623</sup>. Likewise, the Internet Observatory *Ve Sin Filtro* would have verified the blocking of YouTube, Twitter, Instagram, and Periscope platforms in the service provided by the state-owned company CANTV<sup>1624</sup>.

1180. The protest continued on May 1st<sup>1625</sup>. The organization *Espacio Público* documented on that day 12 cases of violations of freedom of expression. Among them, there were several attacks on press workers who covered the events by public order troops, as was the case of journalist Gregory Jaimes, wounded in the face by pellets allegedly launched by members of the National Police<sup>1626</sup>. Internet access continued to be restricted by CANTV, who kept access to YouTube blocked during Guaidó's speech<sup>1627</sup>.

1181. Again, as a result of the repression of police and military forces, scores of wounded were registered among the protesters. A 27-year-old woman lost her life after being shot in the head during a demonstration in Altamira, according to the Venezuelan Observatory of Social Conflict (OVCS)<sup>1628</sup>.

1182. On May 2, Yoifre Hernández Vásquez, 14, and Yosner Graterol, 16, died after being injured by security forces during the demonstrations on April 30 and May 1. Also, a fifth person died at night in a clash between opposition supporters and government forces in Santa Elena de Arenales, in the state of Mérida<sup>1629</sup>.

1183. La CIDH ha reiterado que la protesta social es una herramienta fundamental para la labor de defensa de los derechos humanos, y esencial para la expresión crítica política y social de las actividades de las autoridades. La Comisión ha señalado que "resulta en principio inadmisibles la penalización per se de las demostraciones en la vía pública cuando se realizan en el marco del derecho a la libertad de expresión y del derecho de reunión"<sup>1630</sup> y que "el ejercicio del derecho de reunión a través de la protesta social no debe sujetarse a una autorización por parte de las autoridades ni a requisitos excesivos que dificulten su realización"<sup>1631</sup>.

1184. Asimismo, en la Declaración Conjunta sobre violencia contra los y las periodistas en el marco de manifestaciones sociales, adoptada en 2013, se indica que los derechos de reunión y libertad de expresión "son fundamentales y su garantía es una condición necesaria para la existencia y el funcionamiento de una sociedad democrática. Un Estado puede imponer limitaciones razonables a las manifestaciones con el fin de asegurar el desarrollo pacífico de las mismas o dispersar aquellas que se tornan violentas, siempre que tales límites se encuentren regidos por los principios de legalidad, necesidad y proporcionalidad. Además, la desconcentración de una manifestación debe justificarse en el deber de protección de las personas, y deben utilizarse las medidas más seguras y menos lesivas para los manifestantes. El uso de la fuerza en manifestaciones públicas debe ser excepcional y en circunstancias estrictamente necesarias conforme a los principios internacionalmente reconocidos"<sup>1632</sup>.

<sup>1620</sup>The Guardian. May 1, 2019. [Venezuela crisis: Maduro claims victory over 'deranged' coup attempt; Venezuela Analysis. Venezuela: Military Uprising in Caracas \(in Development\)](#).

<sup>1621</sup>Twitter account of the Inter American Commission on Human Rights (@CIDH). [April 30, 2019](#); Twitter account of Programa Venezolano de Educación-Acción en Derechos Humanos (@Provea). [April 30, 2019](#); Efecto Cocuyo. May 1, 2019. [Matan a Samuel Méndez en Aragua durante protesta este #30Abr](#); El Pitazo. April 30, 2019. [Asesinan a un joven durante protesta en La Victoria](#); Infobae. April 30, 2019. [La represión chavista dejó un muerto, más de 100 heridos y decenas de detenidos tras el alzamiento contra la dictadura de Venezuela](#).

<sup>1622</sup>Reuters. April 30, 2019. [Government vehicle runs over protesters in Caracas](#).

<sup>1623</sup>CNN. May 1, 2019. [CNN and BBC pulled off the air by Venezuela's government](#).

<sup>1624</sup>Committee to Protect Journalists (CPJ). May 1, 2019. [Venezuelan authorities restrict internet, block outlets amid unrest](#).

<sup>1625</sup>The New York Times. May 1, 2019. [Venezuela, en ascuas durante las protestas del Día de los Trabajadores](#); BBC. May 2, 2019. [Crisis en Venezuela: tensión por manifestaciones a favor y en contra de Maduro tras el "levantamiento" de Guaidó y López](#).

<sup>1626</sup>Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [May 1, 2019](#); El Tiempo. May 1, 2019. [Las fotos de la represión del régimen de Maduro este primero de mayo](#).

<sup>1627</sup>Espacio Público. May 2, 2019. [Jornada del 1ero de mayo: se agudizan las agresiones contra periodistas](#).

<sup>1628</sup>Twitter account of Observatorio Venezolano de Conflictividad Social (@OVCSocial). [May 1, 2019](#).

<sup>1629</sup>Infobae. May 2, 2019. [Ascienden a cuatro los muertos por la represión chavista: dos eran adolescentes de 14 y 16 años](#); CNN. May 3, 2019. [Al menos 5 muertos en la más reciente ola de protestas en Venezuela](#); Noticias ONU. May 3, 2019. [La ONU eleva a cinco el número de muertos por las protestas en Venezuela](#).

<sup>1630</sup>IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para. 197.

<sup>1631</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. 139.

<sup>1632</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](#).

## D. Stigmatizing statements

1185. The mayor of Anzoátegui municipality, Cojedes state, would have signaled out, in a regional radio program, journalist Luisana Suárez to be behind public demonstrations against the management of the local government<sup>1633</sup>. On May 25, the Minister of Penitentiary Affairs, Iris Varela, would have called journalist Sebastiana Barráez a “compulsive mythomaniac”, after she reported on alleged meetings between representatives of the United Socialist Party of Venezuela [*Partido Socialista Unido de Venezuela*] (PSUV) with members of the Liberation Army National [*Ejército de Liberación Nacional*] (ELN) on the border<sup>1634</sup>.

1186. Venezuela's ambassador to the United Nations, Samuel Moncada, would have publicly assured to have proof that journalist Nelson Bocaranda had been “bought” by foreign agencies. His accusations, made through his Twitter account, were echoed through the portal of the Ministry of Popular Power for Foreign Affairs of Venezuela<sup>1635</sup>.

1187. On August 11, during his radio program *Contacto*, the governor of the Yaracuy state, Julio León Heredia, would have ordered the expropriation of the headquarters of *El Diario de Yaracuy* after accusing its owner, Gianfranco Napolitano, of looting and robbing the State<sup>1636</sup>.

1188. La CIDH recuerda que los funcionarios públicos tienen el deber de asegurarse que con sus pronunciamientos no están lesionando los derechos de quienes contribuyen a la deliberación pública mediante la expresión y difusión de su pensamiento, tales como periodistas, medios de comunicación y organizaciones defensoras de derechos humanos y deben atender al contexto en el cual se expresan para asegurarse que sus expresiones no constituyan, en palabras de la Corte, “formas de injerencia directa o indirecta o presión lesiva en los derechos de quienes pretenden contribuir a la deliberación pública mediante la expresión y difusión de su pensamiento”<sup>1637</sup>.

## E. Subsequent Liabilities

1189. Karen Palacios, clarinetist of the National Philharmonic Orchestra of Venezuela, was arrested by officials of the General Directorate of Military Counterintelligence (DGCIM) on June 1, allegedly for “instigating hatred in social networks”, after she denounced on her Twitter account that she would have been expelled from the orchestra for having signed in favor of the presidential referendum backed by the opposition in 2017. Palacios would have been released on July 16, after spending 45 days in detention, although she would have received a release card authorizing her release on June 18<sup>1638</sup>.

1190. On June 4, the Supreme Court of Justice of Venezuela would have rejected an appeal from the journal *La Patilla* and ordered the payment of 30,000 million bolivars (about US\$ 5 million) as compensation to the former vice president of Venezuela Diosdado Cabello, in the framework of a civil lawsuit for defamation that the official initiated after the media reproduced the publication of an investigation of the Spanish newspaper *ABC* in which the high-ranking official was linked with drug trafficking and illicit business. The Court raised the amount of compensation that had been set in first instance<sup>1639</sup>. According to the coordinator of the Central American and South American Program of the Committee to Protect Journalists, Natalie Southwick, “the exorbitant compensation imposed on *La Patilla* is nothing more than a barely concealed attempt to bankrupt and close a critical media”<sup>1640</sup>.

1191. On June 27, firefighters Carlos Varón and Ricardo Prieto were dismissed from their positions, in September 2018 they were arrested for making a humorous video comparing President Nicolás Maduro with a donkey<sup>1641</sup>. The firefighters were charged with the crimes provided for in articles 20 and 21 of the so-called “law against hate”, but these charges would have been later exchanged for crimes of offense to the President and

<sup>1633</sup>Las Noticias de Cojedes. June 26, 2019. [Residentes De Apartadero Rechazan Señalamientos De Alcaldesa Flor Rivas Contra Periodista Luisana Suárez](#).

<sup>1634</sup>Espacio Público. May 27, 2019. [Iris Varela hostiga a la periodista Sebastiana Barráez](#).

<sup>1635</sup>Noticias 24. August 12, 2019. [Samuel Moncada: Nelson Bocaranda es un agente al servicio de Estados Unidos](#); Ministerio del Poder Popular para Relaciones Exteriores. August 13, 2019. [Embajador Moncada revela archivos que vinculan a Nelson Bocaranda como espía de EEUU](#).

<sup>1636</sup>2001. August 11, 2019. [Gobernador Julio León ordena expropiar la sede de “El Diario de Yaracuy” \(+Video\)](#); CNVE24. August 11, 2019. [¡No circulaba por falta de papel! León Heredia ordenó expropiar “El Diario de Yaracuy”](#).

<sup>1637</sup>I/A Court H. R. *Case of Perozo et al v. Venezuela. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 195. Para. 151. See 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>1638</sup>Infobae. July 17, 2019. [Liberaron a la clarinetista venezolana encarcelada por denunciar en las redes que el régimen de Maduro la despidió por razones políticas](#); El Estímulo. July 16, 2019. [Excarcelan a la clarinetista Karen Palacios detenida por criticar al gobierno de Maduro](#); El Nacional. July 14, 2019. [Karen Palacios continúa detenida a pesar de tener boleta de excarcelación](#).

<sup>1639</sup>IACHR. *Annual Report 2018. Report of the Office of The Special Rapporteur for Freedom of Expression*. OEA/Ser.L/V/II. Doc. 30. March 17, 2019. Para. 1041.

<sup>1640</sup>El Nacional. June 4, 2019. [TSJ ordena a La Patilla que pague Bs 30.000 millones a Diosdado Cabello](#); Committee to Protect Journalists (CPJ). June 7, 2019. [Venezuela's Supreme Court orders La Patilla to pay US\\$5m in damages to Cabello](#).

<sup>1641</sup>Espacio Público. 26 de julio de 2019. [Destituyen de sus cargos a los hombres de Mérida](#); El Pitazo. 26 de julio de 2019. [Destituyen a hombres acusados por video satírico sobre Nicolás Maduro](#).

public instigation to hate, established in articles 147 and 285 of the Criminal Code. On October 31, 2018, both were released on parole under periodic presentation every 30 days and a ban on leaving the state of Mérida<sup>1642</sup>.

1192. On July 18, agents of the Bureau for Scientific, Criminal, and Forensic Investigations [*Cuerpo de Investigaciones Científicas, Penales y Criminalísticas*] (CICPC) reportedly arrested journalist Wilmer Quintana García for the alleged crime of "instigation to hate" provided in the Law Against Hate, for Peaceful Coexistence and Tolerance, for publishing on his Facebook profile complaints about alleged acts of corruption in the provision of public services in the state of Guárico. A court would have ordered his arrest on July 11, after the governor of Guárico, José Manuel Vásquez, filed a complaint against him due to the publications. Quintana was director of the now out of circulation weekly *La Verdad* and host of the opinion program *En Portada*. On August 19, the State and Municipal Court of First Instance in Control Function No. 3 would have ordered the journalist's house arrest after he was detained for 37 days. The measure would have been granted after Quintana suffered a heart attack while in detention for which he had to be urgently transferred to a medical center. On September 9, the Third Criminal Control Court of San Juan de los Morros would have ordered the release of the journalist and would have banned him from publishing complaints about alleged corruption cases in the Guárico state<sup>1643</sup>.

1193. On August 13, the Fifth Court of Military Control would have sentenced the general secretary of the Ferrominera del Orinoco union (Sintraferrominera) and coordinator of the Intersectorial of Workers of Guayana, Rubén González, to five years and nine months in prison for the crimes of "insult of guards" and "insult to the National Armed Forces". Gonzalez was arrested on November 29, 2018, when he was returning from a protest march against measures taken by the government in Caracas. For months, the union leader had been leading labor protests in Bolívar state and, days before his arrest, he had denounced the detention of nine iron state workers while protesting their labor rights. During an assembly of workers in August 2018, in Ciudad Piar (Bolívar state), officials of the Bolivarian National Guard (GNB) had tried to arrest Gonzalez, but the workers would have prevented it. Later, the Military Prosecutor 43 would have filed charges against him for resisting arrest. After being imprisoned for almost nine months, González was convicted and was ordered to serve his sentence at the Penitentiary Center of the East, in Maturín, known as "La Pica". In 2009 González had already been imprisoned for protests and in 2011 he was sentenced to nine years in jail by a court in Bolívar. However, the Supreme Court of Justice (TSJ) overturned the sentence against him and ordered his release. Trade union, social and human rights organizations in Venezuela demanded the release of Gonzalez and denounced that his conviction criminalizes social protest and seeks to silence dissenting voices. They also questioned the use of Military Justice to judge civilians. Gonzalez's organizations and relatives reported that he has received cruel and inhuman treatment during his detention<sup>1644</sup>.

1194. The tweeter Pedro Patricio Jaimes continues to be detained after more than a year and a half without having been put on trial and without having a conviction<sup>1645</sup>. Jaimes was arrested by officials of the Bolivarian National Intelligence Service (Sebin) on May 10, 2018 after he published on the Twitter account @AereoMeteo information about the route of the presidential plane that transferred Nicolás Maduro to the Aragua state. Jaimes Criollo would have been accused of endangering the security of the nation and has since been under pre-trial detention<sup>1646</sup>. According to the information received by the Office of the Special Rapporteur, several irregularities were reported in the case. The preliminary hearing would have been postponed seven times and the trial hearing was suspended three times; In addition, the detainee has reported being in inhuman detention conditions, which would have caused severe health problems. On October 4 of that year, the Inter-American Commission granted precautionary measures for Jaimes<sup>1647</sup>. In September, the Office of the Special Rapporteur expressed concern about the prolonged stay in prison of the communicator and about the application of norms that arbitrarily criminalize the exercise of freedom of expression<sup>1648</sup>.

<sup>1642</sup>Clarín. September 17, 2018. [Detienen a dos bomberos en Venezuela por comparar a Maduro con un burro](#); Twitter account of Espacio Público (@espaciopublico). [September 14, 2018](#); El País. September 19, 2018. [Hasta 20 años de prisión por burlarse de Maduro en las redes sociales](#).

<sup>1643</sup>Committee to Protect Journalists (CPJ). August 12, 2019. [Venezuelan authorities detain Wilmer Quintana for Facebook posts under anti-hate law](#); El Nacional. July 18, 2019. [Cicpc detuvo al periodista Wilmer Quintana por «incitación al odio»](#); Twitter account of Espacio Público (@espaciopublico). [July 18, 2019](#); Qué pasa en Venezuela. September 12, 2019. [AUDIENCIA/ Esto fue lo que se decidió hacer con Wilmer Quintana](#).

<sup>1644</sup>Efecto Cocuyo. August 13, 2019. [Tribunal militar condena a casi 6 años de prisión a sindicalista Rubén González](#); Alberto News. No date. [Provea: "Rubén González ha sido perseguido durante 10 años por defender a los trabajadores"](#); Infobae. August 15, 2019. [Los venezolanos exigen la liberación de Rubén González, sindicalista condenado por la justicia militar tras reclamar mejoras salariales](#); El Pitazo. August 13, 2019. [Tribunal militar condena a sindicalista Rubén González a cinco años de cárcel](#); Civils Derechos Humanos. August 14, 2019. [100 organizaciones sindicales y sociales: Sentencia al sindicalista Rubén González por tribunal militar reitera ausencia de democracia y política estatal para criminalizar la protesta pacífica](#).

<sup>1645</sup>CNVE24. May 10, 2019. [¡A un año de su detención! Madre de Pedro Jaimes: "Que alguien me explique si hizo algo grave... yo sé que no" \(+Video\)](#); Crónica Uno. May 13, 2019. [Pedro Jaimes cumple un año de detención arbitraria por tuitear información pública](#); Espacio Público. October 10, 2019. [Un aficionado a la aviación recluido en el Sebin](#).

<sup>1646</sup>IACHR. [Annual Report 2018. Report of the Office of The Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 30. March 17, 2019. Para. 1.044.

<sup>1647</sup>IACHR. [RESOLUCIÓN 78/2018. Medida cautelar No. 688-18. Pedro Patricio Jaimes Criollo respecto de Venezuela](#). October 4, 2018.

<sup>1648</sup>IACHR. Special Rapporteurship for Freedom of Expression. September 18, 2019. [Press Release R232/19 Office of the Special Rapporteur condemns that communicators Pedro Jaimes and Jesús Medina have served one year in prison in Venezuela without being convicted](#).

1195. La CIDH ha sostenido que “[e]l tipo de debate político a que da lugar el derecho a la libertad de expresión generará inevitablemente ciertos discursos críticos o incluso ofensivos para quienes ocupan cargos públicos o están íntimamente vinculados a la formulación de la política pública”<sup>1649</sup>. Por lo tanto, como se afirma en el principio 10 de la Declaración de Principios, “[l]a protección a la reputación debe estar garantizada sólo a través de sanciones civiles, en los casos en que la persona ofendida sea un funcionario público”. Es decir, el uso de mecanismos penales para castigar el discurso en asuntos de interés público, y en especial relacionado con funcionarios públicos o políticos, no responde a una necesidad social apremiante que lo justifique, es innecesario y desproporcionado y puede ser un medio de censura indirecta dado su efecto desalentador sobre el debate relativo a asuntos de interés público.

1196. El principio 11 de la Declaración de Principios sobre Libertad de Expresión de la CIDH establece que: “[l]os funcionarios públicos están sujetos a un mayor escrutinio por parte de la sociedad. Las leyes que penalizan la expresión ofensiva dirigida a funcionarios públicos generalmente conocidas como ‘leyes de desacato’ atentan contra la libertad de expresión y el derecho a la información”. Además, la CIDH ha sostenido repetidamente que la aplicación del derecho penal para sancionar expresiones referidas a funcionarios públicos es desproporcionada cuando se trata de un discurso protegido, como la información o expresión sobre asuntos de interés público, y viola el derecho a la libertad de expresión<sup>1650</sup>.

## F. Prior censorship

1197. The Bolivarian National Police (PNB) would have arrested four people who acted and produced the theatrical comedy *Two policemen in distress* [*Dos policías en apuros*] for the alleged crime of “usurpation of public function”, because they used police uniforms as clothing and sought to “ridicule and misrepresent the true police functions,” according to what the PNB published on its Twitter account. They were released a day later and were instructed not to use again police uniforms<sup>1651</sup>.

## G. Direct or indirect censorship

1198. According to the information received by the Office of the Special Rapporteur, throughout 2019 the National Telecommunications Commission (Conatel) continued ordering, in an irregular manner, the closure of stations, along with searches and confiscation of transmission equipment and the removal from air of certain informative programs and of opinion.

1199. For example, in April Conatel would have ordered the closure of the *Ambiente 96.1 FM* radio station in the Guárico state, after officials of the entity inspected its facilities and confiscated its transmitting equipment, computers, and processors. Officials would have argued that the company's articles of incorporation had irregularities. From the station they assured that they have been carrying out procedures before the Conatel for seven years to correct the documents and had not obtained an answer<sup>1652</sup>. Also, that month Conatel would have ordered the closure of the *Radio Criolla 92.9 FM* station, located in the Elorza Municipality, because it did not have the necessary permits to operate. The owner of the station, José Galindo, would have assured to have the documentation in order and that the closure is due to political reasons for the critical coverage of the municipal mayor's management<sup>1653</sup>. In May, Conatel would have ordered the closure of the *La Mega Hertz 96.5* station, located in the Biruaca Municipality, Apure state, and confiscated its equipment. The radio producer denounced that Conatel carried out a permanent control of the contents that were broadcasted<sup>1654</sup>. In June, Conatel would have ordered the closure of the *Radio Plus* station in Maturín, Monagas state, after inspecting its facilities and confiscating transmitters, computers, and radio cabin equipment. The measure would affect the transmissions of the 94.9 FM radio, the *TvPlus* channel, and the cable TV service provider Planet Cable. The *TvPlus* channel reporter and *Globovisión* correspondent, Jhonny Ulloa, would have been forced to leave the headquarters while the inspection was being carried out, presumably for reporting about the inspection on his WhatsApp status<sup>1655</sup>. In July, Conatel would have ordered that the program “*Diálogo en la voz de los pensionados y jubilados*” be taken off the air, which was broadcasted on the *TV Rio* channel, in the Heres municipality, Bolívar state, presumably

<sup>1649</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights.](#) OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

<sup>1650</sup> IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015/2015.

<sup>1651</sup> Twitter account of Policía Nacional (@CPNB\_VE). [August 5, 2019](#); Espacio Público. August 6, 2019. [Excarcelan a actores detenidos por usar uniformes de la PNB.](#)

<sup>1652</sup> El Pitazo. April 17, 2019. [Conatel silenció a la emisora Ambiente 96.1 FM en Guárico](#); Noticiero Digital. April 17, 2019. [Conatel ordena el cierre de Ambiente 96.1 FM en Guárico.](#)

<sup>1653</sup> Espacio Público. April 25, 2019. [Atacan las rejas de seguridad de Radio Criolla 92.9 FM](#); Espacio Público. May 8, 2019. [En dos días, Conatel cierra dos emisoras en Apure](#); El Doral News. No date. [Conatel ordena el cierre de Radio Criolla 92.9 FM en Apure.](#)

<sup>1654</sup> Espacio Público. May 8, 2019. [En dos días, Conatel cierra dos emisoras en Apure](#); El Pitazo. May 6, 2019. [Conatel cierra emisora La Mega Hertz 96.5 FM de Apure.](#)

<sup>1655</sup> El Pitazo. June 8, 2019. [¡OTRA MÁSI! CONATEL CIERRA RADIO PLUS 94.9 FM EN MONAGAS](#); El Pitazo. June 7, 2019. [Conatel cierra y confisca 23 equipos de TvPlus radio en Maturín](#); Espacio Público. June 7, 2019. [Conatel saca del aire a Radio Plus 94.9 FM en Monagas.](#)



due to the use of the words “regime” and “shortage” during an interview with former constitutionalist Diógenes Jiménez on July 8<sup>1656</sup>. In August, Conatel would have closed and confiscated the equipment of the Z 89.1 FM station located in Valera, Trujillo state, for allegedly not having a license<sup>1657</sup>; Conatel would have confiscated the equipment of the *Súper Estación* 107.3 FM station, in San Felipe state Yaracuy, because it would be operating with the expired concession<sup>1658</sup>; also, the Bolivarian National Guard (GNB) would have confiscated the transmission equipment from the *RBI* 90.9 FM radio station in Ureña<sup>1659</sup>. The “Bajo la Lupa” opinion program would have been removed from the *Unicable TV* programming allegedly due to pressure from Conatel<sup>1660</sup>. On October 1, Conatel officials would have confiscated the transmission equipment of the *Médano Radio* 95.5 FM station, presumably for not having a concession to operate<sup>1661</sup>.

1200. The deputy for the United Socialist Party of Venezuela (Psvu) to the Legislative Council of the Táchira state, Nellyver Lugo, would have requested the Permanent Commission of Politics, Justice, Citizen Security, Human Rights, and Border, the National Telecommunications Commission (Conatel), and to the Public Ministry (MP) to initiate an investigation against the digital media *Táchira Noticias*, *Táchira Norte*, *Reporte.V*, *Noticias Tachirenses*, *Crónica Policial*, *Fogón Informativo*, and *El Pitazo*, for the alleged dissemination of violent videos and images, after said media outlets reported an event in which a 16-year-old lost his sight because of the actions by state security forces<sup>1662</sup>.

1201. The program *Dossier*, broadcasted by the state television channel *Venezolana de Televisión* (VTV), would not have aired twice, in August and September, allegedly by order of government authorities, as reported by its host, Walter Martínez<sup>1663</sup>.

1202. El Principio 5 de la Declaración de Principios señala que “la censura previa, interferencia o presión directa o indirecta sobre cualquier expresión, opinión o información difundida a través de cualquier medio de comunicación oral, escrito, artístico, visual o electrónico, debe estar prohibida por la ley. Las restricciones en la circulación libre de ideas y opiniones, como así también la imposición arbitraria de información y la creación de obstáculos al libre flujo informativo, violan el derecho a la libertad de expresión”.

1203. El Principio 13 de la Declaración de Principios señala que “la utilización del poder del Estado y los recursos de la hacienda pública; la concesión de prebendas arancelarias; la asignación arbitraria y discriminatoria de publicidad oficial y créditos oficiales; el otorgamiento de frecuencias de radio y televisión, entre otros, con el objetivo de presionar y castigar o premiar y privilegiar a los comunicadores sociales y a los medios de comunicación en función de sus líneas informativas, atenta contra la libertad de expresión y deben estar expresamente prohibidos por la ley. Los medios de comunicación social tienen derecho a realizar su labor en forma independiente. Presiones directas o indirectas dirigidas a silenciar la labor informativa de los comunicadores sociales son incompatibles con la libertad de expresión”.

## H. Access to public information

1204. Officials of the National Assembly would have repeatedly blocked the entry of journalists to cover legislative sessions. In instances where reporters would have managed to enter the Federal Legislative Palace, with the help of opposition legislators, they would have suffered aggressions and tussles<sup>1664</sup>.

1205. At least four times during the month of May and three times during June, officials of the Bolivarian National Guard (GNB) would have denied media access to the National Assembly to cover regular sessions. The blockade would have begun on May 7, after the president of the National Assembly, Juan Guaidó, made a call to favor a popular uprising against President Nicolás Maduro. The National Assembly is the last government body controlled by the Venezuelan opposition. Every Tuesday, the day the Assembly has its instance of legislative debate, the troops, who would act under the orders of Major General Leonardo César Malaguera Hernández, would surround the facilities of the entity and prohibit journalists from entering the building, while insulting

<sup>1656</sup>El Nacional. July 12, 2019. [Conatel suspendió programa luego de que un invitado dijo régimen y escasez](#); Espacio Público. July 11, 2019. [Conatel saca del aire un programa de TV por mencionar las palabras “régimen” y “escasez”](#).

<sup>1657</sup>Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [August 7, 2019](#); IPYS Venezuela. August 12, 2019. [Balance semanal](#).

<sup>1658</sup>Espacio Público. August 12, 2019. [Conatel incautó los equipos de Súper Estación 107.3FM en Yaracuy](#); El pitazo. August 15, 2019. [Conatel cierra otra emisora en el estado Yaracuy](#).

<sup>1659</sup>Twitter account of journalist Williams Amaya (@williamsAmaya). [August 14, 2019](#); IPYS Venezuela. August 27, 2019. [Balance semanal](#); Espacio Público. August 15, 2019. [Militares cargaron con los equipos de RBI 90.9 FM en Ureña](#).

<sup>1660</sup>Twitter account of Bajo La Lupa (@BajoLaLupaFM). [August 28, 2019](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [August 27, 2019](#).

<sup>1661</sup>Espacio Público. October 3, 2019. [Conatel saca del aire a Radio Médano 95.5 FM](#).

<sup>1662</sup>2001. July 9, 2019. [Constituyentistas piden investigar a medios digitales tachirenses por supuesto contenido amarillista](#); Noticiero Digital. July 9, 2019. [Piden investigar a medios tachirenses por contenido amarillista](#); Espacio Público. July 10, 2019. [Diputada del CLET ordena investigación contra varios medios en Táchira](#).

<sup>1663</sup>El Pitazo. August 16, 2019. [Periodista Walter Martínez denuncia censura impuesta por Jorge Rodríguez a programa de VTV](#); Espacio Público. August 16, 2019. [Walter Martínez es censurado por Jorge Rodríguez en VTV](#); Espacio Público. October 4, 2019. [Walter Martínez es censurado por Gustavo Cedeño](#).

<sup>1664</sup>Four press workers were reportedly assaulted physically while covering the National Assembly during September. IPYS. October 7, 2019. [Balance Semanal IPYSve | Agresiones y hechos intimidatorios fueron el patrón de la censura en septiembre](#)

and harassing the journalists<sup>1665</sup>. On June 4, after four weeks without being able to access the Federal Legislative Palace, press workers would have entered, with the support of opposition representatives who confronted the GNB<sup>1666</sup>.

1206. El principio 4 de la Declaración de Principios sobre Libertad de Expresión de la CIDH establece que “[e]l acceso a la información en poder del Estado es un derecho fundamental de los individuos. Los Estados están obligados a garantizar el ejercicio de este derecho. Este principio sólo admite limitaciones excepcionales que deben estar establecidas previamente por la ley para el caso que exista un peligro real e inminente que amenace la seguridad nacional en sociedades democráticas”. Teniendo en cuenta el principio de máxima divulgación, la ley debe garantizar el acceso efectivo y más amplio posible a la información pública, y las excepciones no deben convertirse en la regla general en la práctica. Además, el régimen de excepciones debe interpretarse restrictivamente y toda duda deberá resolverse por la transparencia y el acceso.

## I. Internet and freedom of expression

1207. During 2019, obstacles to free communication through the Internet were deepened in Venezuela. Cyber-attacks, blockages to websites, social networks, or streaming services ordered by state authorities and executed by public and private telecommunications companies, and recurring connectivity failures due to damage to telecommunications infrastructure have limited the possibility of Venezuelans to transmit and receive relevant information on matters of high political and social interest. On the other hand, the digital rights of citizens and, in particular, of journalists at the time of carrying out their work, were affected due to power cuts that happened on several occasions in different regions of the country<sup>1667</sup>.

1208. According to a monitoring carried out by the Press and Society Institute Venezuela [*Instituto Prensa y Sociedad Venezuela*] (IPYS), there were 140 cases of violations of citizens' digital rights between January and August in Venezuela<sup>1668</sup>. In those eight months, blockades (37), Internet access restrictions (69), attacks (30), expression restrictions (3), and regulatory restrictions (1) were recurrent. The organization also found that between January and July, 881 blockades occurred on digital platforms. The main affected were the information portals and the greatest number of blockages occurred from the connections of CANTV, Movistar, Digitel, Inter, and Movilnet. These providers of Internet services, private and state-owned, “applied the same censorship practice when exercising intermittent, temporary, and other continuous blockages,” said IPYS, based on data from its Digital Rights monitoring system, in cases reported by the Netblocks Internet observatory and through the OONI Explorer tool. According to the evidence collected by the organization, at least 48 web pages of national and foreign media, whose contents have a high impact in the country, were arbitrarily censored 434 times in Venezuela, in the first seven months of 2019. The most pages Restricted were those of the media *NTN24*, *VIVOplay*, *El Pitazo*, *VPItv*, *El Nacional*, *Aporrea*, and *Noticia al día*<sup>1669</sup>.

1209. In that regard, the Office of the Special Rapporteur received information on several episodes of blockades and attacks on news websites. Thus, for example, the information portal *Runrun.es* would have suffered a cyber-attack on May 25 that kept access to the page blocked. The attack was carried out after the portal published a research paper on the performance of the Special Actions Forces of the Bolivarian National Police in Caracas<sup>1670</sup>. On June 19, the news portals *El Pitazo* and *Efecto Cocuyo* would have been blocked by operators CANTV, Movilnet, and Digitel, following an order from the National Telecommunications Commission (Conatel). *El Pitazo* would also have been blocked by Movistar on June 17<sup>1671</sup> and would have suffered a cyber-attack on September 29<sup>1672</sup>. On June 26, the CANTV company would have blocked access to the website *www.vamosbien.com*, linked to the president of the National Assembly, Juan Guaidó<sup>1673</sup>. In August, the Instagram

<sup>1665</sup> Infobae. May 7, 2019. [Colectivos chavistas amenazaron a los diputados y la Guardia Nacional bloqueó el acceso de la prensa al Parlamento](#); El Estímulo. May 7, 2019. [GNB impide ingreso a periodistas a la sesión de la Asamblea Nacional](#); Efecto Cocuyo. May 28, 2019. [Sntp rechaza prohibición de acceso de la prensa a la AN por quinta vez en un mes](#); AFP. May 7, 2019. [Media denied access to the Venezuelan National Assembly](#); Twitter account of Sindicato Nacional de Trabajadores de Prensa de Venezuela (@sntpvenezuela). [May 21, 2019](#); Committee to Protect Journalists (CPJ). June 26, 2019. [Soldiers block press access to Venezuelan parliament](#); Espacio Público. May 21, 2019. [GNB impide nuevamente el acceso de los periodistas a la AN](#); Espacio Público. May 15, 2019. [GNB bloquea el acceso de los periodistas a la Asamblea Nacional](#).

<sup>1667</sup> IPYS. September 13, 2019. [Balance semanal](#).

<sup>1668</sup> IPYS. October 7, 2019. [Conectividad en riesgo: 140 violaciones a los derechos digitales en lo que va de 2019](#); IPYS. August 23, 2019. [Balance Especial IPYSve | 881: la lista de la censura digital en Venezuela](#).

<sup>1669</sup> IPYS. October 7, 2019. [Conectividad en riesgo: 140 violaciones a los derechos digitales en lo que va de 2019](#); IPYS. August 23, 2019. [Balance Especial IPYSve | 881: la lista de la censura digital en Venezuela](#)

<sup>1670</sup> Espacio Público. May 29, 2019. [Runrunes sufre un nuevo ataque informático](#); Tal Cual. May 27, 2019. [Runrunes es víctima de ataques cibernéticos tras reportaje sobre las FAES](#).

<sup>1671</sup> El Estímulo. June 19, 2019. [El Pitazo y Efecto Cocuyo sufren bloqueo por parte de Conatel](#); Infobae. June 21, 2019. [Denuncian a Movistar Venezuela por bloquear medios independientes en internet por instrucciones del régimen de Maduro](#); El Pitazo. June 21, 2019. [Periodistas de El Pitazo protestaron contra bloqueo de su dominio ordenado por Conatel](#).

<sup>1672</sup> Espacio Público. October 4, 2019. [Portal web El Pitazo sufrió nuevo ataque](#).

<sup>1673</sup> Venezuela Al Día. June 26, 2019. [Cantv bloquea el sitio VamosBien.com de Guaidó en su primer día de funcionamiento](#).

account of the newspaper *La Verdad de Vargas* was blocked by the social network twice, under the argument of breach of conditions<sup>1674</sup>. In September, the portal of the *Centro de Noticias Venezuela 24* would have registered more than 12,000 cyber-attacks on its web platform in 72 hours, which mainly affected the display of political news reports<sup>1675</sup>.

1210. The journalistic coverage of the National Assembly sessions would also have been obstructed by the selective blocking of web search and video streaming services by the state-owned telecommunications company CANTV. The organization *Espacio Público* recorded 11 cases of blockades to online platforms (mainly YouTube and Periscope) during May. The blockades would occur, in addition to during the sessions of the legislature<sup>1676</sup>, at times of coverage of conflicting situations or during speeches by the opposition leader to the government Juan Guaidó<sup>1677</sup>.

1211. The Office of the Special Rapporteur recalls that all limitations on freedom of expression, including those that affect expression on the Internet, must be established by law in a clear and precise manner, must be proportionate to the legitimate purposes pursued, and must be based on a judicial decision resulting from a contradictory process. In this regard, Internet legislation should not include broad and vague definitions, or disproportionately affect legitimate websites and services. States should keep in mind that while freedom of expression can be restricted to achieve legitimate objectives, such as crime prevention or the protection of the rights of others, such limitations must be drafted clearly and precisely and affect the minor possible degree the right to freedom of expression. Any measure that affects the expressions that circulate on the Internet, should be conceived with the specific purpose of preserving the unique capacity of this medium to promote freedom of expression through the free exchange of information and ideas instantly and at low cost, regardless of borders<sup>1678</sup>.

## J. Other relevant situations

1212. On January 9, Migration officials at Simón Bolívar de Maiquetía Airport would have prevented entrance to the country to Danish reporter Kristoffer Toft, who is collaborating with the *Caracas Chronicles*<sup>1679</sup>. Also, on October 7, the Administrative Service of Identification, Migration, and Foreigners [*Servicio Administrativo de Identificación, Migración y Extranjería*] (Saime) would have denied entry to the country to British journalist John Carlin, author of the book *The Human Factor [El Factor Humano]* on the process of social reconciliation in South Africa led by Nelson Mandela, who would attend the conference *Mandela and the road to peace, possible horizons for Venezuela [Mandela y el camino a la paz, horizontes posibles para Venezuela]*, organized by the Institute for Integral Transitions [*Instituto para las Transiciones Integrales*] (IFIT)<sup>1680</sup>.

1213. Civil society organizations denounced that the state media *Telesur* would have made a coverage with “disinformation features by omitting information sources and contrasts” on the blackouts that occurred in March in Venezuela. As reported by IPYS Venezuela, the channel “limited itself to citing official spokespersons, used in an selfish and incomplete way the documentary sources, and omitted any analysis, opinion, report, or background that supported the criticism for lack of maintenance, conclusion of works, or failures caused due to the inability of Corpoelec staff”<sup>1681</sup>.

1214. Journalist Rubén Marcano would have received a citation by the Bureau for Scientific, Criminal, and Forensic Investigations (Cicpc) of the Computer Crimes Division for the alleged dissemination of prohibited material on his website [www.superdato.com.ve](http://www.superdato.com.ve), which disseminates equestrian content<sup>1682</sup>.

<sup>1674</sup> Twitter account of La Verdad de Vargas (@LaVerdadVargas). [August 21, 2019](#); IPYS. August 27, 2019. [Balance semanal](#).

<sup>1675</sup> Twitter account of Centro de Noticias Venezuela 24 (@cnve24). [September 16, 2019](#); IPYS. October 7, 2019. [Conectividad en riesgo: 140 violaciones a los derechos digitales en lo que va de 2019](#).

<sup>1676</sup> For example, according to monitoring carried out by Netblocks organization, on August 20, during an extraordinary session of the National Assembly, the state Internet provider CANTV reportedly blocked search and streaming services preventing access to the broadcast of the legislative meeting. Twitter account of NetBlocks.org (@netblocks). [August 20, 2019](#); Espacio Público. August 21, 2019. [CANTV bloquea servicios de Google durante la sesión de la AN](#).

<sup>1677</sup> Espacio Público. May 29, 2019. [CANTV sigue bloqueando Youtube durante las sesiones de la AN; Espacio Público. Bloquean Youtube durante sesión de la Asamblea Nacional](#); Committee to Protect Journalists (CPJ). June 26, 2019. [Soldiers block press access to Venezuelan parliament](#).

<sup>1678</sup> IACHR. Special Rapporteurship for Freedom of Expression. UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. [Joint Declaration](#). January 20, 2012..

<sup>1679</sup> Twitter account of KristofferToft (@toft\_kristoffer). [January 9, 2019](#); Twitter account of Instituto Prensa y Sociedad (@ipysvenezuela). [January 9, 2019](#).

<sup>1680</sup> Espacio Público. [Gobierno impide la entrada a Venezuela al periodista inglés John Carlin](#); IPYS. October 11, 2019. [John Carlin: mi objetivo al viajar a Venezuela siempre fue buena voluntad](#).

<sup>1681</sup> Instituto Prensa y Sociedad (IPYS). June 21, 2019. [Reporte Especial IPYSve | Apagones y desinformación en Telesur](#).

<sup>1682</sup> Espacio Público. June 17, 2019. [Funcionarios de seguridad amenazan con encarcelar a periodista](#).

## CHAPTER III: CONCLUSIONS AND RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its Annual Report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example in the area of respect, protection, and promotion of the right to freedom of expression.

### **A. Violence against Journalists and the Media**

2. The Office of the Special Rapporteur notes with extreme concern the indicators of violence against journalists for reasons related to the work they perform, which remain the same. At least 27 journalists and press workers were killed in the Americas in 2019 for reasons allegedly related to the exercise of journalism. There were murders of journalists in Bolivia, Brazil, Colombia, Guatemala, Haiti, Honduras, and Mexico. These crimes demonstrate the persistence of patterns of violence in several States of the region, while in others, journalists face greater vulnerabilities amid increasingly polarized contexts that have seriously deteriorated the environment in which journalists can perform their jobs.

3. Once again, the Office of the Special Rapporteur expresses its deep concern about the risk that journalists must face due to the work they perform. Faced with this situation, this Office has warned on other occasions that many journalists choose to stop investigating and disseminating information of high public interest to their local communities to avoid a reprisal against their life or their physical integrity, or that of their family members.

4. Is a matter of particular concern the increase in stigmatization and discredit against journalists by high-level authorities. Despite repeated recommendations by the IACHR, authorities persist in the use of speeches that seek to disqualify and undermine the journalistic work of journalists, community communicators, media, human rights defenders, and civil society organizations for reasons related to the exercise of the right to freedom of expression. This practice has been constant in Venezuela, Nicaragua, and Cuba, but this Office is also concerned that it has become a systematic practice in the United States, Brazil, and El Salvador following the constant statements against the press and against women journalists based on their gender that seek to undermine their fundamental role of informing and transmitting opinions.

5. Likewise, this Office notes with alarm the increase in acts of violence, aggression, threat, intimidation, and various types of harassment towards journalists, but also towards community communicators and popular communicators who exercise their right to freedom of expression in contexts of fights for the defense of human rights in their communities.

6. The general situation of insecurity and lack of guarantees on the part of the State for the work of journalists, reporters, documentary filmmakers, and members of the press in coverage of social protests and citizen demonstrations is of special attention for this Office. In the context of a regional situation of social protests, this Office has registered that dozens of journalists were subjected to physical attacks and faced various types of impediments, whether by the actions of the Police, parastatal groups, or protesters; likewise their equipment and work items were also damaged, suffering confiscation, destruction, or theft.

7. This Office urges state authorities to contribute decisively to the construction of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for it.

8. With regard to this point, as in previous years, the Office of the Special Rapporteur recommends Member States to:

**A.** Adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, omitting any statement that may increase the risk for journalists; the respect for journalists' right to keep their sources of information; the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines on the respect for the right of freedom of expression, determining appropriate sanctions proportionate to the damage done; as well as the development of accurate statistics on violence against journalists.

**B.** Adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals. Measures or protection programs must be suitable and sufficient for its purpose, in accordance with the views expressed in this report.

**C.** Carry out serious, impartial, and effective investigations into the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, in accordance with this report. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.

**D.** Bring to trial, before impartial and independent tribunals, all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, remove legal obstacles to the investigation and punishment of these crimes, and provide the victims and their family members ample participation during the investigation and prosecution, as well as adequate compensation, and eliminate gender barriers that obstruct access to justice.

**E.** Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the States must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

**F.** Adopt specific, adequate and effective measures to prevent attacks and other forms of violence perpetrated against women journalists, and prosecute and punish those responsible. States must adopt effective measures to encourage reporting of cases of violence against women journalists and combat the impunity that characterizes those crimes.

**G.** Encourage democratic debate through public declarations, practices, and policies that promote tolerance and respect of all individuals, under equal conditions, whatever their thoughts or ideas.

**H.** Exhort the authorities to refrain from making public statements or using state media outlets to carry out public campaigns that can encourage violence against individuals because of their opinions. In particular, avoid statements that could stigmatize journalists, media outlets, and human rights defenders.

## **B. Social Protest**

9. 2019 was a year marked by numerous social protests and citizen demonstrations in different countries of the region. The Office of the Special Rapporteur notes with grave concern a high number of deaths, hundreds of wounded and detained, in addition to cruel and degrading treatment that has left repression through excessive use of force by police and military bodies in different protests and demonstrations public events in the region, in a framework where dialogue is not privileged as a solution. In specific alarm the situation experienced in Chile, Bolivia, Ecuador, Haiti, Brazil, Panama, Costa Rica, Puerto Rico, and Venezuela. Also, Cuba and Nicaragua where repression persists that even prevents the development of protest and public demonstrations by declaring them illegal or criminalizing them before they take place.

10. The IACHR and its Office of the Special Rapporteur followed with extreme concern the situation of Ecuador (October 5 to 16) and Chile (October 18 to 27), where fundamental freedoms were abolished as a result of the use of the exception regimes. This Office has condemned the excessive use of force by joint tasks of Police and the military who would have used ballistic and non-ballistic projectiles and chemical agents to disperse mass demonstrations in both countries where reports of killings, torture, and mutilations against several protesters were reported.

11. This Office again expresses the recommendation to adopt regulatory frameworks aimed at protecting and facilitating the exercise of social protest. The Office of the Special Rapporteur recalls that States should not fail to take into account that when faced with institutional frameworks that do not favor participation, or in the face of serious barriers to access to more traditional forms of mass communication, public protest can become the only means that really allows discontented sectors of the population, but not aligned with political parties, and discriminated or marginalized groups in the public debate to make their point of view heard and influence public debate.

12. In relation to this point, as in previous years, the Office of the Special Rapporteur recommends Member States to:

**A.** Guarantee the legitimate exercise of social protest and prevent the application of disproportionate restrictions that can be used to inhibit or suppress critical or dissident expressions. In order to be consistent with international obligations on human rights, any national regulation affecting the right to social protest must meet requirements of legality, necessity and proportionality.

**B.** Initiate the necessary legislative reforms to eliminate from the legal system requirements for the previous authorization or permission to carry out demonstrations and protests in public spaces, and expressly establish the general presumption in favor of the exercise of this right.

**C.** Ensure protection of individuals and refrain from stigmatizing or stereotyping protesters and their demands, avoiding generalizations based on the behavior of particular groups or isolated events. If security forces must act in a demonstration, they shall use the safest and least harmful measures to

individual rights. The response of security forces should aim to protect and facilitate rights, not to repress them. The general principles on the use of force, applied to the context of protests and demonstrations, require that security operations be carefully and thoroughly planned by persons with specific experience and training for this type of situation.

**D.** In the context of positive obligations to guarantee the right and protect the person exercising it as well as third parties, States should establish specific rules and action protocols for security forces acting in situations of social protest and public demonstrations. These guidelines should aim for police agents to act in the knowledge that their obligation is to protect the participants in a public meeting, demonstration or concentration, to the extent that it is the exercise of a human right.

**E.** Guarantee that firearms are excluded from the devices used to control social protests. The ban on carrying firearms and lead ammunition by officials who may come into contact with protesters has been proven as the best measure of preventing lethal violence and deaths occurring in a context of social protests. Operations may provide for the availability of firearms and lead ammunition somewhere outside the range of the demonstration for those exceptional cases in which a violent situation warranting such use occurs. In this extreme scenario, there shall be explicit rules regarding who has the power to authorize their use and the ways in which this authorization is to be properly documented.

### **C. Criminalization of expression and proportionality of subsequent liabilities**

13. Despite the progress in terms of regulatory reforms to align inter-American standards with crimes that seek to protect the honor and reputation of public officials, the Office of the Special Rapporteur expresses its concern that in some countries of the region criminal offences that open the way for the criminalization of the right to freedom of expression are still being used. Among the countries with a high prevalence are Peru, where the journalist Paola Ugaz has at least five legal proceedings against her for aggravated defamation, due to her investigations into Sodalicio, a Catholic organization that has been investigating since 2010. In the same vein is Panama, where between March and July of this year the fourth sub-regional Prosecutor opened nine complaints for the alleged commission of crimes against honor in its slander and insults modality presented by former President Ricardo Martinelli against around 40 communicators, executives, and owners of the Corporation La Prensa (Coprensa), of the newspaper *La Estrella* and *Radio Panama*, among others. In Brazil, Venezuela, and the Dominican Republic, journalists were also subject to lawsuits, while in Mexico journalist Sergio Aguayo would have been sentenced to pay half a million dollars for alleged moral damage to former PRI president Humberto Moreira.

14. Similarly, is of concern the persistence in the use of regulations contrary to inter-American standards in Caribbean countries such as Bahamas, Barbados, Grenada, St. Kitts and Nevis, St. Vicente, St. Lucia, and Trinidad and Tobago

15. Finally, the Office of the Special Rapporteur observes with concern the tendency to use criminal offences such as “sedition”, “terrorism”, and “incitement to violence” in Bolivia, where it would seek to criminalize protesters and activists, as well as social movements historically recognized by their disruptive methods of social protest (road blockage and hunger strike) as evidenced by the cases registered with the group of coca growers of the Chapare in Cochabamba and members of the Federation of Neighborhood Boards and CSTUCB in La Paz.

16. In relation to this point, as in previous years, the Office of the Special Rapporteur recommends Member States to:

**A.** Promote the repeal of contempt (*desacato*) laws, whatever their form, given that these norms are contrary to the American Convention and restrict public debate, an essential element of the practice of democracy.

**B.** Promote the repeal of laws on criminal defamation, and in particular abstain from using criminal proceedings to protect honor and reputation when information is disseminated about issues of public interest, about public officials, or about candidates for public office. Protecting the privacy or the honor and reputation of public officials or persons who have voluntarily become involved in issues of public interest, should be guaranteed only through civil law.

**C.** Promote the inclusion of inter-American standards in civil legislation so that civil proceedings against individuals who have made statements about public officials or about matters of public interest apply the standard of actual malice, in accordance with principle 10 of the Declaration of Principles, and are proportionate and reasonable.

**D.** Promote the modification of ambiguous or imprecise criminal laws that disproportionately limit the right to freedom of expression, such as those aimed at protecting the honor of ideas or institutions, with the aim of eliminating the use of criminal proceedings to inhibit free democratic debate about all issues of public interest.

#### **D. Direct and indirect censorship**

17. The Office of the Special Rapporteur emphasizes that, in Venezuela, Cuba, and Nicaragua, the pattern of articulated attack from the State towards journalists, media, and opposition activists is ongoing. In these States, different forms of censorship of national and foreign media are verified, arbitrary arrests of journalists and human rights defenders, as well as different forms of blockades of websites. Likewise, the Office of the Special Rapporteur confirmed the stigmatization of the independent press.

18. The Office of the Special Rapporteur is concerned that some countries continue to resort to direct censorship through the closure of the media or interference in the broadcasts of subscription channels. It has been observed that Telecommunications regulators eliminated, or interrupted cable channels perceived as critical in different countries such as Venezuela, Bolivia, and Ecuador, respectively. Member States must take into account that Article 13 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship.

19. This Office has received complaints that some governments maintain the practice of allocating government advertising expenses with the aim of punishing or rewarding the media based on their information lines. In Bolivia, a draft Supreme Decree called “Recovery of freedom of expression in Bolivia” was presented, its Article 7 would seek to reassign government advertising in an ambiguous manner.

20. For the Office of the Special Rapporteur, it is necessary for Member States to have regulatory frameworks that establish clear, transparent, objective, and non-discriminatory criteria for determining the distribution of government advertising.

21. In relation to this point, as in previous years, the Office of the Special Rapporteur recommends Member States to:

**A.** Eliminate any norm that enables prior censorship by any state organ, and also any prior condition that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

**B.** Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or coverage of certain information, whether through the discriminatory and arbitrary assignment of government advertising or other indirect means aimed at impeding communication and the circulation of ideas and opinions.

**C.** Regulate these matters in accordance with the current inter-American standards on freedom of expression.

**D.** Adopt legislation to regulate the State's authority to control and supervise the allocation of public goods or resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust institutional frameworks with two central objectives: first, to eliminate the possibility that State authority is used to reward or punish media outlets according to their editorial positions, and second, to foster pluralism and diversity in the public debate.

#### **E. Surveillance programs, Whistleblowers, and source confidentiality**

22. Increasingly, the Office of the Special Rapporteur continued to receive information on a trend in the region of practices aimed at monitoring those who manifest through social networks and the use of different technologies to spy on journalists, social leaders, and politicians. In some countries such as Cuba, Colombia, Chile, Nicaragua, Venezuela the implementation of control and surveillance strategies for citizens' communications in social networks persists.

23. On the use of surveillance technologies, through the purchase of Pegasus software to spy on journalists and human rights defenders in Mexico, the Office of the Special Rapporteur recalls that, in its joint report with the United Nations on Freedom of Expression in Mexico of 2018, it recommended the State to carry out an independent investigation of the federal government and the governments of the federal entities that, presumably, had bought or used the spy program, it also urged that experts from academic organizations and civil society be included in the investigation. All potential buyers and users of Pegasus (and other possible spy products) and all sources of information that can demonstrate the use of the spyware program must also be

analyzed and investigated, as well as provide updated information to the public, periodically, on the state of the investigation.

24. Regarding the reservation of journalistic sources, this Office received information on cases in Argentina and Brazil, arguing that investigative journalism would be in danger as a result of some measures carried out by judicial authorities, which would seek to identify the sources of journalistic material that would have served as the basis for uncovering alleged corruption plots. Likewise, there would have been violations to source confidentiality in Canada and the United States.

25. In relation to this point, as in previous years, the Office of the Special Rapporteur recommends Member States to:

**A.** Review their legislation to establish limits on the power to oversee private communications, their necessity and proportionality, pursuant to the public's universal rights and the principles of international law that have been taken up in this report.

**B.** Ensure that the public can have access to information on programs for surveillance of private communications, their scope and the existing controls to guarantee that they cannot be used arbitrarily. In any case, States must establish independent control mechanisms to ensure the transparency and accountability of these programs.

**C.** Abstain from punishing journalists, members of the media or members of civil society who have access to and disseminate reserved information about this type of surveillance programs, considering it to be of public interest. Confidential sources and materials associated with dissemination of reserved information must be protected by law.

**D.** Establish regulations to guarantee that individuals who expose wrongdoing, serious maladministration, a breach of human rights, humanitarian law violations or other threats to the overall public interest, for example in terms of safety or the environment, should be protected against legal, administrative or employment related sanction, even if they have otherwise acted in breach of a binding rule or contract, as long as at the time of the disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed wrongdoing or the other threats noted above.

#### **F. Access to public information**

26. Despite progress in the incorporation of standards of the inter-American system, in some countries there are still challenges related to overcoming the culture of secrecy and having greater access to information held by the State, statistics, figures, and data in these and others countries of the region. The Office of the Special Rapporteur has noted with concern the increase in violations regarding the exercise of this right.

27. This Office noted the existence of some difficulties for people to access public information, institutional barriers, and systematic breaches to the obligations emanating from inter-American standards.

28. In relation to this point, as in previous years, the Office of the Special Rapporteur recommends Member States to:

**A.** Continue promulgating laws that permit effective access to information and complementary norms that guarantee its adequate implementation, in conformity with the international standards in this area.

**B.** Guarantee effectively, both *de jure* and *de facto*, the right of *habeas data* of all persons, this being an essential element of freedom of expression and the democratic system.

**C.** Encourage the effective and efficient implementation of norms on access to information, adequately training public employees and informing the citizenry in order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process.

**D.** Strengthen the institutional structure for supervision of the implementation of laws regarding access to public information, pursuant to the highest standards in this field, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607 (XL-O/10), by means of which it adopts the "Model Inter-American Law on Access to Information."

**E.** Promote the widespread dissemination of information on the human rights of women and how to uphold them, the mechanisms of protection available to women at potential risk of suffering violence and how to access them, the programs for free legal assistance available to women victims of violence and discrimination, and all other mechanisms for addressing these issues.



**F.** Step up efforts to move towards the effective implementation of comprehensive systems for compiling information on discrimination and violence against women that incorporate information from all State organs with authority in this area, especially the judicial systems. Based on the information collected, States should produce complete statistics on violence and discrimination against women, as well as other kinds of quantitative and qualitative information in this respect. Those statistics should be updated periodically and should include information that is disaggregated at least by sex, gender identity, age, race, ethnicity, sexual orientation, socioeconomic status, and situation of disability so as to make it possible to construct an accurate image of the specific forms in which violence and discrimination affect the women in most vulnerable situations. The statistical information produced should be proactively published.

**G.** Establish systematic policies for the education and training of state officials, in particular judicial officers, on international standards in relation to access to information and violence and discrimination against women. In addition, train the civil society organizations in the use of the mechanisms available to make requests of information to the state.

### **G. Diversity and pluralism in Radio Broadcasting**

29. Throughout 2019, the Office of the Special Rapporteur noted advances and setbacks regarding the regulatory mechanisms to guarantee access to frequencies to community broadcasting persists, it also noted the existence of obstacles for its proper functioning, which continues to be a problem in several countries. The Office of the Special Rapporteur observed again that in some countries of the region there is still a problem of concentration of public or private media.

30. Among the improvement is the awarding of definitive licenses for FM radios to stations that had Provisional Precarious Permits (PPP) by the National Communications Authority [*Ente Nacional de Comunicaciones*] (ENACOM) of Argentina. Among the setbacks, this Office has noted with concern the draft decree “recovery of freedom of expression in Bolivia” and the situation of the Radios of the Original Peoples (RPOs) that would contain provisions incompatible with the inter-American standards on freedom of expression and access to public information.

31. In this regard, the Office of the Special Rapporteur continued to emphasize the need for a technical body independent of the Government to be the competent authority in the matter of broadcasting, which enjoys autonomy in the face of political pressures, and which is subjected to all the guarantees of due process and a rigorous judicial control. In this line, the Office of the Special Rapporteur observed that in several countries there is a persistence of obstacles to implement open, public, and transparent licensing processes or frequencies, subject to clear and pre-established rules, and to strictly necessary, fair, and equitable requirements. In addition, the Office of the Special Rapporteur reiterates that at this moment, the countries of the region are in the process of transitioning from analogue to digital television, while others are just starting.

32. In relation to this point, as in previous years, the Office of the Special Rapporteur recommends Member States to:

**A.** Ensure the existence of transparent, public, and equitable criteria for the allocation of radio frequencies and the new digital dividend. These criteria must take into account the concentration of ownership or control of communications media, and assign the administration of the radio electric spectrum to an organ independent from political and economic interests, subject to due process and judicial oversight.

**B.** Promote effective policies and practices that permit access to information and the equal participation of all sectors of society so that their needs, opinions, and interests will be contemplated in the design and adoption of public policy decisions. Additionally, adopt legislative and other measures that are necessary to guarantee pluralism, including laws that prevent the existence of public or private monopolies.

**C.** Legislate in the area of community radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of equality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the “Joint Declaration on Diversity in Broadcasting.”

33. Ensure that respect for freedom of expression, including media diversity according to editorial position or type of property, is ensured in the digital terrestrial transition process. To that aim, States should ensure that

decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard.

# **ANNEXES**

**DIRECTIVE 1/19**  
**GUIDELINES ON THE ACTIVITIES AND FUNCTIONS PROVIDED FOR**  
**IN THE MANDATES OF THE SPECIAL RAPORTEURSHIPS OF THE IACHR**  
September 30, 2019

**I. BACKGROUND AND MANDATE**

1. The Special Rapporteurships are offices created by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") in accordance with Article 15 of its Rules of Procedure, with a specific mandate related to the fulfillment of the functions of promotion and protection of human rights of the IACHR and with respect to topics of particular interest to that end.

2. Throughout its history, the Commission has identified the promotion and protection of the right to freedom of expression, and of economic, social, cultural, and environmental rights as fundamental issues for the establishment and consolidation of the democratic rule of law and for that reason it has established Special Rapporteurships about such matters<sup>1683</sup>.

3. The Office of the Special Rapporteur for Freedom of Expression (hereinafter "Office of the Special Rapporteur") was created by the IACHR in October 1997 during its 97th Period of Sessions, with the purpose of "strengthening the capacity of the IACHR's to promote and protect full observance of this important right in the Americas, and thus help to ensure its effective exercise."<sup>1684</sup> Since its establishment, the Office of the Special Rapporteur has also been endorsed by the member states of the Organization of American States (hereinafter "OAS").<sup>1685</sup>

4. The Office of the Special Rapporteur was created as "a permanent office that operates independently and has its own budget,"<sup>1686</sup> with the mandate to "raise public awareness of the importance of freedom of expression throughout the hemisphere. This is being done in the conviction that this basic right plays a fundamental role in the development and consolidation of democracy and in the protection of all other human rights. The other purposes of the Office are: to make specific recommendations to Member States regarding freedom of expression so that they can better take measures to support it, to draft specific reports and studies, and to quickly respond to any petition or communication reporting violations of freedom of expression in an OAS Member State."<sup>1687</sup>

5. On April 3, 2014, during the 159th Period of Sessions, the IACHR announced the identification of the necessary resources "to implement the conversion of its Unit on Economic, Social, and Cultural Rights to a Special Rapporteurship. This will enable the Commission to take a broader, deeper, and more cross-cutting approach to these fundamental challenges. In the coming months, the Commission will proceed with the selection of the Special Rapporteur."<sup>1688</sup> With this, the IACHR began the process of creating the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (hereinafter "ESCER"). During its 163rd Period of Session in Lima, Peru, the IACHR appointed the first Rapporteur of that office, in accordance with the

<sup>1683</sup> IACHR. [Strategic Plan 2017-2021](#).

<sup>1684</sup> IACHR. [Annual Report 1998](#). Chapter II. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999.

<sup>1685</sup> The Commission's initiative to create a permanent Office of the Special Rapporteur for Freedom of Expression found full support among the OAS Member States. Indeed, during the Second Summit of the Americas, the hemisphere's Heads of State and Government recognized the fundamental role of freedom of thought and expression, and noted their satisfaction over the creation of the Special Rapporteurship. During the Third Summit of the Americas, held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Office of the Special Rapporteur. Likewise, the OAS General Assembly has on various occasions expressed its support for the work of the Office of the Special Rapporteur and entrusted it with follow-up or analysis of some of the rights that comprise freedom of expression. See, Resolution 1932 (XXXIII-O/03), Resolution 2057 (XXXIV-O/04), Resolution 2149 (XXXV-O/05), Resolution 2121 (XXXV-O/05), Resolution 2237 (XXXVI-O/06), Resolution 2287 (XXXVII-O/07), Resolution 2434 (XXXVIII-O/08), Resolution 2418 (XXXVIII-O/08), Resolution 2523 (XXXIX-O/09), Resolution 2679 (XLI-O/11), Resolution 2661 (XLI-O/11), Resolution 2727 (XLII-O/12), Resolution AG/RES 2811 (XLIII-O/13), Resolution AG/RES. 2842 (XLIV-O/14), Resolution 2885 (XLVI-O/16), and Resolution 2908 (XLVII-O/17).

<sup>1686</sup> IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 1998](#). Chapter I. OEA/Ser.L/V/II.102. Doc. 6 rev. 16 April, 1999.

<sup>1687</sup> IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 1998](#). Chapter I. OEA/Ser.L/V/II.102. Doc. 6 rev. 16 April, 1999.

<sup>1688</sup> IACHR. December 7, 2016. [Press Release R 183/16. IACHR Wraps Up its 159th Session](#).

procedure established in Article 15 of its Rules of Procedure.<sup>1689</sup> The IACHR gave a special character to this Rapporteurship, making it a permanent office, with functional independence, operational structure and budget of its own, with the mandate to "build standards and good practices in the area of economic, social, cultural and environmental rights for the region. The ESCER Rapporteurship will promote these rights through its technical support to the IACHR in processing petitions and cases, precautionary measures, and hearings on the topic. It also will prepare thematic and regional reports, will conduct official and academic visits and will provide technical assistance to the States."<sup>1690</sup> In the 2017-2021 Strategic Plan, the ESCER Rapporteurship was included as a pillar of the program of Special Rapporteurships, as well as setting up its functioning "in relation to all the IACHR's mandates, functions and mechanisms."

## **II. ACTIVITIES AND FUNCTIONS FORESEEN IN THE MANDATES OF THE SPECIAL RAPPOURTEURSHIPS**

6. As provided for in the Rules of Procedure of the IACHR<sup>1691</sup>, the Special Rapporteurships shall exercise their functions in coordination with the Executive Secretary, who may in turn indicate the instances or structure of the Executive Secretariat with which the Rapporteur shall coordinate for the various topics and activities. They will also carry out their activities in coordination with Commissioners in charge of country and thematic Rapporteurships in developing their mandate.

7. Since the Rules of Procedure provide that the activities and functions provided for in the Special Rapporteurships' mandates shall be carried out in accordance with the Rules of Procedure and the guidelines that the Commission might adopt<sup>1692</sup>, the purpose of this Regulation is to promote coherence and institutional coordination in carrying out functions and activities of the Special Rapporteurs, in order to strengthen and clarify their respective frameworks for action. This guideline is based on the norms established in the Rules of Procedure of the IACHR, as well as the guidelines contained in the IACHR Manuals, the Protocols of Action of the Special Rapporteurships, the institutional practice established, and the Strategic Plans of the IACHR.

### **A. Petition and Case System**

8. In coordination with the Executive Secretariat, the Special Rapporteurships will assist the Commission in the evaluation of petitions and cases, as well as in the preparation of the corresponding reports<sup>1693</sup>. This is one of the most important functions of the Special Rapporteurships. Proper promotion of individual petitions, in addition to providing justice for the specific case, allows to draw attention to paradigmatic situations, and to promote the development of inter-American standards in the areas of the mandates of the Special Rapporteurships<sup>1694</sup>.

9. Taking into account their respective mandates and work plans, Rapporteurships should develop the relevant criteria for the identification of cases related to freedoms and rights under their mandate. Promoting proper momentum. The Special Rapporteurships will coordinate with the Executive Secretariat and the Deputy Executive Secretariats on petitions and cases, all matters pertaining to the study of petitions and cases in their different procedural stages before the Commission and, as the case may be, before the Inter-American Court of Human Rights, as well as the preparation and submission of draft reports.

<sup>1689</sup> IACHR. July 5, 2017. [Press Release R 090/17. IACHR Chooses Soledad García Muñoz as Special Rapporteur on Economic, Social, Cultural, and Environmental Rights \(ESCER\)](#).

<sup>1690</sup> IACHR. [Strategic Plan 2017-2021](#).

<sup>1691</sup> Article 15.5 of the Rules of Procedure of the IACHR provides that: "Special rapporteurs shall perform their duties in coordination with the Executive Secretary, who may delegate to them the preparation of reports on petitions and cases", and Article 15.6 provides that "[t]he thematic and special rapporteurs shall perform their activities in coordination with the country rapporteurs"

<sup>1692</sup> In accordance with Article 15.7 of the Rules of Procedure of the IACHR, "[t]he activities and functions provided for in the Rapporteurships' mandates shall be performed in accordance with the present Rules of Procedure and the guidelines, codes of conduct and manuals that the Commission might adopt."

<sup>1693</sup> Article 15.5 of the Rules of Procedure of the IACHR provides that "Special rapporteurs shall perform their duties in coordination with the Executive Secretary, who may delegate to them the preparation of reports on petitions and cases."

<sup>1694</sup> In fact, in the case of the Office of the Special Rapporteur for Freedom of Expression, the development of this function over the course of its twenty years has created important jurisprudence. The Office of the Special Rapporteur has advised the IACHR in the presentation to the Inter-American Court of Human Rights of individual cases on freedom of expression, which gave rise to emblematic rulings of this Court. The strategy of promoting petitions and cases follows both chronological and potential strategic impact criteria.

10. The Special Rapporteurships also assist the Commission in adopting precautionary measures regarding their mandates, in coordination with the Executive Secretariat.

#### **B. Promotion and Academic and Visits**

11. The promotion of human rights constitutes one of the most effective mechanisms for their enforcement and defense in the Hemisphere. Special Rapporteurships carry out promotional activities, such as education, training, or dissemination activities, on the intersection between the inter-American system for the protection of human rights and the rights related to their respective mandates. In particular, these offices promote the training of state actors, civil society, and other stakeholders in the region.

12. In carrying out advocacy work, the Special Rapporteurships will also coordinate joint actions with universities and educational centers, civil society, stakeholders, such as national training entities for state officials, as well as with national human rights institutions, or other independent bodies in charge of the promotion and defense of human rights related to the mandates of the Special Rapporteurships.

13. The academic visits will also allow the Rapporteurships to be informed about the state of freedom of expression and economic, social and cultural rights in the different Member States. These visits allow to create an instance of dialogue between the different actors. During these visits, the Special Rapporteurships may communicate with representatives of the State, non-governmental organizations, the media, and individuals interested in the scope of their mandates.

#### **C. Monitoring the Situation**

14. The Special Rapporteurships also develop the monitoring of the status of freedoms and rights under their mandate in the region, which is carried out through a wide network of contacts and diversity of sources. In carrying out this function, the Special Rapporteurships provide the Commission with expert knowledge on specific cases or situations that are relevant to the exercise of rights related to their mandates, in accordance with the provisions of Article 15.8 of the Rules of Procedure of the IACHR, which provides that Rapporteurs "shall advise the plenary with respect to issues they have become aware of that may be considered matters of controversy, grave concern or special interest for the Commission."

15. In carrying out this function and following consultation with the Commission, the Special Rapporteurships send communications to the OAS member states based on Articles 41 of the American Convention on Human Rights and 18 of the Statute of the IACHR, and issue press releases. These communications and press releases refer to situations of special concern about persons or groups of people, general trends and patterns that could constitute human rights violations in a particular country, or the content of a regulation or legislation considered to be of concern. Communications or letters to States are also an important input for the preparation of reports on the situation of the rights related to each mandate of the Special Rapporteurships.

16. When the Special Rapporteurships request information from OAS member states or make recommendations, the letters should be sent to the presidency of the IACHR and the country Rapporteur for their comments, with a copy to the Executive Secretary before they are forwarded to the States. In the event that it is decided to issue a press release, the draft of the press release, in English and Spanish, must be sent in advance to the president of the IACHR and if there is a country mentioned, the country Rapporteur Commissioner, with a copy to the Executive Secretary, the relevant Deputy Executive Secretary and the Chief of Staff the Office of the Executive Secretariat. In some particularly sensitive cases, the press release may be sent to the entire Commission directive at the request of the president. At this point, the IACHR's special protocol on press releases follows.

#### **D. On-site Visits**

17. By invitation of the OAS member States, the Special Rapporteurships also conducts on-site visits to assess the human rights situation in the concerning country, in accordance with the corresponding rules of

the IACHR Rules of Procedure and the institutional practice<sup>1695</sup>. In particular, the Special Rapporteurships will previously coordinate on-site visits with the Executive Secretariat and the respective country Rapporteurship.

18. Country visits are an essential means of obtaining direct and first-hand information on the human rights situation related to the mandate of the Special Rapporteurs, and facilitate intensive dialogue with all relevant State authorities, including those of the executive, legislative, and judicial branches. They also enable contact and information gathering from victims, victims' relatives, witnesses, national human rights institutions, international and local NGOs, and other members of civil society or stakeholders, the academic community, and officials of international agencies present in the concerning country. Country visits by the Special Rapporteurships provide an opportunity to promote inter-American standards and sensitize national and international actors on specific issues under consideration. This is done, among other things, through meetings, briefings, press coverage, and dissemination of the report of the visit.

19. Special Rapporteurships may carry out visits to countries jointly or together with other representatives of the international community, such as the Special Procedures mandates of the United Nations<sup>1696</sup>.

#### **E. Reports on the Situation of Rights in the Hemisphere**

20. Another important task of the Special Rapporteurships is the periodic preparation of reports on the situation of the rights related to their respective mandates in the hemisphere, which will refer to general or specific situations of human rights violations in the different States of the region, which includes identifying the main threats to ensure their exercise and the progress that has been made in the different areas<sup>1697</sup>. These periodic reports are tools for engaging in a constructive dialogue with OAS member states highlighting the reported progress in legislative, administrative, or jurisprudential matters, but also drawing attention to the problems and challenges faced during the relevant period. The reports include viable and feasible recommendations based on the principles and standards of the inter-American human rights system.

21. Likewise, the Special Rapporteurships will elaborate chapters or provide inputs to the country reports or the Annual Report of the IACHR, regarding issues related to their mandates.

22. For the drafting of these reports, the Rapporteurships will have the information obtained during visits to the Member States, the information provided by governments and other agencies of the State administration, publicly available official information, as well as all other information coming from civil society organizations and individuals interested in the matter.

23. The reports are considered by the plenary of the Commission for approval and inclusion in the Annual Report of the IACHR, which is presented each year to the OAS General Assembly.

#### **F. Public Hearings**

24. The IACHR may convene public hearings on its own initiative or at the request of an interested party, in accordance with Articles 61 to 70 of its Rules of Procedure. The hearings have the purpose of receiving information from the parties with respect to a petition or case being processed before the Commission; follow-up to recommendations; or general or particular information related to human rights in one or more OAS Member States.

25. The Special Rapporteurships participate actively in the public hearings convened by the IACHR on the rights related to their respective mandates, preparing inputs, and making the interventions and the

<sup>1695</sup> This practice is consolidated by the visits and following reports published by the Office of the Special Rapporteur for Freedom of Expression on the situation of the right to freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), Colombia (2005), Honduras (2009, 2010 and 2015), Venezuela (2015), and Chile (2016).

<sup>1696</sup> In 2010 the Office of the Special Rapporteur carried out a visit to Mexico together with the United Nations Special Rapporteur on Freedom of Opinion and Opinion and produced a [special country report](#).

<sup>1697</sup> For example, since its establishment, the Office of the Special Rapporteur has issued 19 [annual reports on the situation of freedom of expression](#).

corresponding follow-up. These hearings are a fundamental tool within the monitoring and thematic development tasks of the Special Rapporteurships because they allow them to receive inputs on the situation of these rights in the region, to promote the application of international standards in the national legal systems, as well as to know the work of civil society strategic actors.

26. In the process of selecting public hearings to be held at each session, the Special Rapporteurships will prepare their opinion on the requests for hearings received. If the Special Rapporteurships wish the Commission to convene a specific public hearing on issues related to the rights related to their mandate, they may prepare a memorandum addressed to the Executive Secretariat of the IACHR, requesting that it submits a request for hearing to the IACHR president. In working meetings and public hearings dealing with matters related to the mandate of the Special Rapporteurships, the Office will coordinate with the Executive Secretariat to ensure the assistance of the Rapporteur and other persons in charge of attending them. Likewise, the Special Rapporteurships will elaborate the summaries on the background and topics to be addressed in those hearings and meetings. In the case of hearings on a petition or case, the corresponding Special Rapporteurship will also express its opinion on the reception of the testimonial or expert evidence eventually proposed.

### **G. Development of Expert Knowledge**

27. The Rapporteurships also prepare thematic reports on those matters that require specialized study. These reports are designed to lead to processes of discussion on issues and specific problems identified in the region. Thematic reports will include recommendations on the implementation of legislative and administrative reforms, or other public policies and measures to be adopted in the States of the Americas.

28. The thematic reports prepared by the Special Rapporteurships must be approved by the IACHR before they are published and will adequately integrate suggestions of changes, recommendations on topics to be addressed, as well as any other adaptation to the original texts that come from the members of the Commission.

29. In carrying out this function, the Special Rapporteurships may also take part in joint statements with other representatives of the international community, such as United Nations Special Procedures mandates holder on human rights<sup>1698</sup>. When it comes to regional issues, statements are signed by the UN and OAS rapporteurs. Joint declarations constitute a fundamental working tool for the Special Rapporteurships. The Special Rapporteurships will keep the IACHR informed of the joint declarations they regularly adopt together with other Special Rapporteurs.

### **H. Technical Advice and Public Policies**

30. At the request of States, civil society, and other interested parties, the Special Rapporteurships can generate projects and actions aimed at providing technical assistance, promoting the exchange of good practices, compliance with standards and legislative adaptation, such as the generation of public policies regarding issues related to their mandates. In this, as in its previous capacities, the Special Rapporteurships will coordinate their efforts in the matter with those of the Executive Secretariat, through its relevant Deputy Secretary. The Special Rapporteurships may also provide technical advice to the organs of the OAS in the areas of its mandate. The Special Rapporteurships will previously inform the respective Country Rapporteurship and the Executive Secretariat about the activities carried out in compliance with this function.

### **I. Work Plan**

31. The Special Rapporteurships, under the leadership of their holders, must prepare a three-year work plan to be presented and approved by the plenary of the IACHR, as a way of establishing, publicly defining, and institutionalizing the axes and priorities of action during each one of the mandates of the Rapporteurships and their respective Offices. The rapporteurs will adjust their work plans with the plenary of the Commission for approval and submit a written report to the Commission on the work carried out, at least once a year, in

<sup>1698</sup> For example, since its creation, the Office of the Special Rapporteur for Freedom of Expression has participated in the preparation of [statements](#) with other regional and UN rapporteurs for freedom of expression. Joint declarations are usually signed by the rapporteurs of the UN, the Organization for Security and Cooperation in Europe (OSCE), the OAS, and the African Commission on Human and Peoples' Rights. Similarly, the ESCER has participated in joint declarations with the UN Rapporteurships on adequate housing and on the right to health.



accordance with Article 15.6 of the Rules of Procedure of the IACHR<sup>1699</sup>.

32. In the process of setting up a new Special Rapporteurship, transitional plans and affirmative measures that are necessary to ensure their implementation will be adopted.

#### **J. Financing**

33. The Special Rapporteurships have their own budget, financed by the funds they obtain themselves, through donations from States, foundations, and particulars, as well as through participation in competitive international cooperation processes. To date, Special Rapporteurships do not receive resources from the Regular Fund of the OAS or the IACHR, nor does it impose on the Executive Secretariat of the IACHR the task of obtaining the funds for its operation, what may be subject to reconsideration by the IACHR.

34. The Special Rapporteurships prepare or participate in the preparation of projects of international cooperation according to the agenda or work plan that has been approved by the IACHR. Based on this work plan, the Special Rapporteurships generate or contribute to the presentation of specific projects to donors that are subject to the corresponding process within the OAS.

35. Notwithstanding the foregoing, the Special Rapporteurships will participate in the coordination instances that the Executive Secretariat has or that they promote in order to optimize the mobilization of funds by the IACHR, always promoting dialogue and cooperation between the different areas.

#### **K. Protocols of Institutional Action and Coordination Spaces**

36. In order to provide institutional coherence and pragmatic homogeneity when executing the tasks and activities of the Special Rapporteurships in an effective and methodical way, the Special Rapporteurs should adopt and follow up protocols of action and methodologies of work, under guidelines contained in the IACHR regulations, this directive, the Commission manuals, and established institutional practice. To this end, the Rapporteurships will be able to integrate into the initiatives of the Integrated Information Analysis and Management Platform (IIAMP) of the IACHR for the elaboration of protocols for the production, organization, analysis, and dissemination of information; methodologies for collection, registration, production, and management of information; alliances with local observatories and panels on the prospect and situation analysis, in accordance with the IACHR Strategic Plan.

37. Likewise, in agreement with the Executive Secretariat, the Special Rapporteurships will also participate in coordination spaces or special programs of the IACHR, such as the Rapid and Integrated Response Coordination Unit (SACROI), special follow-up mechanisms, the procedural delays program, the institutional transparency program and those others in which their participation is relevant to ensure the good work and coordination of the tasks of the IACHR.

Approved by the Inter-American Commission on Human Rights on the 30th day of September 2019 (signed): Esmeralda E. Arosemena Bernal de Troitiño, Presidenta; Joel Hernández, Primer Vicepresidente; Antonia Urrejola, Segunda Vicepresidenta; Margarete May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Members of the Commission.

<sup>1699</sup> Article 15.6 of the Rules of Procedure provides that: "Rapporteurs shall present their work plans to the plenary of the Commission for approval. They shall report in writing to the Commission, at least annually, on the work undertaken".

# GUIDE TO GUARANTEE FREEDOM OF EXPRESSION REGARDING DELIBERATE DISINFORMATION IN ELECTORAL CONTEXTS

OCTOBER 2019

On June 5, 2018, the General Assembly of the Organization of American States asked the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), the Department of International Law (DIL) and the Department of Electoral Cooperation and Observation (DECO) of the Organization of American States to develop a “Practical guide of recommendations to guarantee freedom of expression and access to information from various sources on the Internet in electoral contexts, without undue interference”.<sup>1700</sup>

With a view of conducting this process through stakeholder participation and collaboration, the Office of the Special Rapporteur and DECO issued a call for proposals at the end of 2018 seeking contributions and reflections regarding the concern expressed by the States due to the dissemination of deliberately false information and disinformation campaigns on social networks, as well as for the improper use of personal data during electoral periods. The community was invited to “submit general comments or ongoing work” involving empirical studies on the mass dissemination of false information, especially in electoral contexts, principles or standards applicable to the problem, possible actions, and stakeholders involved. 19 contributions were received from 24 organizations or individuals.<sup>1701</sup> Likewise, on January 31, 2019, the Special Rapporteur, Edison Lanza, participated in a session of the Committee on Juridical and Political Affairs of the OAS General Assembly where the work plan to address the mandate to develop a guide on freedom of expression and the phenomenon of

<sup>1700</sup> GENERAL ASSEMBLY OF THE OAS, Promotion and Protection of Human Rights. AG/RES. 2928 (XLVIII-O/18), (2018), 166.

<sup>1701</sup> The following contributions were received:

ID	Organization/ Individual	Country	Date
1	Linterna Verde	Colombia	17-12-2018
2	Misión de Observación Electoral MOE Colombia	Colombia	10-01-2019
3	Juan Ortíz Freuler	EEUU	30-01-2019
4	EFF	EEUU	31-01-2019
5	Asociación por los Derechos Civiles (ADC)	Argentina	31-01-2019
6	Coding Rights	Brasil	31-01-2019
7	Fundación Karisma	Colombia	31-01-2019
8	Hiperderecho	Perú	31-01-2019
9	IPANDETEC	Panamá	31-01-2019
10	R3D	Mexico	31-01-2019
11	TEDIC	Paraguay	31-01-2019
12	Intervozes	Brasil	31-01-2019
13	Centro de Estudos Sobre Justiça de Transição	Brasil	31-01-2019
14	Derechos Digitales	Chile	31-01-2019
15	Defensoría del Público	Argentina	31-01-2019
16	Centro Universitário Antônio Eufrásio de Toledo	Brasil	31-01-2019
17	Colombia Diversa	Colombia	01-02-2019
18	Access Now	EEUU	04-02-2019
19	Funciple	Colombia	07-02-2019
20	Dercom-UBA	Argentina	11-02-2019
21	Eulália Camurça	Brasil	18-02-2019
22	Privacy International	Reino Unido	29-03-2019
23	UNESCO	Regional	22-04-2019
24	Observacon	Uruguay	07-08-2019

deliberate misinformation in electoral contexts was presented; During that session, contributions were received from numerous States present.

In late April 2019 the Office of the Special Rapporteur and the Department of Electoral Cooperation and Observation (DECO) of the OAS, with support from the National Electoral Institute of Mexico, organized a meeting with 28 experts from the region who discussed the issue of disinformation and possible State responses to it over the course of two days. The Office of the Special Rapporteur and the OAS SSD thank the experts for their invaluable contributions to this process, as well as the subsequent exchange to arrive at the document presented here.<sup>1702</sup>

The panel of experts was formed in keeping with the “multiple stakeholders” model, which has been used to address similar challenges.<sup>1703</sup> This model seeks to create a space for deliberation in which different actors interested in the topic are represented. Reasonable gender and geographical representation were also sought. The panel was thus composed of civil society organizations, electoral authorities, experts, independent experts and academics, Internet service providers, among them the main information exchange platforms (Google, Facebook, and Twitter), fact-checking agencies present in the region, and research centers throughout the hemisphere.

Within the framework of the meeting of experts, case studies on misinformation in electoral processes that took place in three countries of the hemisphere were presented: the case of the 2016 United States election, conducted by the Inter-American Dialogue; the case of the 2018 election of Brazil, by MacKenzie University; and the case of the elections in Mexico also in 2018, by the National Electoral Institute and UNAM. The UNESCO Office for South America also presented for this panel the document *Social Media and Elections* which includes a conceptual framework to address the challenges of misinformation, developed by expert Andrew Puddephatt. For its part, DECO brought to the discussion contributions about the challenges related to misinformation that have been documented in the electoral processes of the region.

Below is the Guide that summarizes the main findings of the process that was carried out, it establishes a conceptual framework to address the phenomenon of the dissemination of deliberate misinformation and includes recommendations addressed to States and other actors that can positively impact the combat of misinformation.

The Guide is divided into three sections: I) Description of the phenomenon of misinformation in electoral contexts. II) Systematization of inter-American human rights standards that should guide state responses in the matter. III) Presentation of the recommendations that were requested by the OAS General Assembly.

## **I. Disinformation, democracy, and electoral processes**

*Disinformation* consists of the mass dissemination of false information (a) with the intent to deceive the public and (b) with the knowledge of its falsehood<sup>1704</sup>. The phenomenon is of particular concern in electoral contexts

<sup>1702</sup> The members of the panel of experts are: Alba Mora Roca (Verificado Mexico), Ailidh Callander (Privacy International), Andrew Puddephatt (Global Partners & Associates Ltd, UK), Brenda Santamaria (OAS Department of Electoral Cooperation and Observation—DECO), Caio Machado (Oxford Internet Institute), Carlos Cortes (Linterna Verde, Colombia), Cristina Tardaguila (Agencia Lupa, Brazil), Diogo Rais (Mackenzie Presbyterian University, Brazil), Edison Lanza (OAS/IACHR Office of the Special Rapporteur for Freedom of Expression), Eleonora Rabinovich (Google), Francisco Guerrero (OAS Secretariat for Strengthening Democracy), Gerardo de Icaza (OAS Department of Electoral Cooperation and Observation—DECO), Guilherme Canela (UNESCO), Gustavo Gomez (OBSERVACOM), Hugo Rodriguez (Twitter Latin America), Iñigo Fernandez (Facebook), Juan Ortiz Freuler (Berkman Klein Center for Internet and Society, Affiliate), Lorenzo Cordova (National Electoral Institute of Mexico), Danya Centeno García (R3D Mexico), Marcos Tourinho (Facebook), Maria Andrea Valles (Google), Martin Becerra (Universidad de Quilmes, Cultural Industries Research Program), Michael Camilleri (Inter-American Dialogue, USA), Monica Cruz (Verificado, Mexico), Ramiro Alvarez Ugarte (Specialist in Constitutional Law and Human Rights, UP/UBA, Argentina), Roberta Braga (Atlantic Council), Roberto Rock (Inter American Press Association), Veridiana Alimonti (Electronic Frontier Foundation).

<sup>1703</sup> See, e.g., the recommendations of the European Commission’s High Level Expert Group. Cf. EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, *A multi-dimensional approach to disinformation. Report of the independent High level Group on fake news and online disinformation*. Directorate-General for Communication Networks, Content; Technology of the European Commission. 2018

<sup>1704</sup> This definition should be taken as provisional and for the purposes of this document. In the process of consultation with experts, states and civil society, it was pointed out that the phenomenon of misinformation is inserted into a complex network of practices that seek to shape the public debate, sometimes with the intention of impoverishing it. These types of practices present considerable challenges that are likely to be addressed in the future. On the other hand, it is necessary to emphasize that the concept of “false information” refers exclusively to facts that can be verified as true or false, or at least subjected to a contrast test. It does not refer to opinions or approximations of editorial tone, which can be shocking or misleading or that, because they are opinions, are not susceptible to a judgment of finding or truthfulness. Certain practices of malicious editing of true content could enter, in this sense, within this definition if that definition seeks to

since—if effective—it could affect the legitimacy of a process that is critical to the functioning and very existence of a democratic society.

Although disinformation has always been among us, in recent times it seems to have taken on new characteristics thanks to the emergence of the Internet. Disinformation operates within the framework of a decentralized network that has expanded people's ability to express themselves in the public sphere, with access to minimal technological resources. This communication ecosystem presents tremendous opportunities for expanding and strengthening the public discourse and for the circulation of information of public interest.

The inter-American human rights system has concluded that freedom of expression is characterized as a right with two dimensions: an individual one, which concerns the expression of one's thoughts, ideas, and information; and a collective or social dimension, consisting of the right of society to procure and receive information, to know the thoughts, ideas, and information of others and to be well informed. The Internet is one of the technologies that has most enhanced the exercise of freedom of expression, given that it turned millions of people who were passive recipients of information into active participants in the public debate.<sup>1705</sup>

However, this paradigm shift brought new dilemmas. For example, the challenges of the speed with which information is currently produced and distributed, the volume of information that is generated thanks to the exponential multiplication of sources, and the ability of information to expand horizontally in a "viral" way in this decentralized network, along with the ability to direct messages to very specific demographic segments. In this new technological reality, challenges such as "disinformation" require applying and reaffirming the principles that guide, normatively, the inter-American system in order to establish how to protect the public debate without affecting the exercise of fundamental freedoms.

The Panel of Experts concluded that disinformation flourishes in a particularly vigorous way in this ecosystem and there are several elements or factors that seem to explain, enhance or feed the phenomenon. Although the evidence in this regard is still scarce, insufficient, and often contradictory, some of these factors to be taken into account, when analyzing the phenomenon of misinformation, are developed below:

*Polarization.* Several studies link the phenomenon of disinformation to political polarization. Some argue that disinformation is the *cause* of polarization, as it appeals to people's emotions and seeks to affect their behavior, including voting behavior (such as so-called "voter suppression," i.e., practices or strategies used to discourage certain sectors of the population from participating in the electoral process)<sup>1706</sup>. Others argue that disinformation is actually the *effect* of political polarization, as people lock themselves into narrow information silos in which they only access information through the prism of their own ideologies or political positions (spaces called "echo chambers"), which prevents them from accessing divergent points of view.<sup>1707</sup> Other studies reject the notion that there is a significant link between political polarization and disinformation. They maintain, for instance, that polarization is the fault of political actors who encourage it, or the media, some of which have embraced this polarizing logic for some time.<sup>1708</sup>

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deceive the general public and falsifies the original content. This is the case, for example, of videos in which a person's speech slows down to make them appear intoxicated, a practice that has been seen in the United States and

<sup>1705</sup> Cf. IACHR, *Standards for a Free, Open and Inclusive Internet*. Washington D.C., Office of the Special Rapporteur for Freedom of Expression of the IACHR. 2016, para. 81.

<sup>1706</sup> H. ALLCOTT; M. GENTZKOW, *Social media and fake news in the 2016 election*, *Journal of Economic Perspectives*, vol. 31, 2, 2017, 211-236, retrieved on: October 15, 2018, from <http://pubs.aeaweb.org/doi/10.1257/jep.31.2.211>; V. BAKIR; A. MCSTAY, *Fake news and the economy of emotions: Problems, causes, solutions*, *Digital Journalism*, vol. 6, 2, 2018, 154-175, retrieved on: March 6, 2019, from <https://www.tandfonline.com/doi/full/10.1080/21670811.2017.1345645>; A. GUESS; B. LYONS, *Fake news, Facebook ads, and misperceptions*, 2018, *WORKING PAPER*; Cf. G. PENNYCOOK; D. G. RAND, *Who falls for fake news? The roles of analytic thinking, motivated reasoning, political ideology, and bullshit receptivity*, *SSRN Electronic Journal*, 2017, retrieved on: October 15, 2018, from <https://www.ssrn.com/abstract=3023545>, 20182019.

<sup>1707</sup> Cf. C. R. SUNSTEIN, *#Republic: Divided democracy in the age of social media*, Princeton University Press, Princeton; Oxford, 2017, pp. 14-15.

<sup>1708</sup> Cf. Y. BENKLER; R. FARIS; H. ROBERTS, *Network propaganda: Manipulation, disinformation, and radicalization in American politics*, Oxford University Press, New York, NY, 2018, p. 14; L. BOXELL; M. GENTZKOW; J. M. SHAPIRO, *Greater Internet use is not associated with faster growth in political polarization among US demographic groups*, *Proceedings of the National Academy of Sciences*, vol. 114, 40, 2017, 10612-10617, retrieved on: November 15, 2018, from <http://www.pnas.org/content/114/40/10612>; S. FLAXMAN; S. GOEL; J. M. RAO, *Filter Bubbles, Echo Chambers, and Online News Consumption*, *Public Opinion Quarterly*, vol. 80, S1, 2016, 298-320, retrieved on: March 18, 2019, from <https://academic.oup.com/poq/article-lookup/doi/10.1093/poq/nfw006>; A. MARWICK; R. LEWIS, *Media manipulation and disinformation online*. Data & Society Research Institute. 2017, p. 20; F. ZUIDERVEEN BORGESIU ET AL., *Should We Worry About Filter Bubbles?* Rochester, NY.. Social Science Research Network. 2016.

*Effects.* Assuming that the phenomenon of disinformation is expanding, it is vitally important to determine its effects. On this point, the data are also inconclusive: while some studies suggest that some people are more likely than others to believe false information,<sup>1709</sup> others find that a significant percentage of citizens retain the ability to distinguish true from false information on their own.<sup>1710</sup> Moreover, the effects may not be epistemic (leading a person to consider what is false to be true) but rather may be linked to an emotional aspect of mobilizing political identities to support or reject a particular political party or candidate.<sup>1711</sup> In the electoral context, existing research suggests that disinformation campaigns do not have significant effects,<sup>1712</sup> others have found that disinformation has an effect on the determination of the information agenda, with the existence of disinformation being amplified in the media, and may even be connected with the erosion of trust in democratic institutions<sup>1713</sup>.

*Other incentives for disinformation practices.* Many studies have sought to unravel what drives the phenomenon, even involuntarily. Thus, it has been argued that the online advertising market, based on the mining of personal data and the ability to target messages accurately and effectively, encourages disinformation as it is spread through the same tools and techniques used by the advertising market.<sup>1714</sup> In this regard, the use of personal data for advertising purposes—largely permitted by outdated or limited data protection laws—appears to create conditions that favor the phenomenon or make it more effective. It should be noted here that many of these norms in the region could be outdated in relation to these new phenomena or their application could be limited.<sup>1715</sup>

A relevant conclusion of the Panel is related to the need to include not only the platforms but also the actors who promote advertising messages, including political parties, so that they act in an ethical manner when producing and promoting truthful content and strictly abiding to the protection of personal data in accordance with the regulations in the matter. In any case, for all actors, it is necessary to underline the duty to respect the principles of quality, legality, purpose, and proportionality in the collection, transfer and use of personal data.

It is necessary to draw attention to the need to differentiate between advertising for commercial purposes and electoral advertising: while the former is linked to the operation of a market for goods and services, the latter relates to an essential process for democracy. The electoral process is fundamental for democracy and there may be a legitimate interest of the state in establishing restrictions proportional to certain types of electoral publicity within the framework of those processes. In this sense, certain types of advertising that may be acceptable when it has purely commercial purposes may be problematic in the context of electoral processes.<sup>1716</sup>

<sup>1709</sup> Cf. G. PENNYCOOK; D. G. RAND, "Who falls for fake news?", cit. See also G. PENNYCOOK; D. G. RAND, "Lazy, not biased", cit.

<sup>1710</sup> S. FLAXMAN ET AL., "Filter Bubbles, Echo Chambers, and Online News Consumption", cit., vol. 80; Cf. J. L. NELSON; H. TANEJA, *The small, disloyal fake news audience: The role of audience availability in fake news consumption*, New Media & Society, vol. 20, 10, 2018, 3720-3737, retrieved on: March 18, 2019, from <https://doi.org/10.1177/1461444818758715>.

<sup>1711</sup> M. BALMAS, *When Fake News Becomes Real: Combined Exposure to Multiple News Sources and Political Attitudes of Inefficacy, Alienation, and Cynicism*, Communication Research, vol. XX, X, 2012, 1-25 (on the correlation between exposure to fake news and feelings of cynicism and discouragement); Cf. FORUM, *Comparative Responses to the Global Disinformation Challenges*. International Forum for Democratic Studies. 2018; S. VOSOUGH; D. ROY; S. ARAL, *The spread of true and false news online*, Science, vol. 359, 6380, 2018, 1146-1151, retrieved on: March 2, 2019, from <http://science.sciencemag.org/content/359/6380/1146>.

<sup>1712</sup> Cf. H. ALLCOTT; M. GENTZKOW, "Social media and fake news in the 2016 election," cit., vol. 31; A. GUESS; B. LYONS, "Fake news, Facebook ads, and misperceptions," cit.

<sup>1713</sup> See L. Bandeira, D. Barojan, R. Braga, JL Penarredonda, M.F. Perez Arguello, "Disinformation in Democracies: Strengthening Digital Resilience in Latin America," published on March 28, 2019 (where it is argued that polarization and misinformation mutually reinforce each other, that misinformation produced an "agenda determination" effect on news coverage and that there were amplifying effects of disinformation in the coverage of the phenomenon itself).

<sup>1714</sup> D. GHOSH; B. SCOTT, *Digital deceit: The technologies behind precision propaganda on the Internet*. Washington D.C., New America. 2018, p. 3; A. MARWICK; R. LEWIS, *Media Manipulation and Disinformation Online*, cit., p. 42.

<sup>1715</sup> ACCESS NOW, *Input from Access Now on Disinformation in Electoral Contexts*. Access Now. 2019, p. 4; This point was made by several contributors to the process. See ADC ET AL., *Regional input from civil society organizations working in the area of human rights in the digital environment*. Asociación por los Derechos Civiles (ADC), Coding Rights, Fundación Karisma, Hiperderecho, Ipandete, Red en Defensa de los Derechos Digitales (R3D) & Tedic. 2019, pp. 10-12; P. INTERNATIONAL, *Public Consultation: Disinformation in electoral contexts. Privacy International's Response*. Privacy International. 2019, p. 3.

<sup>1716</sup> It is necessary to point out that many data sources used by political campaigns for profiling are sources created for commercial purposes, through the so-called "data brokers" and other actors. The variety of data they can access ranges from social media data to the use of credit cards and TV consumption patterns. On this point, see, Chester, J., & Montgomery, K. C. (2017). The role of digital marketing in political campaigns. Internet Policy Review, 6(4). Retrieved from <https://policyreview.info/articles/analysis/role-digital-marketing-political-campaigns>.

Many of the States in the region already have more restricted electoral advertising standards than the rules that regulate commercial advertising. However, advertising messages are also protected by the right to freedom of expression and any restriction in this regard must be established through a law in a formal and material sense, and must respect the conditions of necessity and proportionality that all state regulations intended to protect a legitimate interest must comply with.

*Internet virality.* It should be noted that the phenomenon of *Internet virality* is not in itself problematic: on the contrary, by taking advantage of the decentralized nature of the network, the circulation of information can bypass controls or points of blockage or censorship, something especially valuable in the contexts of authoritarian countries. However, when it comes to misinformation, it can be a factor that complicates the approach to the phenomenon. There are studies that suggest that fake news circulates faster than the real news, because they appeal to emotions and are - consequently - more attractive.<sup>1717</sup> It has also been argued that social networks offer a form of information exchange that is "epistemically valuable": a publication on a social network is equivalent to a "testimony" given by another person, usually someone we know or appreciate for some reason (that is why we "follow" or are his "friends", etc.). As human beings tend to accept what others transmit to us in the form of testimony, it is possible to postulate that disinformation flourishes in social networks because it takes advantage of an epistemologically valid procedure for most cases and uses.<sup>1718</sup>

*Motivation.* Finally, a core issue for understanding the phenomenon of disinformation concerns the actors behind it. Existing research on the matter suggests that these actors are diverse, ranging from foreign States seeking to influence elections in other countries to private actors motivated by economic reasons (who are hired to deploy disinformation campaigns) or political reasons (who carry out such campaigns to influence elections). In addition, these interested parties that voluntarily promote disinformation campaigns take advantage of the actions of other actors who unwittingly promote the phenomenon, such as the highly segmented digital advertising system, media that unwittingly disseminate false information, political parties, or candidates that repeat false information in negative campaigns, and so on.

Despite the lack of conclusive elements on its effects, it seems clear that the deliberate spread of false information impoverishes the public debate and makes it harder for citizens to exercise their right to receive information from various sources, and in the end it is an obstacle to participating in Democratic decisions. This document recognizes the legitimate concern of the states, civil society, and private actors involved, as well as the importance of adopting proportionate measures aimed at combating misinformation, in line with international obligations regarding the protection of human rights, fundamental freedoms, and the functioning of the democratic system.

## II. Disinformation and the Standards of the Inter-American Human Rights System

The paradigm shift in the information flow of democratic societies was accompanied by the emergence of new actors. That is the case of *intermediaries* and *platforms* operating on the Internet seem to play central roles in the new information ecosystem. These actors have had a positive impact on their development, by facilitating access to information that we do not know (in the case of search engines), offering the necessary infrastructure to participate in the public debate (such as Internet service providers) or offer platforms where it is possible to share information, ideas, and access content produced by third parties (as is the case with media consumption platforms or social networks). These services, managed by the private sector, have become important actors, partly as a result of the concentration - in market terms - prevalent in these services.<sup>1719</sup>

<sup>1717</sup> Cf. S. VOSOUGHI Y OTROS, "The spread of true and false news online", cit., vol. 359.

<sup>1718</sup> R. RINI, *Fake News and Partisan Epistemology*, Kennedy Institute of Ethics Journal, vol. 27, 2, 2017, p. 5, retrieved on: March 2, 2019, from <https://muse.jhu.edu/article/670860>.

<sup>1719</sup> See S. HUBBARD, *Fake News is a Real Antitrust Problem*. CIP Antitrust Chronicle. 2017, 2 ("Two corporations have an outsized control on the flow of information worldwide. Google accounts for roughly 80 percent of global Internet searches, and its search market share exceeds 90 percent in most European countries. 4 Facebook dwarfs all other social networks, with two billion active monthly users"). See also OBSERVACOM, *OTT Regulation. Key points for the democratic regulation of «Over-the-Top» services so as to ensure a free and open Internet and the full exercise of digital rights and freedom of expression*. Observacom. 2017, 3:

"In a scenario centralized by the traditional media, it was clear that the market on its own did not guarantee the fundamental diversity, pluralism and freedom of expression needed by democracy. With the emergence of the Internet, it seemed that part of the rationality that gave meaning and foundation to democratic regulation might have been lost. In fact, some important players in the digital ecosystem claim that regulation of the Internet is not only dangerous but should not exist, as it is no longer necessary or possible. However, after the initial phase of more decentralized and open network operation, new bottlenecks formed and the Internet embarked on a growing centralization among just a few actors of the digital ecosystem that has affected its potential to serve all of humanity: this was underlined by the creator of the World Wide Web, Tim Berners Lee. The trend towards concentration and threats to freedom of expression on the Internet show that

Through their role as intermediaries in the flow of information on the Internet, these actors operate as traffic “control nodes.” Their decisions have a significant impact on the public debate, and so a number of governments—especially authoritarian ones—have tried to pressure them to help shape the flow of information according to their interests. It has also been noted that the companies themselves, by moderating the content circulating on their platforms according to their own terms of service and “community” rules, make decisions to suppress or reduce the flow of content that affects and shapes the public debate. Currently, and as a result of challenges such as intentional disinformation and hate speech, many of these companies are going through processes to review the criteria they use to moderate content, the internal procedures they use for this purpose, and the selection of information generated and presented to users, based on the use of algorithms. This dynamic of public pressures and private actions is exacerbated by concentration: the more powerful the actor that operates as an intermediary, the more attractive it becomes to those who wish to pressure it and the more impact its decisions have.

Given the fundamental role of these actors as intermediaries, modern democratic States have sought to exempt them from the liability that might arise from content created by third parties and distributed on their platforms. Thus, the 2017 Joint Declaration of the Rapporteurs for Freedom of Expression of the OAS, OSCE, and UN noted that intermediaries “should never be liable for any third party content relating to those services unless they specifically intervene in that content or refuse to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it and they have the technical capacity to do that”.<sup>1720</sup>

On the other hand, Article 13.2 of the American Convention admits the possibility of establishing responsibilities beyond freedom of expression to protect the reputation and rights of others, public order, morals, and public health. In that sense, the dissemination of deliberate misinformation could damage the reputation of a candidate or public person or possibly other more diffuse interests such as the democratic process or the public's trust in democratic institutions.

It is here that the State's responses must be analyzed in detail, because in different places it is proposed to apply the regime of subsequent liabilities to punish those who disseminate misinformation. In that sense, both the Commission and the Inter-American Court have established that the application of criminal norms for the protection of reputation, honor, or the private life of public officials or persons aspiring to hold public office - in cases in which the public interest is involved - constitutes a disproportionate response, within the framework of a democratic society.

This guide recommends that the States of the region, in line with the standards of the inter-American human rights system, should not establish new criminal types to sanction the dissemination of misinformation or false news. Introducing criminal types, which due to the nature of the phenomenon would be vague or ambiguous, could lead the region back to a logic of criminalizing expressions about officials or people involved in matters of public interest and establishing a tool with a strong chilling effect on the dissemination of ideas, criticism, and information for fear of being subjected to a criminal process, which would be particularly restrictive in the context of the electoral contest.

Although the dissemination of misinformation deliberately seems to fit the so-called “actual malice” standard, which refers to the possibility of applying civil sanctions to those who distribute false or aggravating information knowing that it is false or with absolute negligence regarding the truth, which causes a damage to the aforementioned person, it should be noted that the offenses appear to be different.<sup>1721</sup>

In cases of defamation, which are the cases for which the standard of actual malice was developed, the remedy and the liability regime proposed by the inter-American system implies the exercise of the right to rectification or response as a less damaging measure of freedom of expression or, if the damage was serious, the attribution of civil responsibilities.<sup>1722</sup> Even in these cases, it should be remembered that this rule of attribution of responsibility was established to respond to cases where there is a known issuer, usually a journalist or a relevant political or social actor, and they acted with malice or manifest negligence, to damage the reputation of an official or a public person.

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diversity and pluralism---and even the notion of an open and free Internet---need regulatory guarantees so that they can be maintained as values and paradigms of modern digital communications.

<sup>1720</sup> OAS, OSCE, UN & ACHPR, “Joint Declaration on Freedom of Expression and ‘Fake News,’ Disinformation and Propaganda,” (2017), 1.d.

<sup>1721</sup> Cf. IACHR, *Inter-American Legal Framework Regarding the Right to Freedom of Expression*. Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. 2010, para. 109.

<sup>1722</sup> Cf. *Ibid.*, para. 79.

This traditional response may be insufficient to deal with the problem of deliberate misinformation, for various reasons. First, there are reasons of scale that make it difficult to project this liability regime to the phenomenon of misinformation, as well as the possible anonymous nature of the diffuser (anonymity that - by the way - is also protected by human rights standards<sup>1723</sup>).

Secondly, in the case of the dissemination of misinformation, it does not always seek to damage the reputation of one of the participants of public life or an election, but to affect a more diffuse interest such as democratic public order, involved in the integrity of the electoral process. In these cases, it is clear that the civil responsibilities provided would not be suitable for safeguarding that interest and electoral law could develop specific responses to this kind of phenomena. This is what happens, at the moment, when the internal legal regimes establish specific regulations on their electoral processes and prohibit certain types of conduct such as, for example, those that seek to "suppress" voting. When disinformation campaigns seek to promote such practices, those who promote them incur in prohibited actions that receive a response within the framework of the general electoral regime that each country implements.

On the other hand, disinformation can also have a global scale but the jurisdictions of the countries are limited and the actions of the platforms restricted to their own services. When spreading in a decentralized network, it can sometimes be very difficult if not impossible to identify the people behind a disinformation campaign. In case of doing so, it is possible that these persons operate outside the territory of the affected country. But even when states can reliably discover who is behind a disinformation campaign and can submit them to their jurisdiction, it is possible that the judicial processes necessary to determine their civil liability are too slow to provide an effective response, especially to protect the integrity of the electoral process.

These difficulties are what have pushed many countries to transfer on to intermediaries obligations to control and suppress the "fake news" of their platforms<sup>1724</sup>. However, these responses are not in line with international standards that seek to limit the responsibility of intermediaries to avoid generating incentives for greater "private censorship." The rules that impose on intermediaries obligations to control and cancel certain contents, generate incentives for them to censor a greater amount of content, to avoid economic sanctions, for example.

<sup>1725</sup>

Partly as a response to the new challenges posed by the Internet, inter-American human rights standards have been developed taking into account the particularities of the network. Thus, for example, inter-American standards protect all open expressions *ab initio* also on the Internet and only allow burdensome responses such as blocking or filtering actions on the Internet in exceptional cases. Thus, the Office of the Special Rapporteur has affirmed that in the face of "openly illicit contents or discourses not protected by the right to freedom of expression (such as war propaganda and advocacy of hatred that constitutes incitement to violence, direct and public incitement to genocide, and child pornography) it is permissible to adopt mandatory measures to block and filter specific content", provided that the illegality of the content has been determined by an independent judicial authority.<sup>1726</sup>

In these cases, the measure must undergo a "strict proportionality judgment and be carefully designed and clearly limited in such a way that it does not reach legitimate discourses that deserve protection".<sup>1727</sup> These types of measures "must have safeguards that prevent abuse, such as transparency regarding the contents

<sup>1723</sup> It is relevant to highlight that, although anonymity can present challenges, it cannot justify actions that tend to affect it. Indeed, anonymous speech is a vital part of the democratic public debate. It allows to access, generate, and share opinions and information in a safe way, away from social pressures or official controls, as well as from possible state or private reprisals. The value of anonymous discourse is broad in democratic societies, but especially relevant and valuable in the framework of authoritarian societies. This has been previously noted by the IACHR. See IACHR, *Freedom of Expression and Internet*. Washington D.C. Office of the Special Rapporteur for Freedom of Expression of the IACHR. 2013, para. 134

<sup>1724</sup> Countries that have opted for this type of model include Germany and France, as well as China, Bangladesh, Cambodia, Egypt, Kenya, Malaysia, Vietnam, Myanmar, and Thailand.

<sup>1725</sup> On this point, see EFF's input:

"EFF has pointed out that problems with censorship by direct hosts of speech are tremendously magnified when core infrastructure providers are pushed to block or filter content. The risk of powerful voices silencing marginalized ones is greater, as are the risks of collateral damage. Takedowns by infrastructural intermediaries—such as certificate authorities, DNS, or content delivery networks—are far more likely to cause collateral censorship. For that reason, EFF has called these parts of the Internet free speech's weakest links and believes that the most consistent defense these links can take is to decline attempts to use them as a control point. Conduits such as ISPs should also not be treated as publishers. Their legitimate scope to limit content is critically restricted by network neutrality principles that require them not to discriminate online content". See EFF, Written Submission for the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR/RFOE), the OAS Department of Electoral Cooperation and Observation (DECO) and the Department of International Law (DIL). Electronic Frontiers Foundation. 2019, 14.

<sup>1726</sup> IACHR, *Standards for a Free, Open and Inclusive Internet*, cit., para. 88.

<sup>1727</sup> *Ibid.*, para. 88.



whose removal has been ordered, as well as detailed information on their need and justification".<sup>1728</sup> These measures should be adopted "only when it is the only measure available to achieve an imperative purpose".<sup>1729</sup>

The Rapporteurs for Freedom of Expression recently recalled that the "blocking of entire websites, IP addresses, ports, or network protocols provided by the State is an extreme measure that can only be justified when stipulated by law and is necessary to protect a human right or other legitimate public interest, which includes that it is proportionate, there are no less invasive alternative measures that could preserve that interest and respect minimum guarantees of due process".<sup>1730</sup>

The adoption of measures to combat disinformation could, however, be disproportionate. Moreover, disinformation does not fall squarely within the category of "clearly illegal content or speech that is not covered by the right to freedom of expression" that justifies such measures.<sup>1731</sup> Information on matters of public interest enjoys a certain presumption of legitimacy, as it is a kind of specially protected speech.<sup>1732</sup> When it is difficult to determine the truthfulness or falsity of the information, that presumption is maintained. The presumption can only be overcome when "contradicted by a competent authority that provides sufficient guarantees of independence, autonomy and impartiality,<sup>1733</sup> typically, a court that takes action after receiving a specific complaint. In this regard, "General prohibitions on the dissemination of information based on vague and ambiguous ideas, including 'fake news' or 'non-objective information,' are incompatible with international standards for restrictions on freedom of expression [...] and should be abolished".<sup>1734</sup>

On the other hand, the factual determination of the content deemed illegal is especially difficult in the case of false information: sometimes, distinguishing what is true and what is not, requires a trial that demands to study the case in question, contrast it with available evidence and make a decision. The judgment itself --- of truth or falsehood --- may depend on possible readings of ambiguous materials.<sup>1735</sup> When private Internet companies are required to take charge of this trial under penalty of sanction, as in the laws recently approved by countries such as Germany and France to deal with the phenomenon of misinformation, the main incentive for intermediary companies is not to be sanctioned, and that incentive controls their actions: experience in other less controversial issues indicates that they can take actions aimed at detecting, in general automatically, the allegedly unlawful content so as not to incur responsibility.<sup>1736</sup> This produces the aforementioned phenomenon of "private censorship", according to which the business response to legal claims is broader and more comprehensive than the mandate they receive and ends up silencing much more content than is really necessary to comply with legal obligations. The existence of this dynamic in Germany was denounced after the approval at the end of 2017 of a law that orders the platforms to remove the "manifestly illegal" content, once they have "news" of this content by any means, even without the intervention of a public authority.<sup>1737</sup>

Likewise, it must be borne in mind that state's responses to the phenomenon of misinformation must be concerned about not affecting the integrity of the computer systems on which the Internet works and the communications that are channeled through the network. Thus, for instance, the fact that it has been documented that at least part of the disinformation campaigns use encrypted messaging systems could never

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<sup>1728</sup> *Ibid.*, para. 89.

<sup>1729</sup> *Ibid.*, para. 89.

<sup>1730</sup> OAS, OSCE, UN, and ACHPR, "Joint Declaration on Freedom of Expression. "Fake News", "Disinformation and Propaganda", cit., para. 1.f.

<sup>1731</sup> IACHR, *Standards for a Free, Open and Inclusive Internet*, cit., para. 88.

<sup>1732</sup> Cf. *Ibid.*, para. 92.

<sup>1733</sup> *Ibid.*, para. 92.

<sup>1734</sup> OAS, OSCE, UN, and ACHPR, "Joint Declaration on Freedom of Expression. "Fake News", "Disinformation and Propaganda", cit., para. 2.a.

<sup>1735</sup> Cf. EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, *A multi-dimensional approach to disinformation. Report of the independent High level Group on fake news and online disinformation*. Directorate-General for Communication Networks, Content; Technology of the European Commission. 2018, p. 19 ("These general objectives should be pursued based on the recognition that information can rarely be neatly categorized as simply true or false, the conviction that no authority has a monopoly on knowledge, and the belief that free societies benefit from -- and are defined by the acceptance of -- free confrontation of diverse and sometimes uncomfortable ideas and information").

<sup>1736</sup> Due to the volume of information circulating on the Internet, intermediary companies have stressed that actions should be able to be automated, i.e. built using technological tools that make it possible to detect unlawful content automatically, without human intervention. On this point, see GOOGLE INC., *How Google Fights Disinformation*. Palo Alto, California. Google Inc. 2019, p. 3.

<sup>1737</sup> EFJ, *Germany: Repeal NetzDG bill, deletion is not the answer*. *European federation of journalists*, 2018, retrieved on: March 4, 2019, from <https://europeanjournalists.org/blog/2018/01/09/germany-repeal-netzdg-bill-deletion-is-not-the-answer/>; Cf. HUMAN RIGHTS WATCH, *Germany. Flawed Social Media Law*, 2018, retrieved on: January 16, 2019, from <https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>.

lead to questioning the end-to-end encryption of communications, which are essential to protect privacy --and consequently, freedom-- of citizens' communications.

As a consequence of the challenges presented by the phenomenon of misinformation and the special protection that the inter-American system grants to the circulation of information of public interest or that encourages public debate, particularly in electoral periods, most of the responses that this document recommends to deal with the phenomenon of misinformation are non-regulatory in nature<sup>1738</sup>. They seek to strengthen the capacities of citizens to distinguish false information from true information. They have the advantage of not generating a risk for freedom of expression, since they operate within the ideal promoted by the inter-American system to safeguard an open and uninhibited public debate.

In that sense, it's fundamental the principle that there is no better response to an opinion formed on the wrong basis or false information than an opposing or correct opinion or true information.<sup>1739</sup> Therefore, State actions must be aimed at raising public awareness about the existence of the phenomenon, awakening a critical spirit in them when consuming and replicating that information, and developing the necessary resources to verify information of doubtful origin.

The Panel of Experts highlighted this type of action taken in recent months in countries with important traditions of defense of freedom of expression, such as Norway and Sweden.<sup>1740</sup> There have also been similar actions in the United States (at a state level) and in countries in the region such as Argentina, Brazil, Canada, Colombia, Costa Rica, Mexico and Uruguay.

A good example of this are the actions of the National Electoral Institute of Mexico or of the Superior Electoral Tribunal of Brazil during their 2018 presidential elections.<sup>1741</sup> In these cases, the electoral authorities set up efficient communication channels with the main platforms, media, and fact-checking agencies. Through this, they were able to respond to false information, especially that which sought to affect the integrity of the electoral process, with accurate information. This type of action consists, among other things, of (a) making citizens aware of the phenomenon of disinformation; (b) drawing attention to it in order to encourage citizens not to repeat false information; (c) offering tools and resources to verify information; and (d) contrasting specific false information with accurate information. Many of these recommendations were especially supported by the European Commission's High-Level Expert Group, which suggests that most reactions to disinformation should be "of a non-regulatory character and involve a wide range of different stakeholders".<sup>1742</sup>

<sup>1738</sup> Cf. EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, *A multi-dimensional approach to disinformation. Report of the independent High level Group on fake news and online disinformation.*, cit., p. 19.

<sup>1739</sup> Cf. IACHR, *Inter-American Legal Framework regarding the Right to Freedom of Expression*, cit, par. 146. See also EFF, Written Submission for the Office of the Special Rapporteur, cit, 6 ("Moreover, even assuming that it is possible to determine the truth about everything, the debate and exchange of ideas clearly is the best method to uncover this truth and to strengthen democratic systems based on plurality of ideas, opinions and information"). This approach is inspired by the concurring opinion of Justice Brandeis in *Whitney v. California*, decided by the U.S. Supreme Court in 1927. Brandeis maintained the following in a paragraph that has since been part of the canon of freedom of expression worldwide:

"Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that, in its government, the deliberative forces should prevail over the arbitrary. They valued liberty both as an end, and as a means. They believed liberty to be the secret of happiness, and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that, without free speech and assembly, discussion would be futile; that, with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty, and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies, and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law — the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed". See *Whitney v. California*, 274 U.S. 357 (1927), 375-376 (J. Brandeis, concurring).

<sup>1740</sup> Cf. POYNTER, *A guide to anti-misinformation actions around the world*. Poynter, 2019, retrieved on: March 6, 2019, from <https://www.poynter.org/ifcn/anti-misinformation-actions/>.

<sup>1741</sup> L. CASADO, *TSE falha no combate a fake news na campanha de primeiro turno*, Folha de S. Paulo, 2018, retrieved on: October 17, 2018, from <https://www1.folha.uol.com.br/poder/2018/10/tse-falha-no-combate-a-fake-news-na-campanha-de-primeiro-turno.shtml>; I. FERRAZ, *TSE adia reunião de combate a fake news a pedido de Bolsonaro*. *Metrópoles*, 2018, retrieved on: October 17, 2018, from <https://www.metropoles.com/Brazil/eleicoes-2018/tse-adia-reuniao-de-combate-a-fake-news-a-pedido-de-bolsonaro>; Cf. INE, *Nuevos retos para la democracia Elecciones en tiempos de desinformación. Estrategia y acciones implementadas para enfrentar la desinformación deliberada en las elecciones mexicanas de 2018* ["New challenges to democracy: Elections in times of disinformation. Strategy and Actions Implemented to Confront Deliberate Disinformation in the 2018 Mexican Elections"]. National Electoral Institute. 2019; R. MORAES MOURA; A. PUPO, *TSE dá 48 horas para Facebook remover «fake news» contra Marina Silva*, Estadão, 2018, retrieved on: October 25, 2018, from <https://politica.estadao.com.br/blogs/fausto-macedo/tse-da-48-horas-para-facebook-remover-fake-news-contra-marina-silva/>.

<sup>1742</sup> EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, *A multi-dimensional approach to disinformation. Report of the independent High level Group on fake news and online disinformation.*, cit., p. 8.

It should be noted that private actors with more capacity for action on this phenomenon - platforms, social networks and intermediary companies - are also called to adopt various actions aimed at combating disinformation campaigns in their spaces. In different documents, the Special Rapporteurs for Freedom of Expression have insisted that Internet companies should mitigate the effects of their business models and adopt and implement measures taking as reference the UN Guiding Principles on Business and Human Rights and solutions in international human rights law, especially the instruments and mandates referring to the right to freedom of expression.

Thus, companies such as Facebook, Google, and Twitter have reacted to the international call with greater transparency in relation to their content moderation policies, have increased levels of transparency regarding the decision-making process and have supported initiatives that tend to counteract the phenomenon during electoral periods, such as quality journalism and the work of fact-checking agencies<sup>1743</sup>.

It is important to remember that these actions are framed in *self-regulation* processes of these companies, but they can have an impact on the exercise of the right to freedom of expression, due to the central role they play in the flow of information on the Internet. Therefore, it is necessary to insist on the need for their content moderation practices to respect fundamental guarantees of due process, independent authority, transparency, so that they are able to strengthen, enrich, and expand the public debate.

Finally, according to the international standards on the governance of the global network represented by the Internet, it is recommended that countries wishing to take action to combat disinformation should convene all interested parties to address phenomena that may affect its operation. This is not only a good generic practice in relation to public policy development processes, but it is especially necessary in this case: we are facing a complex problem, involving multiple variables and actors, and presenting --- accordingly --- great challenges. Therefore, it is essential to develop open processes involving public authorities, private companies, academics and researchers, political parties and electoral bodies, as well as civil society organizations, fact-checking agencies, the media, and journalists.

### III. Recommendations

Taking into account the arguments and background mentioned, the recommendations of the Panel of Experts of multiple stakeholders convened especially for this purpose, and the inter-American standards of human rights, in response to the request made by the General Assembly of the Organization of American States, next are a series of recommendations and good practices developed to deal with the phenomenon of misinformation in electoral contexts, as a starting point, which should be periodically reviewed by the organization, summoning again all the stakeholders.

#### 1. To the OAS Member States

##### *1.1 To the legislative branch*

- *Avoid establishing regulatory frameworks that hold intermediaries responsible for content produced by third parties.* Taking into account the background on the matter and the undesirable effects of regulatory standards that seek to address the problem of misinformation through the establishment of fines and sanctions directed at intermediaries, it is recommended that the legislative branches of the region refrain from adopting punitive approaches on the matter. These approaches create incentives for private actors with a central role in the circulation of information contrary to freedom of expression and the free debate of ideas, since they will be inclined to censor more content to avoid being sanctioned, and thus affect protected speeches. Likewise, these regulatory approaches are difficult to administer *even* when they are developed taking into account the principles of proportionality and respect for due process.

Avoid using criminal law tools, such as the creation of new broad and ambiguous criminal offenses to typify the phenomenon of misinformation. Along the same lines, it is necessary to remember that those who reproduce information of public interest that turns out to be false but do so without intent to infringe a

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<sup>1743</sup> In the consultation process it was pointed out that, many times, the measures adopted were not implemented in a transparent manner; It is sometimes difficult to know what measures are being applied and where, how false or misleading contents are affected and to what extent these solutions can be projected in the long term. Cf. Communication from CELE to the Office of the Special Rapporteur, dated June 18, 2019. In this regard, it is pertinent to reiterate that this type of measures must be developed for the citizens and transparently.

damage or inadvertently cannot be sanctioned in any way<sup>1744</sup>. In any case, the States that are part of the Inter-American system may only establish restrictions on the right to freedom of expression in accordance with the test provided for in Article 13.2 of the American Convention and in other international treaties on freedom of expression for such restrictions, which requires that they be stipulated by law, intended for protect one of the legitimate interests recognized by international law, and are necessary and proportionate to protect that interest, within the framework of the functioning of the democratic system.

- *Strengthen the legal frameworks for personal data protection.* The use of personal data for advertising purposes by the various actors of the digital ecosystem is allowed by the different legal systems and is used by Internet companies in their business model, as well as to facilitate access to diverse content, provided that the general principles of international standards regarding data protection are complied with. In that sense, there should not be general exceptions for the use of personal data for political purposes, but a strengthening of the regulatory frameworks and the authority to control this data.

Legislative branches must strengthen local personal data protection frameworks, since the exploitation of the data for advertising purposes by platforms and other actors in the digital ecosystem is also one of the elements that, used improperly, indirectly promotes the phenomenon of misinformation. Proper protection of personal data should ensure that citizens have final control over how their data is used to offer them services.

Likewise, these frameworks should have efficient reporting and control mechanisms, in order to prevent abusive use of personal data. These mechanisms should - in addition - contain exceptions and guarantees that protect fundamental activities in a democracy - such as journalism and the circulation of information of public interest - and that allow the robust functioning of legal regimes for access to public information, an essential dimension of the right to freedom of thought and expression. It is essential that the data protection authorities have the resources, powers, and independence to be able to intervene and effectively monitor compliance with the law.

- *Strengthen the judicial processes of a civil nature through which subsequent liabilities in the area of freedom of expression are channeled.* The civil liabilities provided for possible abuses in the exercise of freedom of expression are legitimate in cases where the reputation or private life of a public official or a public person is at stake. In these cases, States must establish that the communicator in the dissemination of information was intended to inflict damage or conducted themselves with manifest negligence in the search for the truth or falsity of the news, respecting the principles of necessity and proportionality in the establishment of the compensation, if applicable. An efficient and timely judicial process, without giving up the guarantees of due process, can become an effective tool to combat phenomena such as deliberate misinformation that affects officials or candidates for public office. Likewise, it should be noted that citizens who participate in the public debate usually do not have the same means as professional journalists to verify the truth or falsity of information they access and may reproduce, comment, or share a false story. In these cases, this circumstance should be evaluated to inhibit the responsibility for “manifest negligence” that the standard of actual malice implies.
- *Strengthen the legal frameworks regarding transparency in electoral advertising.* One of the essential conditions to combat the phenomenon of misinformation implies transparency and publicity of the entire electoral process. Most electoral regimes in the region already include transparency obligations, especially at the head of political parties. Likewise, many also include special obligations, such as pointing out that certain messages or notices are issued within the framework of electoral campaigns, hired by a certain political party, electoral alliance, or third parties, and so on.

These obligations must include that political parties transparent and report on the expenditure that is invested in sites and platforms that operate online, entities involved in digital campaigns, data sources (such as data brokers), advertising agencies, and providers of digital tools. This can be established through obligations to refer to the origin of the notice, the contracting entity or political party, the amounts invested, the criteria used to address the messages, and so on. These measures should not affect citizen’s right to

<sup>1744</sup> In this regard, the Inter-American Commission has considered that the use of criminal law as a response to abuses committed in the exercise of freedom of expression is an essentially disproportionate response (Cf.) and the Inter-American Court has so maintained this in cases that it was resolved (Cf. IACHR, *Inter-American Legal Framework Regarding the Right to Freedom of Expression*, cit., para. 72). On the “actual malice” standard, see IACHR, *Inter-American Legal Framework Regarding the Right to Freedom of Expression*, cit., Para. 109.

express themselves anonymously, especially when that expression is channeled through the investment of small sums of money by individual persons in social networks.

- *Review the legal frameworks that regulate electoral processes.* Each country in the region organizes its elections in a different way: some under national norms, in others, state regulations coexist with others of federal order, and so on. Also, some countries regulate their processes more or less strictly: the range of restrictions or prohibitions is very wide in some countries and is almost non-existent in others. The expansion of electoral campaigns on the Internet and the appearance of the misinformation phenomenon constitute good opportunities to review and strengthen these legal frameworks. In that sense, if there are regulations that imply a limitation to freedom of expression, these regulations, in order to be legitimate, must satisfy the demanding requirements set forth in the tripartite test that the inter-American system has developed.

These legal frameworks should be reviewed so as not to unduly restrict the right to freedom of expression in the traditional media and consider the changes that are being registered in electoral campaigns, the Internet ecosystem, and the new advertising paradigm based on personal information. In that context, the regulation of electoral advertising could address this advertising practice in a specific way: what may be legitimate to sell marketable goods may not be legitimate to persuade voters. Third, legal frameworks regarding electoral advertising could consider certain practices usually prohibited -such as, for example, attempts to deceive the electorate to “suppress” their right to vote or interfere with the development of the electoral process- when they are carried out through disinformation actions, in which case the same remedies or sanctions that the electoral legislation provides for this type of behavior could be applied in these cases.

### *1.2 To the Judiciary*

- *Consider the systemic impact of their decisions on the operation of the Internet.* The judiciary must take human rights standards into consideration when resolving cases in which the speech under scrutiny can be classified as “misinformation”, according to the definition offered in the preceding paragraphs. In this sense, it is essential that the judges of the region understand that decisions that imply blocking or filtering access to certain online content are only legitimate if they are established by means of a clear and precise law, responds to an urgent need, and it can only be achieved through this type of actions and not others that harm the freedom of expression to a lesser extent. Blocking or taking down content on the Internet can have an effect similar to censorship.

Likewise, it is essential that within the framework of these processes the damage caused by the speech under scrutiny is identified and adequate guarantees of due process are offered, in particular for the producers or issuers of the speech under scrutiny. Judicial remedies, on the other hand, should be limited and should not affect more speech than is strictly necessary. It is important that the judges of the region understand the decentralized nature of the network and the unexpected or undesirable consequences that may arise from generic and disproportionate court orders, which do not account for how the Internet works.

### *1.3 To the executive branch and senior public officials*

- *Remember the special responsibilities that they have in the exercise of their own freedom of expression.* The executive branches of the region have special responsibilities regarding freedom of expression and the fight against misinformation. In addition to legal and regulatory obligations, the executive as well as elected authorities and officials, are also often central actors in the political debate in each of the countries. Sometimes, they are also central actors in the election campaigns.

As the Office of the Special Rapporteur pointed out, when high-ranking public officials exercise their freedom of expression “they are subject to certain limitations as to reasonably, although not necessarily exhaustively, present the facts on which they base their opinions, and should do so with an even greater diligence than that employed by individuals, in view of the high degree of credibility they enjoy and in order to prevent citizens from receiving a manipulated version of the facts”.<sup>1745</sup> These responsibilities apply especially to disinformation campaigns: it has been verified that the intervention of relevant public actors, without adherence to these principles, promotes the dissemination of false information.

<sup>1745</sup> IACHR, Inter-American Legal Framework Regarding the Right to Freedom of Expression, cit., para. 202.

Likewise, public officials must be careful to ensure that their comments are accurate and avoid stigmatization and discredit of the media using labels that refer to so-called fake news or other qualifications that discredit them, they must also not threaten journalists or undermine respect for the independence of the media.

- *Carry out positive education, training, and awareness actions on the phenomenon of misinformation.* In general, the executive branches of the region control dimensions of the state that are essential for the development of these types of campaigns. For example, from the management of the education system or cultural promotion avenues. In these cases, it is essential that the authorities in charge of these departments address the problem of misinformation through awareness, education, and training campaigns. They should be focused on offering citizens tools to distinguish true from false information, become aware of their own participation in the processes of replication of information, and warn about the impoverishment of the public debate that misinformation generates. While this recommendation is addressed to the executive branch, it would be desirable for all actors involved in the phenomenon to develop education and awareness campaigns.
- *Promote universal Internet access.* One of the basic conditions to fight against misinformation is to be able to access various sources of information to compare and check if the information received by people is credible. That requires citizens to have access to all the possibilities offered by the Internet network. In this regard, the Inter-American Commission has stressed that the principle of “universal access” must guide state obligations in the matter, and this results in duties such as “the duty to progressively promote universal access not only to the Internet infrastructure, but to the technology necessary for its use and to the greatest possible amount of information available on the network; the duty to eliminate arbitrary barriers to access to infrastructure, technology, and information online; and the duty to adopt positive differentiation measures to allow the effective enjoyment of this right to persons or communities that so require due to their circumstances of marginalization or discrimination”.<sup>1746</sup>
- *Protect the principle of net neutrality.* It is essential to insist that States have the obligation to guarantee the principle of net neutrality, in relation to the intermediaries that allow the operation of the Internet - both those who manage the network, as well as platforms-. In this regard, States must respect and establish rules that require intermediaries not to discriminate Internet flows based on the content, origin, recipient, or device used; This principle has been identified as “a necessary condition for exercising freedom of expression on the Internet under the terms of Article 13 of the American Convention”.<sup>1747</sup>
- *Protect journalists and social communicators from violence.* One of the main restrictions on the right to freedom of expression in Latin America is the phenomenon of violence against journalists<sup>1748</sup>. Journalists and the media may be subject to disinformation campaigns, a situation that would increase the risk they themselves suffer in the exercise of their profession. In that context, it is relevant to remember the special obligations of protection, prevention, and investigation that weigh on the state authorities in the fight against violence against journalists and social communicators<sup>1749</sup>.

#### *1.4 To the electoral authorities*

- *Strengthen the capacities of citizens to dismantle disinformation campaigns in electoral contexts.* Electoral authorities play a central role for modern democracy. Their role and responsibilities vary according to the institutional design of each country. In some cases, they have administrative regulatory functions, in others of investigation (e.g., specialized prosecutors) and in other cases of prosecution. Therefore, the field of action to address the issue of misinformation is different in each case.
- *Avoid holding intermediaries responsible for the fact that deliberate misinformation circulates on their platforms, which can trigger the dynamics of “private censorship.”* Likewise, it is recommended that the

<sup>1746</sup> Cf. IACHR, *Standards for a Free, Open, and Inclusive Internet*, cit., P. 14.

<sup>1747</sup> IACHR, *Standards for a Free, Open, and Inclusive Internet*, cit., P. 14.

<sup>1748</sup> Cf. IACHR. *Violence against Journalists and Media Workers*. Washington, DC: Inter-American Commission on Human Rights. 2013.

<sup>1749</sup> Cf. IACHR. *Violence against Journalists and Media Workers*. Washington, DC: Inter-American Commission on Human Rights. 2013, para. 259.

control they exercise meets the general requirements of the inter-American standards of human rights regarding freedom of expression. That is, that the restrictions on this right are minimal, especially in the context of the electoral debate, and only be applied as the result of provisions established through laws in a formal and material sense, that are precise enough and in compliance with compelling objectives through which this means can only be achieved, and not by less restrictive ways of the law in question.<sup>1750</sup>

In this sense, the electoral authorities already have numerous contraventions or electoral crimes that they can use to combat the phenomenon of misinformation; it would be desirable for existing legal frameworks to be used instead of promoting innovations that threaten freedom of expression.

- *Strengthen training on electoral processes.* One of the patterns identified in disinformation campaigns deployed in Latin America is the dissemination of false information about the electoral process. It is especially worrying when the misinformation is relative to the places and date where you can vote, the form and procedures to vote, or the results of the election itself. This requires the electoral authorities to act preventively, strengthening, and actively providing information actively to citizens about the elections, so that they have adequate information to exercise their rights and thus not be vulnerable to disinformation campaigns.
- *Collaborate with public authorities regarding data protection.* As the misinformation is based, at least in part, on the use of personal data for advertising purposes, it is important that the electoral authorities collaborate with the data protection authorities to strengthen the guarantees of the right to privacy in the face of electoral processes.
- *Train public officials about the phenomenon of misinformation.* It is essential that the electoral authorities ensure that all relevant public officials in the context of an electoral process know the problem, know in advance what are the actions planned before the distribution of false information that seeks to deceive the electorate about the electoral process, and that know the planned procedures to be placed in action. In this sense, it is relevant that people who participate in electoral observation processes, both internal and external, are also trained.
- *Generate instances of dialogue and cooperation of multiple stakeholders.* Public electoral authorities are in the best position to advance a "multi-stakeholder" model in preparation for an electoral process. They play a role both limited and vital in the democratic process, they are nonpartisan and can legitimately lead these processes. They must be intended to (a) convene stakeholders in the phenomenon of misinformation; (b) work to produce more information and a better understanding of the issue; (c) develop concrete and staggered proposals for efficient and proportionate actions to counteract the negative effects of disinformation campaigns.
- *Explore the possibility of developing cooperation agreements with Internet platforms and intermediary companies.* One of the positive practices detected in the region is the development of agreements established between electoral authorities and companies that provide services on the Internet to act against the phenomenon of misinformation. These agreements allow authorities to better understand how the Internet works and how the main companies deploy their content moderation policies. They also allow the establishment of efficient communication channels that allow actions to be taken quickly and effectively.

The experiences of the National Electoral Institute of Mexico and the Superior Electoral Court of Brazil, which have been the first to explore this practice in the region, suggest that such agreements may be positive in the development of proportionate responses and privileged communication channels with the platforms. Within the framework of this consultation process, information was also received on the use of these types of agreements in other jurisdictions such as in Argentina and Colombia.

These agreements must be transparent and must not establish regulations of any kind that imply suppression of content related to information of public interest and debate in the electoral context; if they do, they would be contrary to the American Convention because they lack the requirements established in Article 13.2 and adequate mechanisms for questioning or accountability. The restrictions on the type of response that states may display and that arise from the inter-American human rights standards must

<sup>1750</sup> Cf. IACHR, Inter-American Legal Framework Regarding the Right to Freedom of Expression, cit., Para. 67.

meet the strict requirements developed in this document, as well as the obligations that weigh on the authorities in guaranteeing the exercise of freedom of expression during the elections and the rights of the users of the platforms.

## 2. To intermediary companies

- *Make transparent the criteria used to moderate, detect and prioritize content on platforms.* Intermediary companies play a fundamental role in the way we collectively address the phenomenon of misinformation. The limitation of liability in legal terms for the contents that circulate on their platforms does not mean that they do not have special responsibilities for the place they occupy in the free flow of information on the Internet. In this sense, it is desirable that companies that moderate content continue their efforts to transparent technological solutions that make possible the curation and algorithmic moderation of content, including data that inform artificial intelligence. Also, clarify and inform users of the criteria they use in their internal decision-making processes regarding content that they unsubscribe in application of their community policies.

Currently, many online platforms are offering information to users about the reasons why they see certain political campaign notices in the framework of electoral processes: these practices should be consolidated and even expanded, since they are especially relevant to combat campaigns misinformation in electoral contexts<sup>1751</sup>.

- *Ensure due process in content moderation.* Both content moderation actions based on the internal policies themselves and those based on legal requirements must be applied respecting elementary guarantees of due process, including the possibility of questioning moderation decisions before an independent body, the right to receive reasons of the decisions that exclude certain contents from the public debate, and the right to have the contents restored if it is determined that the moderation decision was wrong<sup>1752</sup>.

In this sense, some practices developed in recent months by some intermediaries are positive, such as creating institutional spaces between the platforms and the claims or appeals of the users, such as supervisory or appeal advice for those cases in which users have been affected by unsubscribed content or suspended accounts, etc. In the design of these spaces it is important to provide them with public designation mechanisms, guarantees of independence of their members regarding corporate interests, and have the power to influence the policies that the platforms deploy to moderate content.

When these spaces function as true instances of appeal to decision-making processes on content moderation, they should have as reference the international human rights framework and have due process guarantees. In this way, they can function as proportionate and suitable responses to guarantee the right to freedom of expression on their platforms and establish the corresponding remedies when disengagements protected by this right are written off. However, it is relevant to highlight the advisory function of these councils, and that they should not aspire to fulfill legal or quasi-legal functions.

- *Deepen transparency actions on political advertising, especially during election periods.* It is essential that intermediary companies operate with transparency regarding the phenomenon of disinformation, taking actions aimed at making visible a phenomenon that is more effective the more it is hidden. Thus, for example, actions aimed at making political propaganda visible, its origin and financing would allow - for example - to quickly identify those responsible for the disinformation campaigns that are channeled in this

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<sup>1751</sup> Twitter expressed its general agreement with the principle and provided the following information: "In Twitter we're committed to providing meaningful context around all political entities who use our advertising products. That means enforcing strict political advertising policies and ensuring ad disclosures on Twitter are transparent and informative. And we're expanding our political ads policy and transparency approach to global markets as well. Our teams will continue to build the operational and tooling support to expand our political advertising policies to other key markets through 2019 and beyond, according to the applicable laws in each jurisdiction and protecting freedom of speech fundamental principles. We strongly believe that meaningful transparency is the best path forward for all advertising products we offer, particularly those used in a political context".

<sup>1752</sup> In this regard, Google noted that transparency, regarding their internal process, "cannot be total, as that could make it easier for malicious actors to discover how to manipulate enforcement policies."



way. In the same way, it is recommended to platforms to adapt their electoral advertising offers to the legal frameworks in force in each jurisdiction in the matter<sup>1753</sup>.

- *Collaborate with independent researchers.* Because disinformation is a complex phenomenon, companies that provide services must collaborate with independent researchers, providing information to better understand the phenomenon of disinformation. In this sense, there are varying degrees of access to platform services -from broad access through an API (Application Programming Interface) to restricted access, based on the periodic production of information that turns to transparency reports-. It is important that companies deepen these practices, as long as this access occurs guaranteeing the privacy of users.<sup>1754</sup>
- *Collaborate with electoral authorities.* Within the good practices identified so far, the collaboration of companies that provide Internet services with the electoral authorities allows efficient channels of dialogue to be established that facilitate the legitimate action of the authorities in the face of misinformation. Therefore, it is necessary for companies to continue their efforts to work with the electoral authorities in all jurisdictions in which they operate and provide the service, provided they are legitimate authorities that coordinate democratic electoral processes and are not questioned by the international community.
- *Support quality journalism.* Among the self-regulation actions already undertaken by global companies, those that support independent and quality journalism stand out for strengthening the regulatory ideal of an open and robust public debate. In this regard, it would be desirable for these efforts to continue and expand in the region.
- *Review the content recommendation algorithms.* In general, companies that offer Internet services want their users to access relevant information. At least in part, they seek to achieve that goal through algorithms that - based on different information about what users are interested in - recommend similar content, under the premise that this information is "relevant" to them. It is important that companies do not base these criteria, which are used to build those algorithms, on purely commercial reasons such as, for example, those that seek to expand the scope of the content or the "permanence" of the users on the platforms.
- *Adopt positive actions aimed at counteracting misinformation campaigns.* Platforms should take positive actions to counteract misinformation, such as - for example - promoting content from fact-checking agencies. These types of actions are less risky than those that involve removing content and that may be more effective in combating the worrying phenomena. Since algorithms are largely responsible for the information that people "see" or "access" on platforms, it is advisable to increase transparency on the criteria that companies use for the construction and implementation of these mechanisms.
- *Review policies on bots and automated publishing tools.* Automated publishing tools and bots - as accounts not controlled by humans, but controlled by automated tools - have been identified as factors that help the expansion of false information.<sup>1755</sup> While bots are not problematic in themselves, when they operate as part of disinformation campaigns they could be moderated by platforms. In this regard, platforms are recommended to continue working on the identification of problematic uses of this type of technological tools.
- *Develop good practices at the level of self-regulation.* Many of the recommendations indicated in the previous paragraphs seek that the platforms exert the power that they actually have in the flow of information on the Internet in a virtuous way from the point of view of the values of freedom of expression that should guide the democratic debate. In this sense, if the platforms, for example, offer a channel for citizens to express themselves, it is important that if the latter break internal content moderation policies

<sup>1753</sup> Various civil society entities in the region have questioned the main actors in the world of platforms and intermediaries in this regard. See ADC et. al., A call to Facebook, Google, and Twitter to deepen the transparency of online political advertising, available at: <https://adc.org.ar/2019/09/02/un-llamado-a-facebook-google-y-twitter-para-profundizar-la-transparencia-de-la-publicidad-politica-online/>

<sup>1754</sup> Cf. EUROPEAN COMMISSION; NETWORKS, CONTENT AND TECHNOLOGY, *A multi-dimensional approach to disinformation. Report of the independent High level Group on fake news and online disinformation.*, cit., p. 25.

<sup>1755</sup> Cf. C. SHAO ET. AL, *The spread of low-credibility content by social bots*, Nature Communications, vol. 9, 1, 2018,4787.

they can understand the policies, defend their behavior and their contents in a process that protects elementary principles of due process.

The recommendations contained here and - in general - business practices that seek to align the responses to the phenomenon of misinformation with the values of free democratic debate constitute, together, a series of good practices that the industry should develop in that level; that is, as good practices that the industry recognizes as regulatory ideals for itself. This type of development could have a positive long-term impact and influence, positively, new companies and Internet services that would surely continue to emerge in the years to come.

- *Respect and proactively comply with the protection of personal data.* Platforms feed on personal data to profile their users and personalize content. It is essential that platforms proactively respect high data protection standards for all their users.

### 3. To the political parties

- *Avoid campaigns that use false information.* Political parties are essential institutions of the democratic system. They act as intermediaries between citizens and their representatives, and there is no time where this intermediation is clearer and more efficient than during election campaigns.

It is essential that political parties refrain from promoting disinformation campaigns by themselves or by third parties, which includes the duty not only to not promote them voluntarily, but to verify that this is not done involuntarily, that the main actors do not contribute to the dissemination of false information and that militants and activists reject such practices.

- *Make the electoral campaign transparent.* It is important that the political parties clarify their electoral campaigns in the sense of informing the communication channels, the contents of the campaigns and the main messages. This will allow citizens to properly distinguish nonpartisan campaigns from those that are.
- *Respect and proactively comply with the protection of personal data.* Political parties must also comply with the regulations on the protection of personal data and make transparent the sources of data used, the elaboration of profiles, and the criteria to disseminate personalized messages.

### 4. To telecommunications companies

- *Review zero rating agreements to combat misinformation.* Telecommunications companies are intermediary actors that only have an indirect relationship with the phenomenon. In Latin America, in recent years, zero rating agreements have been expanded, these are contracts whereby certain social networks, platforms, or messaging systems agree with telecommunications companies that their services do not count for the computation of the "data" that their users consume in their mobile phone services. This allows users with the most economical data plans to use almost exclusively those services, which do not exceed the amount of data they have contracted.

While these agreements may affect the principle of net neutrality, this occurs under the premise that they allow Internet access to expand, although at a very limited version of it. This has been problematic in the face of disinformation campaigns: those who - for example - receive false information through social networks or almost exclusive private messaging services and cannot verify that information because they do not have access to the Internet in its entirety.

Without going into the analysis of these private commercial agreements with regards to the right to freedom of expression, it is recommended that telecommunications companies expand their zero rating agreements in a way that allows users to access only some of the services or platforms verify information with media and organizations specialized in verification.<sup>1756</sup>

### 5. To the media and journalists

- *Strengthen quality journalism against disinformation.* It has been proven that the media are relevant actors in the phenomenon of misinformation. Occasionally, their interventions have caused disinformation to

<sup>1756</sup> In this regard, we ratify what was indicated by the IACHR in 2016 in the sense that the compatibility of these agreements "with human rights must be measured in the light of the legality, necessity, and proportionality test" and taking into account, especially, the impact they have on access to broad and diverse sources of information.

expand faster, in other cases, they have been effective in promoting checked information in response to false information. In any case, political polarization affects them and - according to studies conducted in the United States - the polarization of the media itself fuels the phenomenon of disinformation campaigns.<sup>1757</sup>

It is important that the media and journalists remember their role in a democratic society of privileged channels of public debate. This imposes a series of good practices that have proven to be significant contributions to the democratic system, such as investigative journalism, editorial independence, and certain objectivity as an ex officio regulatory ideal.

### **6. To Fact-Checkers**

- *Unify definitions of misinformation and strengthen regional networks.* The fact-checking agencies that have grown exponentially in our region in recent years play an important role in the fight against misinformation. By verifying public discourse, they offer a service that can help citizens navigate a complex public debate and - occasionally - contaminated with false information.

It is important that fact-checking agencies use precise definitions about their work and the qualifications they use. In this sense, it is important to limit the phenomenon of misinformation based on the definition offered above and not apply qualifying adjectives related to the *falsity* of content that does not strictly deserve it, such as when some campaigns or information are labeled as "deceptive." Vague or ambiguous definitions could produce unwanted effects, such as involuntarily increasing the dissemination of false information or contributing to the discredit of professional media, possibilities especially present in contexts of high political polarization. In this sense, it is necessary that the definition of misinformation be limited to the false information distributed knowing its falsity, in the aforementioned terms. This excludes from this category partial or incomplete information, misleading information (since this criterion is excessively subjective), inaccurate information, and so on.

### **7. To companies that trade data for advertising purposes**

- *Respect existing legal frameworks and participate in the conversation about misinformation.* As noted above, the transformation of the Internet-driven advertising market is one of the elements that can have a broader effect of misinformation in societies. Thanks to the use of personal data that users share with various services they use, the industry has managed to develop tools to reach recipients with highly addressed messages, based on precise profiles of preferences, age groups, income, and so on.

Therefore, it is important that companies that engage in digital advertising and design advertising campaigns --- commercial and political --- participate in the discussion about misinformation in the countries in which they operate. Although it seems obvious, it is important to insist on the need for these companies to abide by the existing legal frameworks regarding data protection and, for example, to not use personal databases outside of the cases in which it is allowed bylaw.

### **8. To universities and research centers**

- *Expand empirical research on disinformation.* We still know very little about the extent of misinformation, its scope, causes and effects. In this sense, it is essential that the academic world deepens its research on disinformation, a particularly pressing need in Latin America, where research is scarce. These investigations should have a solid empirical basis, should focus on specific events in the region and should --- as far as possible --- be carried out in a comparative manner. For this, it is essential to expand the collaboration networks between universities and research centers in the countries of the region.

<sup>1757</sup> Cf. Y. BENKLER ET AL, *Network Propaganda*, cit.

## PROTEST AND HUMAN RIGHTS

### STANDARDS ON THE RIGHTS INVOLVED IN SOCIAL PROTEST AND THE OBLIGATIONS TO GUIDE THE RESPONSE OF THE STATE

Social protest is a core element for the existence and consolidation of democratic societies and is protected by a constellation of rights and freedoms, which the inter-American system guarantees both in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights.

Indeed, the rights to freedom of expression, peaceful assembly, and association guarantee and protect various forms—individual and collective—of publicly expressing opinions, dissenting, demanding compliance with social, cultural, and environmental rights, and affirming the identity of groups that have historically been discriminated against. Protest also plays a central role in defending democracy and human rights. According to the instruments of the inter-American system, the joint exercise of these fundamental rights makes the free exercise of democracy possible.

The region, far from offering a picture of consensus regarding the protection of demonstrations and protests, has been—and continues to be—the scene of repression, dispersal, and limitation of the exercise of these rights in the public sphere, the product of a deep-rooted conception that considers citizen mobilization to be a form of disruption of the public order or, even worse, a threat to the stability of democratic institutions. Hence, a central objective of this report, prepared by the Inter-American Commission of Human Rights and its Office of the Special Rapporteur for Freedom of Expression, is to contribute to a better understanding of State obligations aimed at guaranteeing, protecting, and facilitating public protests and demonstrations, as well as the standards that should frame the progressive use of force—and as a last resort—in protest contexts.

This report also acknowledges that in different circumstances protests cause disruption and affect the normal course of other activities—but this fact does not make these forms of expression *per se* illegitimate. It is based on the fact that one of the functions of protest is to channel and amplify the demands, aspirations, and grievances of different segments of the population, including those that, due to their situation of exclusion or vulnerability, cannot readily access traditional media and institutional mediation.

The report stresses that demonstrators have the freedom to choose the mode, form, place, and message for peaceful protest, and States have the obligation to manage social conflict through dialogue. To this end, States must respect the limits on their ability to place legitimate restrictions on demonstrations and protests.

The report also provides an update on the exercise of these rights in relation to the growing importance of the Internet, the media, and the role of advertising, as well as the protection of the social control exercised by journalists and media workers during the organization, announcement, and holding of protests.

The IACHR and its Office of the Special Rapporteur for Freedom of Expression emphasize that this report is the result of the ongoing monitoring of the situation of these freedoms in the region and the opening of dialogue with States and civil society. For more than two years the IACHR and its Office of the Special Rapporteur have conducted academic visits and consultations with social and academic organizations, experts who have contributed information and reflections to this report<sup>1758</sup>; in this regard, they are grateful for the contributions

<sup>1758</sup> The Inter-American Commission and its Special Rapporteurship for Freedom of Expression have paid special attention to the guarantee of the rights involved in social protests and have referred to the matter on various occasions. As background we can mention that in his 2005 Annual Report, the IACHR dedicated a chapter to "Public demonstrations as an exercise of freedom of expression and freedom of assembly". The matter has also been the subject of various thematic audiences, has been part of annual reports, country reports and communications. As a direct precedent of this document, in March 2015, at its 154th session, the Commission held the first regional thematic hearing on human rights in the context of social protest, requested in light of regressions of varying severity in State responses to public demonstrations in various countries of the region by organizations from different countries: American Civil Liberties Union (ACLU), Article 19 Brasil, Article 19 México, Asociación Pro Derechos Humanos, Perú (APRODEH), Canadian Civil Liberties Association (CCLA), Cauce Ciudadano A. C., México, Centro de Derechos Humanos Fray Francisco de Vitoria, México, Centro de Derechos Humanos Miguel Agustín Pro Juárez, México, Centro de Estudios Legales y Sociales, Argentina, Centro de Justicia para la Paz y el Desarrollo, México, Centro Nacional de Comunicación Social (CENCOS), México, Colectivo de Abogados José Alvear Restrepo, Colombia, Comité de Familiares de Detenidos Desaparecidos- Honduras (COFADEH), Comité de Solidaridad con Presos Políticos, Colombia, Conectas Direitos Humanos, Brasil, Coordinadora Nacional de Derechos Humanos, Perú, Corporación Humanas, Chile, Espacio Público, Venezuela, Fundar Centro de Análisis e Investigación, México, Instituto de Defensores de Direitos Humanos, Brasil (DDH), Instituto de Estudios Legales y Sociales (IELSUR), Uruguay, Instituto Mexicano de Derechos Humanos y Democracia, México (IMDHD), Justiça Global, Brasil, Núcleo Especializado de Cidadania e Direitos Humanos de Defensoria Pública do Estado de São Paulo, Observatorio Ciudadano, Chile, Programa Venezolano de Educación - Acción en Derechos Humanos, Venezuela (PROVEA), Propuesta Cívica, México, Red de Apoyo para la Justicia y la Paz, Venezuela, Red Nacional de Organismos Civiles de Derechos Humanos "Todos los derechos para todas y todos", México y Servicios y Asesoría para la Paz, A. C. (SERAPAZ), México. The human rights organizations asked the Commission to address the regional

received and hope that these standards will be useful to those responsible for establishing adequate legal frameworks or for judicial authorities who must adjudicate matters related to protest. In addition, we hope that it will become a reference for the security forces that have the obligation to protect and manage the staging of demonstrations and protests.

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trends that were exposed; develop new standards in the field; discuss with States ways to promote the incorporation into their national laws and policies of the standards developed in the 2009 Citizen Security and Human Rights Report; and identify in a specific document a series of guiding principles on the promotion and protection of human rights in social protest contexts. In October 2015, a follow-up meeting was held between the organizations requesting the hearing and the Executive Secretariat of the IACHR. In its 2015 annual report, the IACHR dedicated a section of its chapter 4A to the use of force in social protest contexts, after conducting a public consultation to which numerous organizations and states in the region replied. In 2016, the IACHR instructed the Office of the Special Rapporteur for Freedom of Expression to produce a broader thematic report, which would bring together different aspects of the right to social protest, based on the relevant background of the Inter-American System and the international human rights system. Edison Lanza, Special Rapporteur for Freedom of Expression, Ona Flores, specialists from the Office of the Special Rapporteur, and Gustavo F. Palmieri, specialized consultant, participated in the preparation of the document. On February 23, 2017, with a first draft of the document, the Office held an experts' meeting in Washington, DC. Participants included: Paulo Abrao, IACHR Executive Secretary, Heidy Rombouts from the Office of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, María Luisa Bascur, for the Mexico Office of the UN Human Rights High Commissioner, Daniel Holder from the Committee on the Administration of Justice (CAJ) in the UK, Catalina Botero, from Universidad de los Andes-Colombia and former IACHR Special Rapporteur for Freedom of Expression, Michael Hamilton from University of East Anglia/OSCE –Great Britain. In addition, the following organizations were represented: Centro de Estudios Legales y Sociales/CELS Argentina; Article XIX, (Offices in Brasil and the UK), the Canadian Civil Liberties Association de Canadá, Colectivo de Abogados José Alvear Restrepo-Colombia; American Civil Liberties Union/ACLU de EEUU; Centro PRODH-México; Universidad Católica Andrés Bello Venezuela; Centro para la Justicia y el Derecho Internacional/CEJIL; Due Process Law Foundation/DPLF USA; International Institute on Race, Equality and Human Rights and The International Center for Not Profit Law/ICNL, EEUU; Nicolás Hernández, Daniel Simons and Sandra Coliver, Mariana Mas, Roxane Cassehgari from Open Society Justice Initiative.

**CHAPTER I**  
**GUIDING PRINCIPLES**

# I. GUIDING PRINCIPLES

## The Right to Protest: Definitions and modes

1. Protest<sup>1759</sup> is a form of individual or collective action aimed at expressing ideas, views, or values of dissent, opposition, denunciation, or vindication. Examples include the expression of political, social, or cultural opinions, views, or perspectives; the vocalization of support or criticism regarding a group, party, or the government itself; the reaction to a policy or the denunciation of a public problem; the affirmation of identity or raising awareness about a group's situation of discrimination and social exclusion.
2. The right to freedom of expression is strongly interconnected with freedom of assembly and the right to protest. Assemblies, defined as any intentional and temporary congregation of a group of people in a private or public space for a specific purpose,<sup>1760</sup> “play a vibrant role in mobilizing the population and in formulating grievances and aspirations, facilitating the celebration of events and, importantly, in influencing States’ public policy.”<sup>1761</sup> At the same time, the expression of individual and collective opinions is one of the objectives of any protest.
3. The right to protest is also strongly associated with human rights activities, including demands for the recognition, protection, or exercise of a right. In many cases, and in different countries in the region, protests are used to react to specific acts of violence, evictions, labor issues, or other events that have affected rights. Protests have been a means to achieve both the raising of the threshold to guarantee fundamental rights at the national level and the inclusion of a large number of rights in the progressive development of international human rights law.<sup>1762</sup>
4. Protest is also closely linked to the promotion and defense of democracy. In particular, the Inter-American Court has recognized that in situations involving a breakdown of the democratic institutional order, protest should be understood to “[correspond] not only to the exercise of a right, but also to compliance with the obligation to defend democracy.”<sup>1763</sup>
5. In democratic societies, individuals and the general public organize and express their demands in different ways and through strategies that vary from condemnation to direct pressure, and in more institutional and structured forms, through formally established organizations—although this also encompasses non-institutional strategies, and spontaneous and horizontally organized demonstrations and protests.
6. In this regard, protests may be led or supported by different types of actors or by a combination of actors. Organized civil society, or NGOs; neighborhood associations, religious bodies, schools, research institutions; trade unions and professional associations; political parties and social movements make these processes of grievance and expression feasible, within the framework of their strategies for the promotion of their ideas and interests or for the defense or promotion of rights.
7. However, spontaneous protests are also a legitimate form of expression, denunciation, protest, or support for various events. They may involve a single person, small groups of individuals, or multitudinous groups in which thousands of people may be coordinated without any specific association with more structured organizations such as those mentioned above.

<sup>1759</sup> Notwithstanding the substantive discussions on the terms used in this section, the concepts of “social protest” and “public demonstrations” will be used interchangeably for the purposes of this report.

<sup>1760</sup> United Nations, Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, UN Doc. A/HRC/20/27 (21 May 2012) para. 51

<sup>1761</sup> United Nations, Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, UN Doc. A/HRC/20/27 (21 May 2012) para. 51

<sup>1762</sup> Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 23 May 2011, A/HRC/17/28, para. 31. It has also been stated that assemblies “play a critical role in protecting and promoting a broad range of human rights.” Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 6.

<sup>1763</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, paras. 148 *et seq.*

8. The Commission notes that although protests and demonstrations in general are associated with rallies or marches in public spaces, they can take different forms and modes—as recognized by the various international human rights protection systems. In its report on the Situation of Human Rights Defenders in the Americas, the IACHR considered traditional forms of protest, but also made special mention of roadblocks, , *cacerolazos* [drumming pots and pans], and vigils, as well as parades, conferences, and sporting, cultural, artistic, and other events.<sup>1764</sup>
9. In recent years, the United Nations Rapporteurs also included demonstrations, strikes, sit-ins, and peaceful occupations in their reports as part of the exercise of the rights to peaceful assembly and association. National and international high courts have held that the right to peaceful and unarmed assembly should not be interpreted narrowly, since it constitutes a fundamental element of democracy.<sup>1765</sup>
10. In short, the Commission understands that some of these forms of protest present complexities for purposes of harmonizing the rights at stake, and that they draw from a diverse repertoire that changes under different conditions and contexts, both in urban and rural settings, as well as when carried out by the most vulnerable groups. In any case, however, it is essential for State responses to the various modes of protest to be guided by dialogue and guarantees for the exercise of all other associated rights.
11. For example, many protests are aimed at expressing opinions rejecting public policies or the officials responsible for them, demanding new measures from the different branches of the State or levels of government, supporting or amplifying public events, or commemorating historical events related to the identity of a people or group, reinforcing the identity of social groups as actors on the public stage and claiming their rights or the conditions of access to them, demanding justice, or protesting against decisions of the Judiciary that they consider unjust, etc.
12. The IACHR also recognizes in this report that, whatever the form of protest, the inter-American instruments establish that the right of assembly must be exercised peacefully and without arms. In the same vein, the Commission recognizes that States have a duty to take the necessary measures to prevent acts of violence and to guarantee public safety and order. However, when using force in these contexts, States must use measures proportional to the accomplishment of these objectives and not arbitrarily hinder the exercise of the rights at stake in protests.
13. Moreover, forms of protest must also be understood in relation to the subject and objective of the action, the underlying theme it addresses, and the context in which it takes place. Some modes seek to create a certain disruption of daily life or a response to practices and norms as a way to raise awareness of proposals or issues or amplify voices that would otherwise be unlikely to be on the agenda or part of public deliberation. Protests directed at private actors, whether an individual, an institution, or a company, may also express grievances or opinions on matters of public interest. This is the case, for example, in many of the public demonstrations condemning the environmental harm or pollution that may result from the activity of large extractive companies, or from the operation of businesses that have impacts on territories.
14. The IACHR recognizes that protest plays a fundamental role in the development and strengthening of democratic systems, is protected by inter-American human rights instruments, and is instrumental in enabling citizen participation in elections and referendums. They can also contribute to the full enjoyment of civil, political, economic, social, and cultural rights.<sup>1766</sup>
15. Protest as a form of participation in public affairs is also relevant because of the structural inequalities that still characterize our region. As the IACHR's Office of the Special Rapporteur for Freedom of

<sup>1764</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006.

<sup>1765</sup> UN, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A-HRC-20-27, para. 12.

<sup>1766</sup> Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, 24 March 2014, A/HRC/25/L.20; Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, 11 April 2014, A/HRC/RES/25/38. The Special Rapporteur on the rights to freedom of peaceful assembly and association and the Special Rapporteur on extrajudicial, summary or arbitrary executions have similarly stated with regard to the proper management of play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes." Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 5.



Expression has already pointed out, the most impoverished sectors of our continent face discriminatory policies and actions and have just begun to have access to information on measures that affect their daily lives. The traditional channels of participation to which they should have access in order to make their demands public are often curtailed.<sup>1767</sup>

16. Although groups and sectors with greater representation and access to formal channels of complaint and political participation also have broad access to the exercise of protest, the protection and guarantee of this right deserve special attention when it is expressed by underrepresented or marginalized sectors or groups that face institutional frameworks not conducive to their participation, or serious barriers to access to other forms of mass communication. Protest is particularly relevant “in amplifying the voices of people who are marginalized or who present an alternative narrative to established political and economic interests.”<sup>1768</sup>

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<sup>1767</sup> IACHR, Annual Report 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 1.

<sup>1768</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 6.

**CHAPTER II**  
**APPLICABLE LEGAL**  
**FRAMEWORK**

## II. APPLICABLE LEGAL FRAMEWORK

### 1. Rights involved

17. In recent years, both in the inter-American human rights system and in the universal and other regional systems, it has been held that States have obligations to respect, protect, and guarantee human rights in the context of protest. This Commission observes that the international system<sup>1769</sup> and the regional systems have pointed out, on different occasions, the relationship of interdependence and indivisibility of the rights exercised through public demonstrations and social protest actions. In particular, the inter-American system has acknowledged the relationship between political rights, freedom of expression, freedom of assembly, and freedom of association, and that these rights, taken together, make the democratic process possible.<sup>1770</sup>
18. *Right to freedom of expression.* This right is enshrined in Article IV of the American Declaration of the Rights and Duties of Man, and in Article 13 of the American Convention on Human Rights. This Commission has on numerous occasions considered “public demonstrations as an exercise of freedom of expression.”<sup>1771</sup> This is because the expression of opinions, the dissemination of information, and the articulation of demands are central objectives of protests. The IACHR and its Office of the Special Rapporteur for Freedom of Expression have reiterated that, “Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.”<sup>1772</sup> In this regard, the right to protest is protected by the right to freedom of expression.<sup>1773</sup>
19. *Freedom of assembly.* Social protest is also protected by the freedom of assembly<sup>1774</sup> enshrined in Article XXI of the American Declaration of the Rights and Duties of Man, and Article 15 of the American Convention on Human Rights. Freedom of assembly protects the peaceful, intentional, and temporary congregation of people in a given space for the achievement of a common goal, including protest. As such, it is indispensable for the collective expression of people’s opinions and views.<sup>1775</sup> The exercise of freedom of assembly is vitally important for the consolidation of democratic societies and is therefore of compelling social interest.<sup>1776</sup>
20. *Right to freedom of association.* Protest is often an important means of action and the pursuit of legitimate objectives by organizations and groups, and as such can also be protected by the right to freedom of association<sup>1777</sup> provided for in Article XXII of the American Declaration of the Rights and Duties of Man

<sup>1769</sup> Human Rights Council, Res 19/35, of 23 March 2012; 22/10, of 21 March 2013; 25/38, of 28 March 2014; 31/37, of 24 March 2016; 38/11 of 16 July 2018.

<sup>1770</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, para. 160.

<sup>1771</sup> IACHR, Annual Report 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly.”

<sup>1772</sup> IACHR, Annual Report 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 6, citing the Court’s opinion in *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC 5/85, Series A, No. 5, of November 13, 1985, para. 69.

<sup>1773</sup> *Idem.* IACHR 2005, para. 6, citing ECtHR, *Vogt v. Germany*, Judgment of 26 September 1995, Series A, No. 323, para. 64; ECtHR, *Rekvenyi v. Hungary*, Judgment of 20 May 1999, 1999-III Reports of Judgments and Decisions, para. 58; ECtHR, *Young, James, and Webster v. United Kingdom*, Judgment of 13 August 1981, Series A, No. 44, para. 57; ECtHR, *Refah Partisi (The Welfare Party) and others v. Turkey* Judgment of 31 July 2001, para. 44, available at <http://www.echr.coe.int>; ECtHR, *United Communist Party of Turkey and Others v. Turkey*, Judgment of 30 January 1998, Report 1998-I, para. 42. See also: Supreme Court of Zambia, *Christine Mulundika and 7 Others v. The People*, Judgment of February 7, 1996, 2 LCR 175 (where the Court held that the right to organize and participate in a public meeting is inherent in the right to express and receive ideas and information without interference as well as to communicate ideas and information without interference).

<sup>1774</sup> In that report, the IACHR stated that, “the right of assembly (...) is essential to the enjoyment of various rights such as freedom of expression, the right of association, and the right to defend human rights. Political and social participation through the exercise of freedom of assembly is critical to the consolidation of democratic life in societies and thus contains a keen social interest.” In: IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, paras. 128-129.

<sup>1775</sup> See communication No. 1948/2010, *Turchenyak et al. v. Belarus*, views adopted on 24 July 2013.

<sup>1776</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, paras. 128-129.

<sup>1777</sup> In relation to the duty of the States to ensure the right of association, the Inter-American Court has said that freedom of association protects “the right to join with others in lawful common pursuits, without pressure or interference that may alter or impair the nature

and in Article 16 of the American Convention on Human Rights. This protection, moreover, has specific dimensions, such as trade union rights and the right to strike.<sup>1778</sup> The Human Rights Council has recognized the link between freedom of association and protest, stating that “Other rights that may be applicable in case of peaceful protests include, for instance, the right to freedom of association.”<sup>1779</sup> The Inter-American Court of Human Rights (hereinafter, “Inter-American Court”) has held that freedom of association “establishes the right of assembly and is characterized by authorizing individuals to create or take part in entities or organizations in order to act collectively to achieve very diverse purposes, provided they are legitimate.”<sup>1780</sup> This entails “the right and the freedom to associate in order to seek together a lawful purpose, without pressure or interference that can alter or [distort] this purpose.”<sup>1781</sup>

21. This Commission underscores that the lawful and legitimate aims of freedom of association include public demonstrations and social protests. The protection granted to the freedom of association extends throughout the life of the association and includes enabling the exercise of the purposes for which it was established.<sup>1782</sup> Such protection may include associations that are not supported by a formal institutional or legal structure. It should be noted that the formal organizations that make up our pluralistic democratic societies arise, for the most part, through gradual processes of institutionalization.
22. *Right to organize and right to strike:* The right to freedom of association has particular dimensions when it comes to specific groups and collectives or specific forms of protest. One example of this is trade unions and strikes, respectively. In this field, the right of association is especially protected by Article 8 of the Additional Protocol to the American Convention in the Area of Economic, Social, and Cultural Rights – “Protocol of San Salvador.” The right to freedom of trade union association consists of “freedom of association consists basically of the ability to constitute labor union organizations, and to set into motion their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right.” The right to strike is one of the expressions of this right, and has been considered one of the most common forms of exercising the right to protest. The specific protection afforded to indigenous peoples’ forms of association and organization under the United Nations Declaration on the Rights of Indigenous Peoples, and their forms of demonstration and protest when related to specially protected rights, such as their cultural identity and lands, should be interpreted in the same regard.<sup>1783</sup>
23. *Right to political participation:* Protest in the context of the consolidation of democracies in the region is a fundamental tool of political participation and of the right to “participate in the conduct of public affairs,” both in terms of the Inter-American Democratic Charter<sup>1784</sup> and under Article 23 of the American Convention. The Human Rights Council has also maintained that “Other rights that may be applicable in case of peaceful protests include (...) the right (...) to take part in the conduct of public affairs (Article 25).”<sup>1785</sup> Protest as a form of participation in public affairs is especially relevant for groups of people historically discriminated against or marginalized.

of such purpose” (I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 143).

<sup>1778</sup> Article XXII of the American Declaration of the Rights and Duties of Man; Article 8 of the Additional Protocol to the American Convention in the Area of Economic, Social, and Cultural Rights – “Protocol of San Salvador”); Article 23 of the Universal Declaration of Human Rights; Article 22 of the International Covenant on Civil and Political Rights; Article 8 of the International Covenant on Economic, Social and Cultural Rights. See: General Assembly, Report of the Special Representative of the Secretary-General on human rights defenders, 13 August 2007, A/62/225, para. 12.

<sup>1779</sup> Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, 21 January 2013, A/HRC/22/28, para. 4.

<sup>1780</sup> I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009, para. 169.

<sup>1781</sup> Cfr. *Case of Baena Ricardo, et al., supra* note 46, para. 156; *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 144; *Case of Kawas Fernández, supra* nota 35, para. 143; I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009, para. 170.

<sup>1782</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. 155; ECHR, *United Communist Party of Turkey and Others v. Turkey*, No. 19392/92, para. 33.

<sup>1783</sup> United Nations General Assembly. Declaration on the Rights of Indigenous Peoples. (A/61/L.67 and Add.1). 107<sup>th</sup> plenary meeting, 13 September 2007.

<sup>1784</sup> Article 2 of the Inter-American Democratic Charter states that “Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.” Article 6 states, “It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.”

<sup>1785</sup> Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, 21 January 2013, A/HRC/22/28, para. 4. The Human Rights Council has further stated, “Acknowledging also that participation in peaceful protests can be an important form of exercising the rights to freedom of peaceful assembly, of expression, of association and of participation in the conduct of public affairs,” and “Recognizing that peaceful protests can make a positive contribution to the development, strengthening and effectiveness of

24. ***Economic, social, and cultural rights:*** Protest is also an essential mechanism for guaranteeing economic, social, cultural, and environmental rights. The struggles for the right to land, the right to a healthy environment, demonstrations against economic reforms and labor flexibilization, among many other things, have led thousands of human rights advocates, as well as student, social, and rural leaders to organize in order to fight for the enjoyment of their rights.<sup>1786</sup> The most impoverished sectors of our hemisphere face discriminatory policies and actions, their access to information on the planning and execution of measures that affect their daily lives is in its infancy, and in general the traditional channels of participation to publicly voice their complaints are often limited. Against this backdrop, in many countries of the hemisphere, social protest and mobilization have become tools for petitioning public authorities as well as channels for the public condemnation of abuses or violations of human rights.<sup>1787</sup>
25. *Other rights:* A protest may encompass other specific rights linked to the groups, actors, or interests involved, such as gender equality in women's movements, or rights protecting migrants, children and adolescents, or indigenous peoples. Protest has also been—and remains—a fundamental tool in the region for different population groups to express their identity and challenge intolerance and discrimination, such as LGBTIQ people and populations of African descent.
26. An analysis of the rights involved in demonstrations and protests must also take into account the fact that improper responses by the State may affect not only the abovementioned rights but also other fundamental rights, such as the rights to life, physical integrity, personal safety, and the right to liberty. This occurs when the State's response leads to the deaths and injuries of demonstrators, mainly due to acts of repression by government agents or a lack of State protection against assaults by other demonstrators or third parties. In our region, participants in protests have often been victims of extrajudicial executions, forced disappearances, torture, ill-treatment, and illegal deprivations of liberty. In some cases it is not only the State, but also private actors acting with the acquiescence of public officials.

## 2. Legitimate restrictions to the rights involved in demonstrations and protests

27. The Inter-American Commission has documented on several occasions that States in the region have perceived and implemented disproportionate responses to protests, as if they were a threat to the stability of the government or to national security. In this regard, the failure to comply with the obligations to respect and guarantee the rights involved in protest “has triggered widespread violence, which in turn has led to serious violations of this right and violations of the rights to life, physical integrity, and personal liberty and security of those participating in the social protest demonstrations.”<sup>1788</sup>
28. With regard to this situation, the Commission has pointed out that States are obliged to guarantee and facilitate the exercise of the human rights at stake during demonstrations and protests, and to implement measures and mechanisms to ensure that those rights can be exercised in practice, rather than hindered. The Inter-American Court has also ruled that citizen security cannot be based on a use of force paradigm aimed at treating the civilian population as the enemy, but must consist of the protection and control of civilians participating in demonstrations.<sup>1789</sup>
29. The Inter-American Court has held that the obligation to respect the rights and freedoms recognized in the American Convention, established in Article 1.1 thereof, entails “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 juridically ensuring the free and full enjoyment of human rights.”<sup>1790</sup>

democratic systems and to democratic processes, including elections and referendums.” Whereas clauses of Resolution 25/38 adopted by the Human Rights Council. The promotion and protection of human rights in the context of peaceful protests. A/HRC/RES/25/38. 11 April 2014.

<sup>1786</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, March 7, 2006, para. 215.

<sup>1787</sup> IACHR, Chapter IV, Annual Report 2002, Vol. III “Report of the Office of the Special Rapporteur for Freedom of Expression,” OEA/Ser.L/V/II. 117, Doc. 5 rev. 1, para. 29.

<sup>1788</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, paras. 130-131; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, OEA/Ser.L/V/II. Doc. 57, para. 192.

<sup>1789</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 78; *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, para. 167.

<sup>1790</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166; I/A Court H.R., *Case of Godínez Cruz v. Honduras*, Judgment of January 20, 1989, Series C No. 5, para. 175.

30. At the same time, Article 2 of the Convention establishes the duty of the States “to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”<sup>1791</sup> This duty entails “the adoption of measures of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.”<sup>1792</sup>
31. With respect to the scope of these rights, while freedom of peaceful assembly, expression, association, and participation are not absolute, restrictions on them should be subject to a number of requirements.<sup>1793</sup> For restrictions on these rights to be legitimate they must be expressly established by law and be necessary to ensure respect for the rights of others or the protection of national security, public order, or public health or morals,<sup>1794</sup> under the terms of Articles 13, 15, and 16 of the American Convention, and Articles IV, XXI, and XXII of the Declaration.<sup>1795</sup>
32. Before examining these requirements with respect to the rights at stake, the Commission wishes to stress that the right to protest must be considered the general rule, and limitations to this right must be the exception.<sup>1796</sup> The protection of the rights and freedoms of others should not be used as a mere excuse to restrict peaceful protests.<sup>1797</sup> In turn, States must bear in mind that these rights are exercised interdependently during a demonstration or protest; in the words of the Inter-American Court: “The ability to protest publicly and peacefully is one of the most accessible ways to exercise the right to freedom of expression, and can contribute to the protection of other rights.”<sup>1798</sup>
33. A comprehensive analysis of the standards relating to restrictions on the main rights involved—freedom of expression, freedom of assembly, and freedom of association—makes it possible to identify common elements in the application of the three-part “test” to assess restrictions on demonstrations and protests. First, any limitation must be provided for in law. Second, it should pursue the legitimate objectives expressly set out in the American Convention. Third, the restrictions must be necessary in a democratic society—a criterion from which proportionality standards are also derived. The authority imposing limitations on a public demonstration must demonstrate that these conditions have been met and all of them must be respected simultaneously in order for the limitations imposed on social protest to be legitimate under the American Convention.<sup>1799</sup> <sup>1800</sup>

<sup>1791</sup> American Convention on Human Rights, art. 2.

<sup>1792</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 207; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 108; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 178; I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 172.

<sup>1793</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter IV, “Freedom of Expression and Poverty,” para. 31; IACHR, Annual Report of the Inter-American Commission on Human Rights 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 2; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 15; Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 January 2013, para. 5.

<sup>1794</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter IV, “Freedom of Expression and Poverty,” para. 31; IACHR, Annual Report of the Inter-American Commission on Human Rights 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 2; IACHR, Report on the Situation of Human Rights Defenders in the Americas, March 7, 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 55; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 15; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 47; Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 January 2013, para. 5.

<sup>1795</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, para. 107; IACHR, Annual Report 2007, Chapter IV, paras. 260-261.

<sup>1796</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 47.

<sup>1797</sup> Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 January 2013, para. 12.

<sup>1798</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 167.

<sup>1799</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 68.

<sup>1800</sup> The UN Human Rights Committee has expressed the same view. Under Article 19, para. 3 of the Covenant, certain restrictions on freedom of expression are permitted, but only to the extent that they are established by law and are necessary to: a) ensure respect for the rights or reputations of others; or b) the protection of national security, public order, public health, or morals. The criteria for restrictions on the rights guaranteed in Articles 21 and 22 of the Covenant follow a similar logic. The mere existence of objective

34. *The restrictions must be provided for in the law* in advance, expressly, exhaustively, precisely and clearly,<sup>1801</sup> both procedurally and substantively.<sup>1802,1803</sup> Only procedural law, the Inter-American Court has held, “is capable of restricting the enjoyment or exercise of the rights recognized by the Convention.” “The word ‘laws’ in Article 30 of the Convention means a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.”<sup>1804</sup> Laws that restrict social protests should be drafted in the clearest and most precise terms possible, since the legal framework that regulates freedom of expression must provide legal certainty to citizens.<sup>1805</sup>
35. The Office of the Special Rapporteur for Freedom of Expression has stated that “vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities, are incompatible with the American Convention, because they can support potential arbitrary acts that are tantamount to prior censorship or that establish disproportionate liabilities for the expression of protected speech.”<sup>1806</sup> Such provisions discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression. As such, the State must specify the conduct that may be subject to subsequent liability in order to prevent adverse impacts upon the free expression of protest and disagreement with the actions of the authorities.<sup>1807</sup>
36. Limitations on social protests must seek to achieve the legitimate objectives authorized by American Convention. Article 15 of the American Convention, which addresses the right of peaceful assembly, establishes that this right may be subject to restrictions imposed “in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.” Article 16.2 provides the same substantive conditions for a legitimate restriction on freedom of association. Article 13.2 states that restrictions placed on the exercise of freedom of expression are legitimate only if they seek to ensure (i) respect for the rights or reputations of others; or (ii) the protection of national security, public order, or public health or morals. The restrictions imposed must pursue one of the compelling objectives specified in the American Convention, and must be necessary to achieve compelling public interests that, because of their importance in specific cases, clearly prevail over the social need for the full enjoyment of this right.<sup>1808</sup> The IACHR has held that the States are not free to interpret in any way the content of these objectives for purposes of justifying a limitation to freedom of expression in specific cases.<sup>1809</sup>

justifications for limiting these rights is not sufficient. The State party must further demonstrate that the prohibition is necessary to prevent a real, and not merely hypothetical, threat to national security or the democratic order, that less intrusive measures would not be sufficient to achieve the same purpose, and that the restriction imposed is proportionate to the interest to be protected. (See: General Comment No. 34 of the Human Rights Committee, on Freedoms of expression and opinion, para. 34; Communication No. 1119/2002, *Jeong-Eun Lee v. Republic of Korea*, views adopted on 20 July 2005, para. 7.2; *Belyatsky and Others v. Belarus*, Communication No. 1296/2004, decision of 7 August 2007, para. 7.3).

<sup>1801</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 69; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 39-40; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 79; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 117; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title IV. OEA/Ser.L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 55; IACHR. Arguments before the Inter-American Court in the *Case of Ricardo Canese v. Paraguay*. Reprinted in: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 72. a).

<sup>1802</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 69;

<sup>1803</sup> ACHR, Arts. 13, 15, 16.2; See also IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 69.

<sup>1804</sup> I/A Court H.R., Advisory Opinion OC-6/86, May 9, 1986, Series A No. 6.

<sup>1805</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 69. With regard to the legal requirement concerning restrictions on the right of assembly and association, see: IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 120; Annual Report 2007, Venezuela, OEA.Ser.L/II.130, December 29, 2007, para. 260; Cf. I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 168.

<sup>1806</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 70

<sup>1807</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 71.

<sup>1808</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 74

<sup>1809</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 75.

37. Exceptions such as “State security,” “public safety,” “public order,” and “protection of the rights of others” must be defined and interpreted in accordance with the inter-American legal framework. The Inter-American Court has defined “public order” as “the conditions that assure the normal and harmonious functioning of institutions based on a coherent system of values and principles.”<sup>1810</sup> The notion of “public order” cannot be invoked to suppress a right guaranteed by the Convention, to change its nature or to deprive it of its real content.<sup>1811</sup> If this concept is invoked as a basis for limiting human rights, it must be interpreted strictly in accordance with the just demands of a democratic society that takes into account the balance between the different interests at stake and the need to preserve the object and purpose of the American Convention.<sup>1812</sup>
38. Limitations on social protest must be necessary in a democratic society for the achievement of the compelling aims they pursue, and strictly proportionate to those aims.<sup>1813</sup> The requirement of necessity “in a democratic society” is expressly provided for both in Articles 15 and 16 on freedom of peaceful assembly and freedom of association, and in Articles 29 and 32 of the American Convention.<sup>1814</sup> In the opinion of the Court, “It follows from the repeated reference to ‘democratic institutions,’ ‘representative democracy’ and ‘democratic society’ that the question whether a restriction on freedom of expression imposed by a state is ‘necessary to ensure’ one of the objectives listed in subparagraphs (a) or (b) [of art. 13.2 of the ACHR] must be judged by reference to the legitimate needs of democratic societies and institutions. [...] The just demands of democracy must consequently guide the interpretation of the [American Convention] and, in particular, the interpretation of those provisions that bear a critical relationship to the preservation and functioning of democratic institutions.”<sup>1815</sup>
39. In addition, the adjective “necessary” does not mean “useful,” “reasonable,” or “timely.”<sup>1816</sup> In order for the restriction to be legitimate, it must be clearly established that there is a certain and compelling social need to implement the restriction, meaning that such legitimate and compelling objective cannot reasonably be achieved by means less restrictive of the human rights involved.<sup>1817</sup> The Inter-American Court has explained, in this regard, that necessity entails the existence of an overriding social need, and that demonstrating the usefulness, reasonableness, or timeliness of the restriction is not sufficient, while “the legality of restrictions [...] depend upon showing that the restrictions are required by a compelling governmental interest. That is, the restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it.”<sup>1818</sup>
40. The requirement of “necessity” also means that restrictions on rights must not go beyond what is strictly necessary, so as to ensure the full exercise and scope of these rights. This requirement suggests that the least burdensome means available should be selected to protect fundamental (protected) legal interests from the most serious attacks that harm or endanger them, otherwise it would lead to the abusive exercise

<sup>1810</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 64.

<sup>1811</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, paras. 80/82.

<sup>1812</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 64.

<sup>1813</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 67.

<sup>1814</sup> Cf. IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>1815</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 42 & 44.

<sup>1816</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 85; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 46; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 122; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>1817</sup> European Court of Human Rights *Dudgeon Case*, Judgment of 22 October, 1981, Series A: v. 45, # 51; IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 85.

<sup>1818</sup> I/A Court H.R., OC-5/85, para. 46; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter IV, “Freedom of Expression and Poverty,” para. 32.



of State power.<sup>1819</sup> In other words, among several options to achieve the same objective, the one that least restricts the rights protected by the American Convention should be chosen.<sup>1820</sup>

41. It is inherent to the functioning of a democratic society that the State must continuously weigh competing or conflicting legitimate rights and interests against each other.<sup>1821</sup> And this weighing, under the requirement of necessity—understood as a compelling social need—means that at times the exercise of freedom of assembly can alter daily routine routines, especially in large urban centers, and even create nuisances or affect the exercise of other rights that should be protected and guaranteed by the State, such as freedom of movement. Nevertheless, as the Commission has acknowledged, “such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves.”<sup>1822</sup>
42. Restrictions must also be strictly “proportionate” to the legitimate aim for which they are intended, and closely tailored to the achievement of that aim, interfering as little as possible with the lawful exercise of that right.<sup>1823</sup> To determine the strict proportionality of the restrictive measure, it must be determined whether the sacrifice of freedom of expression it entails is exaggerated or excessive in relation to the advantages obtained through such measure.<sup>1824</sup> In the opinion of the Inter-American Court, in order to establish the proportionality of a restriction when freedom of expression is limited for purposes of preserving other rights, the circumstances of the case must be examined, for instance: (i) the degree to which the competing right is affected (serious, intermediate, moderate); (ii) the importance of satisfying the competing right; and (iii) whether the satisfaction of the competing right justifies the restriction to freedom of expression.<sup>1825</sup>
43. The principle of proportionality should also take into consideration the subprinciple of narrow tailoring. That is, in order for protest to be limited by an instrument or means that suitably or appropriately meets the objective pursued, such measure must be effectively conducive to achieving the legitimate and compelling objectives sought. An application of this principle means that the States must avoid widespread and indiscriminate measures to restrict protest.<sup>1826</sup>
44. Finally, the fact that demonstrations and protests involve the right to freedom of expression, both in the way in which they take place and in the content they express, can often result in specially protected forms of speech, the robustness of which is conducive to the development and strengthening of democratic coexistence. In that regard, the imposition of subsequent liability is strictly enforceable (Article 13.2 of the Convention). The Inter-American Court has held that “the guarantees contained in the American Convention regarding freedom of expression were designed to be more generous and to reduce to a bare minimum the restrictions impeding the free circulation of ideas.”<sup>1827</sup>
45. In view of the foregoing, States should be particularly strict when imposing restrictions on public demonstrations. The widespread application of legal restrictions on the right to take part in peaceful

<sup>1819</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, paras. 86; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 119.

<sup>1820</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 de November 13, 1985, Series A, No. 5, para. 46; IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 86.

<sup>1821</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc57, para. 195.

<sup>1822</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc57, para. 198.

<sup>1823</sup> I/A Court H.R., *Case of Kimel v. Argentina*. Judgment of May 2, 2008 Series C No. 177, para. 83; I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 85; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 123; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 46; IACHR, Arguments before the Inter-American Court in the Case of Herrera Ulloa v. Costa Rica. Reprinted in: I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 101.1.B). Cf. IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 88.

<sup>1824</sup> Cf. IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 88; I/A Court H.R., *Case of Kimel v. Argentina*. Judgment of May 2, 2008 Series C No. 177, para. 83.

<sup>1825</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 89.

<sup>1826</sup> IACHR, *Inter-American Legal Framework*, para. 87.

<sup>1827</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, Series A, No. 5, of November 13, 1985, para. 50.

protests is inherently disproportionate, as it does not allow for the consideration of the specific circumstances of each individual case.<sup>1828</sup>

### 3. Principle of nondiscrimination

46. The general principle of nondiscrimination applies especially to demonstrations and protests. Indeed, States may not limit social protest on the basis of the prejudices and intolerance that governments or societies have towards an individual or group. We should not lose sight of the fact that under Articles 13 and 16 of the American Convention, “everyone” has the right to freedom of expression and association, and that restrictions to the right to protest “must not perpetuate prejudice or promote intolerance.”<sup>1829</sup>
47. Nor may they impose restrictions with discriminatory effects based on the type of complaint, content, or demand that the participants in the demonstrations seek to assert. When States impose limits on social protest based on prohibited grounds of discrimination,<sup>1830</sup> Article 24 of the American Convention is also violated.<sup>1831</sup> On this point, Principle 2 of the Declaration of Principles on Freedom of Expression states that “All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”<sup>1832</sup>
48. Pursuant to Article 1 of the American Convention, a State’s differentiated treatment of participants in a social protest because of their membership in a particular group or because they have made critical claims against governments or dominant sectors of society may fall within the prohibition of discrimination in Article 1.1 of the ACHR.
49. In the universal sphere, Article 21 of the International Covenant on Civil and Political Rights recognizes that all people have the right to freedom of peaceful assembly. All individuals, groups, unregistered associations, legal entities, and companies are free to organize and participate in public meetings.<sup>1833</sup>
50. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association has recalled that this provision should be read in conjunction with Article 2 of the Covenant, which establishes that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”<sup>1834</sup> and with Article 26, “which guarantees to all individuals equal and effective protection against discrimination on grounds identified in Article 2.”<sup>1835</sup> In this regard, the Human Rights Council has recalled the obligation of States to respect and protect the rights of all persons who hold minority or dissenting opinions or beliefs, human rights defenders, trade unionists, and migrants.<sup>1836</sup>

<sup>1828</sup> OSCE/ODIHR - Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> ed., 2010. Guiding principle 2.4.

<sup>1829</sup> Cfr. IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>1830</sup> Article 1.1. of the ACHR prohibits discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The Court has established that the “other status” clause is merely illustrative and can be expanded according to the changing circumstances of society, as it considers the ACHR to be a living instrument. With this understanding, other prohibited grounds of discrimination such as sexual orientation have been established. On this point, see: *Case of Atala Riffo and daughters v. Chile*, 2013. On this prohibited ground of differentiation, the ECtHR held that the right to freedom of assembly and the prohibition of discrimination were violated in the case of *Alekseyev v. Russia* (Applications nos. 4916/07, 25924/08 and 14599/09) by Russia’s ban on LGBTI pride marches in Moscow.

<sup>1831</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 93; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141 para. 170.

<sup>1832</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para.93

<sup>1833</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 15-16.

<sup>1834</sup> ICCPR, art. 2.

<sup>1835</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 13.

<sup>1836</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, paras. 16 & 22. See also: General Assembly, Report of the Special Representative of the Secretary-General on human rights defenders, 5 September 2006, A/61/312, para. 80.

51. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association recognized that the most at-risk groups share the experience of discrimination, unequal treatment, and harassment,<sup>1837</sup> as well as a lack of visibility and systematic exclusion from public debate.<sup>1838</sup> In this regard, he highlighted the situation of women, children and young people, people with disabilities, foreigners (including asylum seekers, refugees, and migrant workers), members of ethnic and religious minorities, displaced persons, indigenous peoples, people who are discriminated against because of their sexual orientation or gender identity, and human rights defenders (including journalists, trade unionists, environmental activists, among others).<sup>1839</sup> In his opinion, if the exercise of these groups' rights to freedom of assembly and association is restricted or excluded, their marginalization will be reinforced. In turn, marginalization often means that these individuals and groups are less able to exercise these rights. The ability to assemble and associate is, in fact, a key component for the empowerment of marginalized communities and individuals.<sup>1840</sup>
52. The Commission has similarly stated that “Our hemisphere’s most impoverished sectors encounter discriminatory policies and actions, their access to information about the planning and execution of measures affecting their daily lives is nascent at best, and, cxxvi in general, the traditional channels of participation for publicizing their complaints are frequently blocked off to them. Faced with this, in many countries around the hemisphere, protests and social mobilizations have become a tool for petitioning the authorities and a channel for publicly denouncing human rights abuses and violations.”<sup>1841</sup> Along the same lines, the IACHR has underscored that the lawful function of the security forces is to protect peaceful demonstrators and to ensure public security, acting with complete impartiality towards all (...) citizens, regardless of their political affiliation or the content of their demonstrations.”<sup>1842</sup>
53. It should also be noted that the State is not the only perpetrator of violations related to peaceful assembly and association. The actions of non-state actors play a significant role in denying at-risk groups the space to exercise their rights, often through patriarchal attitudes, stereotypes, assumptions, and social constructs that keep these groups at the margins of society. In this regard, the obligations of States extend beyond respecting and guaranteeing rights to protecting right holders from violations and abuses by third parties.<sup>1843</sup> The latter includes the duty to take positive measures to prevent a group of vulnerable demonstrators from being threatened or intimidated for exercising their rights

<sup>1837</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 10.

<sup>1838</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 11.

<sup>1839</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, paras. 15-16; Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 10-11.

<sup>1840</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 15.

<sup>1841</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter IV, “Freedom of Expression and Poverty,” para. 29; IACHR, Annual Report of the Inter-American Commission on Human Rights 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 1.

<sup>1842</sup> IACHR, *Report on the Situation of Human Rights in Venezuela*, para. 301.

<sup>1843</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 9.

**CHAPTER III**  
**OBLIGATION TO RESPECT RIGHTS**

### III. OBLIGATION TO RESPECT RIGHTS

54. The general obligation to respect rights has a special application for the purpose of refraining from preventing or hindering social protest. This Commission has previously maintained that the obligation to respect rights “is defined as the State’s duty not to interfere with, hinder or bar access to, the enjoyment of the resources that are the object of the right. The obligation to protect is the duty to prevent third parties from interfering with, hindering, or barring access to the resources that are the object of that right,”<sup>1844</sup> the obligation to facilitate the exercise of a right includes obligations to “guarantee that the [person entitled to] the right is able to gain access to the enjoyment of the right, when he or she is unable to do it for him or herself, [and] the obligation to promote is the duty to create conditions so that the [right-holder] can have access to the enjoyment of the right.”<sup>1845</sup>

55. The inter-American standards linked to the obligation to respect the right to participate in demonstrations and protests are further discussed below:

#### 1. The right to participate in protest without prior authorization

56. The IACHR has considered that the exercise of freedom of assembly through social protest should not be subject to government authorization or excessive requirements that make it difficult to carry out.<sup>1846</sup> Legal requirements underlying the prohibition or limitation of a meeting or demonstration, such as the requirement of prior permission, are not compatible with freedom of assembly<sup>1847</sup> or the exercise of freedom of expression in the inter-American system.

57. Prior notice, generally justified by States on the basis of the need to provide greater protection to a demonstration, cannot function as a covert authorization mechanism. The IACHR maintained in its report on the “Criminalization of the Work of Human Rights Defenders” that the requirement of prior notification must not be confused with the requirement of prior authorization granted in a discretionary manner,<sup>1848</sup> which must not be established in the law or practice of the administrative authorities, even when it comes to public spaces.<sup>1849</sup>

58. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association has been emphatic in stating that he “believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities (...), but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others.”<sup>1850</sup> At the same time, the existence of mechanisms requiring demonstrators to notify the authorities in advance of the place, date, and time of the protest is only compatible with Article 13 of the ACHR when States require it in order to be able to take measures to protect demonstrators and thus facilitate social protest.<sup>1851</sup>

59. Similarly, when notification procedures are very bureaucratic or intervene unnecessarily or disproportionately in determining the place, time, and manner of a protest, have a chilling effect on the exercise of this right. With regard to the requirement of prior notice to hold a protest, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, has said that “such a notification should be subject to a proportionality assessment, not unduly bureaucratic.”<sup>1852</sup> In particular,

<sup>1844</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2009, OEA/Ser.L/V/II. Doc. 57, para. 35.

<sup>1845</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2009, OEA/Ser.L/V/II. Doc. 57, para. 35.

<sup>1846</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 129.

<sup>1847</sup> In that report, the IACHR found that laws requiring that a police permit be requested ten days in advance for any public event, assembly, election, conference, parade, congress, or sporting, cultural, artistic, or family event constituted a restriction incompatible with the right of assembly. Cfr. IACHR, Annual Report 1979-1980, OEA/Ser.L/V/II.50, October 2, 1980, pp. 119-121.

<sup>1848</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 129; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 137.

<sup>1849</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 129; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, paras. 140 & 142.

<sup>1850</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 28; Guidelines on Freedom of Peaceful Assembly, p. 63. Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, para. 57.

<sup>1851</sup> IACHR, Annual Report 2015, Chapter IV.A, “The Use of Force,” para. 66.

<sup>1852</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 28

prior notification should be requested only for large gatherings or events that could cause transit disruptions<sup>1853</sup> in order to facilitate their conduct and protect demonstrators.

60. In addition, the organizers' failure to give prior notification to the authorities should not lead to the break-up of the gathering or to the imposition of criminal or administrative penalties such as fines or deprivation of liberty against the organizers, leaders, or their associations.<sup>1854</sup> Under this same interpretation, the European Court of Human Rights held that the dissolution of a peaceful demonstration for failure to comply with the prior notification requirement constitutes a disproportionate restriction on the freedom of peaceful assembly.<sup>1855</sup>
61. Spontaneous demonstrations are also protected. Spontaneous gatherings should be exempt from the notification requirement and law enforcement should, to the extent possible, protect and facilitate spontaneous gatherings as they would any other such event.<sup>1856</sup> This Commission recommends that States take account of the fact that there are events in which it is not possible to identify the organizers and that, although announced in advance, take place in a highly improvised and spontaneous manner. The impossibility of identifying the organizers of a demonstration cannot justify the prohibition, dissolution, or repression of a demonstration. In addition, a spontaneous change in a march's route does not negate the obligation to facilitate protest and protect demonstrators and third parties present.
62. The notification procedure, moreover, cannot be regarded as a binding commitment by the organizers to the time, place, and manner of a protest. Nor is it reasonable for the notification procedure to serve as a basis for the imposition of penalties for acts committed by third parties against persons or organizations that have assumed the functions of dissemination, organization, or dialogue with the State with respect to a protest.

## **2. The right to choose the content and messages of the protest**

63. The presumption of *ab initio* coverage of all types of speech has a direct application in social protests because it is a right derived from freedom of expression and one that aims to disseminate social demands in a democratic society. The Office of the Special Rapporteur for Freedom of Expression has stated that, in principle, all forms of speech are protected by the right to freedom of expression, regardless of its content and degree of acceptance by society and the State.<sup>1857</sup> Freedom of expression within the framework of social protests must be guaranteed not only in terms of the dissemination of ideas and information received favorably or considered inoffensive or neutral, but also in terms of those that offend, shock, disturb, are unpleasant, or disturb the State or any sector of the population because of the type of complaint they involve.<sup>1858</sup>
64. This general presumption of coverage of all expressive speech is explained by the State's primary duty of content-neutrality and, as a consequence, by the necessity to guarantee that, in principle, there are no persons, groups, ideas or means of expression excluded *a priori* from public debate.<sup>1859</sup> The IACHR has noted in several reports that Article 13 of the American Convention covers the right of persons to express their sexual orientation and gender identity, and that this type of expression enjoys a special level of protection under inter-American instruments, as it relates to an essential element of personal identity and dignity.<sup>1860</sup> Similarly, the IACHR has stressed the importance of freedom of expression to protect women's right to a life free from violence.
65. Within the framework of the Universal System, the Special Rapporteur on the rights to freedom of peaceful assembly and association has similarly stated that "Any restriction imposed on the nature or

<sup>1853</sup> Guidelines on Freedom of Peaceful Assembly, p. 63.

<sup>1854</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 29

<sup>1855</sup> Cf. ECtHR, *Bukta and Others v. Hungary*, application No. 25691/04 (2007).

<sup>1856</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 23.

<sup>1857</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 30.

<sup>1858</sup> Cf. IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 30.

<sup>1859</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 30.

<sup>1860</sup> IACHR, *Violence against LGBTI Persons*, 2017, para. 80

content of the message the organizers and participants want to convey, especially in relation to criticism of Government policies, should be proscribed, unless the message constitutes ‘incitement to discrimination, hostility or violence.’”<sup>1861</sup>

66. However, the IACHR has taken the view that, without prejudice to the presumption of *ab initio* coverage, there are certain types of speech which, by virtue of express prohibitions embodied in international human rights law, do not enjoy protection under Article 13 of the American Convention within the framework of a social protest.<sup>1862</sup> Specifically, this includes war propaganda and hate speech that constitutes incitement to violence on discriminatory grounds such as sexual orientation, gender, race, religion, or nationality.
67. Article 13.5 of the American Convention expressly provides that “any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”<sup>1863</sup> Direct and public incitement to genocide is outlawed both under conventional international law—by Article III(c) of the Convention on the Prevention and Punishment of the Crime of Genocide—and under customary international law.<sup>1864</sup>
68. These restrictions must be backed up by actual, truthful, objective and strong proof that the person was not simply issuing an opinion (even if that opinion was harsh, unfair, or disturbing), but that the person had the clear intention of promoting illegal violence or any other similar action against LGBTI people, as well as the ability to achieve this objective, and that this entails a real risk of harm to people belonging to these groups.<sup>1865</sup>
69. The United Nations Special Rapporteur has similarly stated that “only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 of the Covenant on Civil and Political Rights) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5) should be deemed unlawful.”<sup>1866</sup> In this regard, the Special Rapporteur maintained that “Restrictions on the content of assemblies may be imposed only in conformity with the legitimate limitations on rights (...), for example, where the message advocates national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Where a content-based restriction is justified, authorities should take the least intrusive and restrictive measures to address the issue.”<sup>1867</sup>
70. In the case of protest, the promotion of national, racial or religious hatred, advocacy of discrimination, hostility, or violence should not be understood exclusively in terms of speech. In addition to promoting a type of speech, protest involves a gathering of people that takes place in a certain space and time, in direct interaction with others present. This involves a potential threat to physical or psychological integrity, or the exercise of rights by third parties depending on the chosen place, time, or manner of protest.

### **3. The right to choose the time and place of the protest**

71. Restrictions on the time, place, or manner of a protest should be exceptional, defined on a case-by-case basis and justified on the basis of the protection of persons. Any State interference in the time and place of a demonstration should meet the criteria of necessity and proportionality in a democratic society.

<sup>1861</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 59.

<sup>1862</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, paras. 57 *et seq.*

<sup>1863</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 58.

<sup>1864</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 59.

<sup>1865</sup> IACHR, Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 59.

<sup>1866</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 18.

<sup>1867</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 33.

72. Protests are indispensable for democratic consolidation and therefore constitute as legitimate a use of public space as any other. Thus, they cannot be suppressed as a way of guaranteeing other more routine uses of these spaces, such as commercial activity or the circulation of persons and vehicles.<sup>1868</sup> In that regard, the IACHR has emphasized that streets and squares are privileged places for public expression.<sup>1869</sup>
73. The authorities should facilitate the holding of public gatherings, social protests, and demonstrations, ensuring that they can be carried out, seen, and heard by the target public in the space chosen by the organizers, in order to deliver the message that the organizers and participants wish to disseminate.<sup>1870</sup> Therefore, as a general rule, the right to demonstrate and protest includes the right to choose the time, place, and manner of doing so.<sup>1871</sup>
74. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association maintained that “States [have the] obligation to guarantee law and order, but restrictions on peaceful assembly in relation to its ‘time, place, and manner’ should be limited to the extent that such restrictions meet the aforementioned strict test of necessity and proportionality.”<sup>1872</sup> The Rapporteur recommended that, if enacted, laws governing freedom of assembly should avoid blanket time and location prohibitions.<sup>1873</sup> Informally or formally imposing on the organizers the expectation to negotiate the time and place of the assembly with the authorities is equally inappropriate.<sup>1874</sup>
75. The choice of where to hold the protest is a substantial component of what is meant to be communicated and is important to the demonstrators. Restrictions on where social protests can take place have a negative impact on the transmission of the intended message to its intended recipients. The IACHR has made it clear that notification of the demonstration cannot allow the authorities to arbitrarily dictate dates, times, or places to demonstrate or protest, prohibiting any demonstration that fails to comply with those determinations.
76. If a protest or demonstration seeks to deliver a specific message to a person, group, or organization, it should, in principle, be able to be held at a place and time that allows for the visual and audio dissemination of the message, in accordance with the principle known as sight and sound.<sup>1875</sup> With regard to the place where public demonstrations are held, the UN Rapporteur has warned against the practice whereby the authorities allow a demonstration to take place, but only in the outskirts of the city or in a specific square, where its impact will be muted.<sup>1876</sup> As the European Court of Human Rights has ruled, such restrictions are disproportionate and unjustified because they affect the very purpose of the protests.<sup>1877</sup>
77. The European Court of Human Rights has also held that the prohibition of a public demonstration on the sole ground that there is another public event scheduled to take place at the same place and time, without a clear indication that the events cannot be properly managed by the security forces, disproportionately interferes with freedom of assembly.<sup>1878</sup> Heated tensions or exchanges between opposing groups cannot be used as the only justification for banning demonstrations, as this would be disproportionate and would deprive society of the opportunity to hear different opinions. On the contrary, the State must take reasonable and timely positive measures to protect participants in demonstrations and counter-demonstrations.<sup>1879</sup>

<sup>1868</sup> OSCE/ODIHR - Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> ed., 2010, p. 32, para. 20.

<sup>1869</sup> IACHR, *Annual Report 2015*, Ch. IV A, para. 64.

<sup>1870</sup> Cf. *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 60.

<sup>1871</sup> European Court of Human Rights, *Sáska v Hungary*. Final 27/2/2013. p. 21.

<sup>1872</sup> Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 59.

<sup>1873</sup> *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 39.

<sup>1874</sup> Cf. *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 56.

<sup>1875</sup> OSCE/ODIHR - Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> ed., 2010, p. 17, Guiding Principle 3.5: “Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within ‘sight and sound’ of their target audience.”

<sup>1876</sup> *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 40.

<sup>1877</sup> ECtHR, *Lashmankin and Others v. Russia*. Applications [57818/09](#) and 14 others. Judgment of 29 May 2017.

<sup>1878</sup> ECtHR, *Lashmankin and Others v. Russia*. Applications [57818/09](#) and 14 others. Judgment of 29 May 2017, para. 422.

<sup>1879</sup> ECtHR, *Öllinger v. Austria*, application No. 76900/01, Judgment of 29 June 2006; ECtHR, *Plattform “Ärzte für das Leben” v. Austria*, application No. 10126/82, Judgment of 21 June 1988, para. 32.



78. In addition, counter-demonstrations may not interfere with the exercise of the right of third parties to assemble.<sup>1880</sup> People should be able to hold their demonstration without fear of being subjected to violence by their opponents, as this fear may deter the expression of certain opinions or perspectives on issues affecting a community. In other words, the State must not allow the right to hold a counter-demonstration to extend to the point where it interferes with other groups' right to demonstrate.<sup>1881</sup>
79. When weighing the need to restrict a counter-demonstration, States should take into account the specific protection to be accorded to socially excluded sectors or groups in vulnerable situations. Demonstrators belonging to minorities, groups that are discriminated against, or in situations of vulnerability should be especially protected from groups that seek to threaten or intimidate them for exercising their rights.
80. The Commission has emphasized that if circumstances relating to time, mode, or space are considered to pose a danger to protestors or third parties, the authorities should state the reasons for their decisions with the goal of seeking a better alternative. In the event that the authority decides that it is appropriate to modify the circumstances of time and place, an adequate and effective remedy must be provided to challenge this decision, which must be adjudicated by an authority other than the one that issued the decision.<sup>1882</sup> The procedure for reviewing decisions prohibiting a protest must be established in a manner that ensures that the decision is made prior to the planned date of the protest. Considering that there may be a short window of time, this may be achieved through interim measures.<sup>1883</sup>

#### **4. The right to choose the mode of protest; Scope of the provision on "peaceful unarmed exercise"**

81. As for restrictions on modes of protest, "the right of assembly, as defined in international instruments and in the domestic laws that have the force of constitutional law in the countries of the region, is that it be exercised peaceably and without arms."<sup>1884</sup> Given the State's obligation to protect human rights in protest contexts, including the life and safety of demonstrators, this qualification in Article 15 of the American Convention must be interpreted as meaning that the State may restrict the participation in public demonstrations and protests of persons who commit acts of violence or who carry weapons.
82. The Commission recognizes that States have a duty to take the necessary measures to prevent acts of violence, to ensure the safety of persons, including demonstrators, and to maintain public order. Violent actions by demonstrators or third parties that pose a certain risk to the life or physical integrity of persons who may or may not be involved in the protest obliges the State to take action to prevent and avoid such occurrences, limiting the protest rights of perpetrators of violence.<sup>1885</sup>
83. Nevertheless, the Commission has stated that the peaceful and unarmed condition provided for in the inter-American instruments as a requirement for the exercise of the right of assembly does not mean that a demonstration can be deemed non-peaceful based on the actions of a few people. When some individuals commit acts of violence in the context of a protest, they should be singled out; but other demonstrators retain their right to peaceful assembly. Consequently, no gathering should be considered unprotected.<sup>1886</sup>
84. The qualifier "peaceful" must be understood, in any case, in the sense that persons who commit acts of violence may see their right to demonstrate restricted, temporarily and individually. The Commission recognizes that the use of law enforcement can be an important factor in protecting the safety of

<sup>1880</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 30; Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 24.

<sup>1881</sup> ECtHR, *Plattform "Ärzt für das Leben" v. Austria*, application No. 10126/82, Judgment of 21 June 1988, para. 32.

<sup>1882</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 130.

<sup>1883</sup> OSCE/ODIHR - Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> ed., 2010, p. 17, Guiding Principle 3.5.

<sup>1884</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57 December 31, 2009, para. 198.

<sup>1885</sup> Human Rights Council, 25<sup>th</sup> Session, "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development" A/HRC/RES/25/38, 11 April 2014, p. 3.

<sup>1886</sup> United Nations. Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 9; Statement by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, at the conclusion of his visit to the Republic of Chile, 30 September 2015; Report of the UN High Commissioner for Human Rights on 'effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests,' UN Doc A/HRC/22/28 of 21 January 2013, para. 10; Amnesty International, *Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, p. 148 c).

demonstrators as well as bystanders. At the same time, the IACHR has also documented that the excessive use of force is often a major source of violations of these same rights.

85. This aspect is always a complex issue to resolve, especially in contexts of social or political unrest. As such, the use of force is viewed as “a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the State’s reaction” (see Chapter IV.1). Within that framework, characterized by **exceptionality**, both the Commission and the I/A Court HR have agreed that for the use of force to be justified one must satisfy the principles of **legality**, **absolute necessity**, and **proportionality**.
86. The Commission has reiterated the need for the restriction related to the peaceful mode of protest not to be used as a formula to arbitrarily and permanently restrict the right of assembly and demonstration. For example, the rights of demonstrators may not be restricted because of the mere creation of nuisances or disruptions to the rights of others. On this matter, the IACHR has stated that it “is mindful of the fact that the exercise of this right can sometimes be disruptive to the normal routine of daily life, especially in large urban centers; it may even cause problems or affect the exercise of other rights that the State has an obligation to protect and ensure, such as freedom of movement. However, such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves.”<sup>1887</sup>
87. The IACHR has also indicated that, in the face of a possible clash between freedom of assembly and, for instance, freedom of movement, when the mode of protest involves cutting off or occupying part of a roadway or route, “it should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure: the undermining of freedom of expression directly affects the central nerve of the democratic system.”<sup>1888</sup>
88. Bandanas, masks, hoods, caps, backpacks, and other types of clothing and accessories are very common at public demonstrations. These items cannot be considered sufficient indicators of a threat of violence, nor can they be used as grounds for the dispersal, arrest, or repression of demonstrators. The IACHR has stressed that, in a democracy, States must act based on the lawfulness of protests or public demonstrations and on the assumption that they do not constitute a threat to public order. This entails an approach centered on strengthening political participation and building greater levels of citizen engagement.<sup>1889</sup>
89. The Commission has stated that a social protest can occur in many different ways. In the region, some of them take the form of street closures, “cacerolazos” (pot-banging sessions), and vigils. Accordingly, “The conditions in which many of these demonstrations and demands occur are complex and require appropriate responses from the authorities for respecting and ensuring human rights.”<sup>1890</sup>

<sup>1887</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57 December 31, 2009, para. 198.

<sup>1888</sup> Cf. IACHR, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005*, Chapter V “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 93.

<sup>1889</sup> IACHR, *Annual Report 2015*, Ch. IV A, para. 64.

<sup>1890</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 131.

**CHAPTER IV**

**OBLIGATION TO PROTECT AND  
FACILITATE**

#### IV. OBLIGATION TO PROTECT AND FACILITATE

90. At the specific time when a protest occurs, State intervention must pay special attention to the duties of protection and facilitation, in keeping with Articles 1 and 2 of the ACHR. Article 1 of the American Convention establishes the obligation of the States to respect the rights and freedoms recognized therein. This obligation includes “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 juridically ensuring the free and full enjoyment of human rights.”<sup>1891</sup> In turn, Article 2 requires States to take measures “of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.”<sup>1892</sup>
91. This Commission has previously stated that “the overriding social interest in the right to take part in public demonstrations gives rise to a general presumption in favor of its exercise.”<sup>1893</sup> This presumption must be established in the States’ legal systems, clearly and explicitly, and apply to all without discrimination.<sup>1894</sup> These provisions must be clear in their formulations, consistent with each other, in line with international standards, and must always be interpreted in favor of those who wish to exercise this right.<sup>1895</sup> If the legal provisions are not clear, they should be clarified or, where appropriate, interpreted in favor of those exercising the right to freedom of peaceful assembly and freedom of expression.<sup>1896</sup>
92. The Human Rights Council of the United Nations has similarly urged the States “to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association, including by ensuring that their domestic legislation and procedures relating to the rights to freedom of peaceful assembly, of expression and of association are in conformity with their international human rights obligations and commitments, clearly and explicitly establish a presumption in favor of the exercise of these rights, and that they are effectively implemented.”<sup>1897</sup>
93. Ultimately, States must act on the basis of the lawfulness of protests and public demonstrations and on the assumption that they do not constitute a threat to public order, even in cases where they are unannounced.<sup>1898</sup> The right to participate in public demonstrations should be permitted even in the absence of a legal regulation, and those who wish to demonstrate should not be required to obtain authorization to do so.<sup>1899</sup> Spontaneous protests are also protected, so no meeting should be treated as unprotected.<sup>1900</sup>

<sup>1891</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166; I/A Court H.R., *Case of Godínez Cruz v. Honduras*, Judgment of January 20, 1989, Series C No. 5, para. 175.

<sup>1892</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 207; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 108; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 178; I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 172.

<sup>1893</sup> *Idem*.

<sup>1894</sup> IACHR, Annual Report 2015, Chapter IV.A, “The Use of Force,” para. 65; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 50; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 26.

<sup>1895</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66.

<sup>1896</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 50.

<sup>1897</sup> Human Rights Council, *The promotion and protection of human rights in the context of peaceful protests*, A/HRC/25/L.20, 24 March 2014, para. 3; Human Rights Council, *The promotion and protection of human rights in the context of peaceful protests*, A/HRC/RES/25/38, 11 April 2014, para. 3 (emphasis added).

<sup>1898</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 50.

<sup>1899</sup> IACHR, Annual Report 2015, Chapter IV.A, “The Use of Force,” para. 65.

<sup>1900</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 17.a.

94. In countries where there are systems of prior notification or announcement, which can be justified on the basis of protecting this right, “this does not mean that the states only have the positive obligation to facilitate and protect those assemblies notice of which is given.” In addition, the right to take part in public demonstrations should not be subject to undue bureaucratic regulation.
95. The competent State institutions have a duty to design appropriate operational plans and procedures. Police action, as considered by the IACHR in its 2015 annual report, “should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. Hence, as a general rule police operations organized in the context of protests should be geared to guaranteeing the exercise of this right and to protecting the demonstrators and third persons who are present (...)”
96. The IACHR has stressed that States, when determining their actions in the context of public manifestations, tend to subordinate the exercise of the right to social protest to the purported upholding of collective interests such as public order and social peace, based on the vagueness or ambiguity of these terms for justifying decisions that restrict rights. The notion of public order and social peace that is imposed appears to be concerned solely with guaranteeing order as an expression of the power of the state, and it accords priority to the rights and interests of those who may be negatively impacted by the protests.<sup>1901</sup>
97. As the Commission has maintained, the actions of the State in the unfolding of protests involves everything from rerouting pedestrian and vehicular traffic in a certain area, to escorting those who are participating in the mass gathering or demonstration in order to guarantee their safety and make it possible for the activities involved to take place.<sup>1902</sup> These actions should include measures to facilitate the timing of the dispersal of demonstrators, precautions to prevent accidents, and measures to assist accident victims or people with health issues during an event.
98. The State’s obligations necessarily include the protection of the lives, physical integrity, dignity, and other rights of public servants responsible for operations carried out in the context of social protests. This requires, among other measures, the provision to security agents of adequate equipment, items for protection and intervention, and training commensurate with the complexity of the tasks they must perform.
99. The authorities must provide for and use various forums for dialogue and exchange with the demonstrators before and during the course of the protest. Accountability, recording the operation’s activities, and access to records is a decisive element not only for the purpose of establishing subsequent liabilities but also for the protection of human rights during the course of protests. These obligations to respect, protect, and facilitate the right to protest include the prevention of actions that could harm the physical integrity of persons; this Commission has held that “When a demonstration or protest leads to situations of violence it should be understood that the state was not capable of guaranteeing the exercise of this right.”<sup>1903</sup>
100. The following key aspects of the management of a protest by State institutions are discussed below:
  1. The general use of the police force in the context of protests;
  2. The more specific regulations on the carrying and use of firearms, the use of so-called less lethal weapons and the procedures for conducting arrests;
  3. The police operations, protocols, and institutional structure of the security forces and the prohibition against the Armed Forces intervening in public demonstrations;
  4. Dialogue and negotiation bodies linked to the reduction of conflict and violence and the preservation of life and physical integrity. Actions to provide security to demonstrators and third parties, particularly when vulnerable or specially protected groups are involved;
  5. The duty to not criminalize leaders and participants in demonstrations and protests.

## **5. Use of force in the context of protests**

101. The use of public force can be an important element in ensuring the right to protest and protecting the safety of demonstrators. On the other hand, it can also give rise to major violations of these same rights.

<sup>1901</sup> IACHR, Annual Report 2015, Chapter IV A, para. 59.

<sup>1902</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 193.

<sup>1903</sup> IACHR, Annual Report 2015, Chapter IV A, para. 68.

102. In its 2015 Annual Report, this Commission recalled, based on a number of reports<sup>1904</sup> and on the case law of the inter-American system,<sup>1905</sup> the irreversibility of the consequences that may result from the use of force. As such, the use of force is viewed as “a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the State’s reaction. Within that framework, characterized by **exceptionality**, both the Commission and the I/A Court HR have agreed that for the use of force to be justified one must satisfy the principles of **legality**, **absolute necessity**, and **proportionality**.”<sup>1906</sup>
103. The IACHR has defined the principle of *legality* as the obligation of the State to “to enact laws and comply with international law on the subject” aimed at regulating the action of the agents of order in performing their functions.<sup>1907</sup> For its part, the Inter-American Court, in referring to the principle of legality, has stated that the use of force “must be aimed at achieving a legitimate objective, and there must be a regulatory framework which takes account of the form of action in such a situation.”<sup>1908</sup>
104. The principle of *absolute necessity* refers to the possibility of resorting to “the defensive and offensive security measures used should be those strictly necessary to carry out the lawful orders of a competent authority in the event of acts of violence or crime that imperil the right to life or the right to personal security.”<sup>1909</sup> At the same time, according to the circumstances of the case, it is necessary to “verify whether other less harmful means exist to safeguard the life and integrity of the person or situation that it is sought to protect, according to the circumstances of the case.”<sup>1910</sup> Specifically, it has also established that this requirement cannot be invoked when people do not pose a direct danger, “even when the failure to use force results in the loss of the opportunity to capture them.”<sup>1911</sup>
105. The United Nations Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force “only when strictly necessary and to the extent required for the performance of their duty.”<sup>1912</sup> The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials reaffirm the principle of *ultima ratio* by providing that officers, in the performance of their duties, shall, “as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”<sup>1913</sup>
106. Finally, the Commission has understood the principle of *proportionality* as “moderation in the actions of law enforcement officials in an effort to minimize the harm and injuries that may result from their intervention, guaranteeing immediate assistance to the persons negatively impacted, and endeavoring to inform next-of-kin or loved ones of the situation as soon as possible.”<sup>1914</sup> Agents who may legitimately make use of force should “apply a standard of differentiated use of force, determining the level of cooperation, resistance, or aggressiveness of the person involved and, on this basis, use tactics of negotiation, control or use of force, as appropriate.”<sup>1915</sup> Circumstances such as “the level of intensity and danger of the threat; the attitude of the individual; the conditions of the surrounding area, and the means

<sup>1904</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124. Doc. 5 rev. 1, adopted on March 7, 2006, para. 64; IACHR: Report No. 90/14, Admissibility and Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, para. 181; Report on Terrorism and Human Rights, October 22, 2002, para. 87; Report on Citizen Security and Human Rights, December 31, 2009, para. 114.

<sup>1905</sup> I/A Court H.R., *Case of Cruz Sánchez et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, para. 265; *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 330; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85.

<sup>1906</sup> IACHR, Annual Report 2015, Chapter IV A, para. 7.

<sup>1907</sup> IACHR, Annual Report 2015, Chapter IV A, para. 8; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 97.

<sup>1908</sup> I/A Court H.R., *Case of Cruz Sánchez et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292 (only in Spanish), para. 265.

<sup>1909</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 116.

<sup>1910</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, paras. 67-68; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85.

<sup>1911</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 134; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85; ECtHR, *Kakoulli v. Turkey*, No. 38595/97. Judgment of 22 November 2005, para. 108.

<sup>1912</sup> Code of Conduct for Law Enforcement Officials, adopted by United Nations General Assembly Resolution 34/169 of 17 December 1979.

<sup>1913</sup> UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4.

<sup>1914</sup> IACHR, Annual Report 2015, Chapter IV A, para. 12; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 119.

<sup>1915</sup> IACHR, Annual Report 2015, Chapter IV A, para. 12; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 119.

available to the agent to deal with the specific situation”<sup>1916</sup> are determinants when it comes to evaluating the proportionality of the interventions by the authorities, as their display of force must at all times aim “to reduce to a minimum the harm or injuries caused to anyone.”<sup>1917</sup>

107. The general principles on the use of force, applied to the context of protests and demonstrations, “require that the security operations be carefully and meticulously planned by persons with experience and training specifically for this type of situation and under clear protocols for action.”<sup>1918</sup>
108. The decision whether or not to use any type of force requires consideration of the risks involved that may lead to an escalation of tensions.<sup>1919</sup> In particular, some States have made progress in defining minimum criteria for all security forces, whose fundamental objective is not only to respect and protect the rights of the participants in a demonstration, but also to protect the life and physical integrity of all those involved.
109. It is important to note that the State has an obligation to protect participants in a demonstration against physical violence by third parties and non-state actors, including persons who may hold opposing views.<sup>1920</sup> The use of force in demonstrations may prove necessary and proportional in cases where there are threats that pose a certain risk to the life or physical integrity of persons present, whether or not they are participating in the protest.
110. The principles of moderation, proportionality, and progressivity must be observed both in situations where the objective is to restrain and/or detain a person who is resisting the police authority’s lawful action, and in police operations involving demonstrations or mass gatherings that may result in violence or affect the rights of third parties.<sup>1921</sup>
111. The design of intervention plans should take into account the fact that the State institutions involved have often had conflicting relationships with demonstrators. The design of these operations must also respect aspects related to the socio-cultural values of those participating in the protest and/or their membership in groups that must be specially protected.
112. Some local regulations instruct personnel participating in protest-related operations to exercise the utmost tolerance towards non-lethal attacks.<sup>1922</sup> The approach in this type of situation should be oriented toward facilitation, and not of containment or even confrontation.<sup>1923</sup> In this regard, it has been reiterated that the rationale for dispersing a demonstration must be the duty to protect people.<sup>1924</sup> Moreover, the mere dispersal of a demonstration does not, in itself, constitute a legitimate aim justifying the use of force by security forces.
113. States need to make progress in regulating their actions, especially the use of force and police action in the specific contexts of protest. These regulations should seek to include both the prevention and prohibition of violations committed through the abuse of firearms or less lethal weapons and devices, unlawful arrests, beatings, or any form of abuse of force that may be involved in a demonstration. They should also cover the use of force to protect rights associated with social protest through actions that facilitate the right to demonstrate, and prevent and deter harm to the safety or other rights of demonstrators or third parties at the hands of State or non-state actors.

## 6. Maximum restriction on firearms

114. As this Commission has underscored, the use of firearms is an extreme measure. They should not be used except where police institutions are unable to use non-lethal means to restrain or detain persons who

<sup>1916</sup> IACHR, Annual Report 2015, Chapter IV A, para. 12; Basic Principles on the Use of Force, Principle No. 9.

<sup>1917</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 136.

<sup>1918</sup> IACHR, Annual Report 2015, Chapter IV A, para. 79.

<sup>1919</sup> Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Guideline 7 e).

<sup>1920</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, March 7, 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 50.

<sup>1921</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II.Doc. 57, December 31, 2009, para. 133.

<sup>1922</sup> IACHR, Annual Report 2015, Chapter IV A, para. 80; South Africa: Police Standing Order 262 on Crowd Management, 2004.

<sup>1923</sup> Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, p. 150.

<sup>1924</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II.Doc. 57, December 31, 2009, para. 133; IACHR, Annual Report 2015, Chapter IV A, para. 67.

threaten the life or safety of police officers or third parties.<sup>1925</sup> This general principle governing the use of lethal force by the police has a particular application in the area of public protests or demonstrations.<sup>1926</sup>

115. International protection mechanisms have repeatedly stressed that the general principles on the use of force, such as necessity and proportionality, make it clear that there are no grounds for the use of lethal force to break up a protest or demonstration, or for firing indiscriminately into a crowd.<sup>1927</sup>
116. This Commission also considers that potentially lethal force cannot be used merely to maintain or restore public order or to protect legal interests less valuable than life, such as property. Only the protection of life and physical integrity from imminent threats can be a legitimate aim for the use of such force.<sup>1928</sup> As discussed by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions:  
  
*“The ‘protect life’ principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests (for example, it may not be used only to disperse protests, to arrest a suspected criminal, or to safeguard other interests such as property). The primary aim must be to save life. In practice, this means that only the protection of life can meet the proportionality requirement where lethal force is used intentionally, and the protection of life can be the only legitimate objective for the use of such force. A fleeing thief who poses no immediate danger may not be killed, even if it means that the thief will escape.”<sup>1929</sup>*
117. The use of firearms in the context of social protests is almost never justified by this criterion of proportionality. As the IACHR has rightly considered, this means that The states should implement mechanisms for effectively prohibiting recourse to the use of lethal force in public demonstrations.<sup>1930</sup> Prohibiting officers who might come into contact with demonstrators from carrying firearms and lead ammunition has proven to be the best measure to prevent lethal violence and deaths in the context of social protests.<sup>1931</sup> Accordingly, firearms and ammunition should be excluded from operations to control social protests.<sup>1932</sup>
118. Although operations may allow for the availability of firearms and lead ammunition somewhere outside the demonstration’s radius of action in exceptional cases where there is a situation of real, serious, and imminent risk to the life or physical integrity of persons that warrants their use,<sup>1933</sup> there should be

<sup>1925</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 118; UN, OHCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36, para. 58.

<sup>1926</sup> IACHR, Annual Report 2015, Chapter IV A, para. 81; UN Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, “Use of force during demonstrations,” A/HRC/17/28, 23 May 2011 para. 75. For additional development of these principles, see: Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, pp 148 i).

<sup>1927</sup> IACHR, Annual Report 2015, Chapter IV A, para. 81. In its 25<sup>th</sup> Session, the United Nations Human Rights Council issued a resolution on “The promotion and protection of human rights in the context of peaceful protests” (paras. 11 & 9), in which it: “Affirms that nothing can ever justify ‘shoot to kill’ practices as well as indiscriminate use of lethal force against a crowd, acts which are unlawful under international human rights law,” and “Urges all States to avoid using force during peaceful protests, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force.”

<sup>1928</sup> Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, A/HRC/25/L.20, of 24 March 2014, art. 10; Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, A/HRC/RES/25/38 of 11 April 2014, art. 10; United Nations Code of Conduct for Law Enforcement Officials and Interpretive Commentary (art. 3): “The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.” In addition, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” (Principle 9).

<sup>1929</sup> OHCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36, paras. 72-73.

<sup>1930</sup> IACHR, Annual Report 2015, Chapter IV A, para. 81, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 201.

<sup>1931</sup> IACHR, Annual Report 2015, Chapter IV A, para. 82; Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68 a); UN Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, “Use of force during demonstrations,” A/HRC/17/28, 23 May 2011 para. 75). Amnesty International has also noted that firearms should not be used as tactical tools in the containment of public assemblies (Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, p. 148 i).

<sup>1932</sup> IACHR, Annual Report 2015, Chapter IV A, para. 82.

<sup>1933</sup> IACHR, Annual Report 2015, Chapter IV A, para. 82; The United Nations Human Rights Council has called upon “...States, as a matter of priority, to ensure that their domestic legislation and procedures are consistent with their international obligations and commitments in relation to the use of force and are effectively implemented by officials exercising law enforcement duties, in particular applicable principles of law enforcement, such as the principles of necessity and proportionality, bearing in mind that lethal force may only be used



explicit rules concerning who has the power to authorize their use in such extreme cases and the ways in which such authorization is to be documented.<sup>1934</sup>

119. In some cases, it has been found that police officers carry weapons and/or ammunition of their own, without authorization or registration. The Commission considers that the States should clearly prohibit police officers from carrying weapons and/or ammunition other than those provided under the rules and regulations of the institution to which they belong, regardless of such privately-owned weapons being duly registered for general use.<sup>1935</sup>

**a) Acquisition, use, and control of less lethal weapons**

120. The production, procurement, and use of so-called “less lethal weapons” have increased markedly, largely due to technological advances in this field. There is today a huge variety of so-called “non-lethal” or “less lethal” weapons available on the market, which are acquired by States and used by police and security personnel. These include different types of rubber bullets, tear gas, electric shock projectiles, rubber projectiles, hydrant trucks, and plastic bullets, sound and energy devices, among others. However, this development has not been accompanied by regulations that oversee and monitor the production, acquisition, and use of these types of weapons.<sup>1936</sup>
121. A bright line cannot be drawn between lethal and non-lethal weapons: “it must be remembered that almost any use of force against the human person can under certain circumstances lead to loss of life or serious injury.”<sup>1937</sup> Empirical evidence shows that in many cases harm to physical integrity has been caused by the misuse of these types of weapons. This is the case of rubber bullets fired at close range and into the upper part of the body, tear gas fired directly at people, irritating gases used against children or the elderly, or electric shock devices used against people with heart conditions. Therefore, consideration should be given not only to the design or features of the weapon, but also to other factors relating to its use and control.
122. The Commission has warned against the often indiscriminate impact of less lethal weapons in the context of social protests. Such is the case of tear gas and of the devices that shoot repeatedly which, on occasion, are used to shoot rubber projectiles covered with hard rubber, plastic, or soft rubber. The use of such weapons should be considered ill-advised since it is impossible to control the direction of their impact. The Commission considers it important to give impetus to studies to further available medical knowledge about the impacts on health and integrity of each of the existing weapons. Moreover, studies should be undertaken that specify how each type of weapon can be used safely.<sup>1938</sup>
123. It has also been noted that in some countries regulation weapons available in security institutions include shotguns that can alternatively be loaded with lead, rubber, or flash bang ammunition cartridges.<sup>1939</sup> These types of weapon is particularly elusive to current control mechanisms during operations and for the administrative and/or judicial reconstruction of their use. The availability of these shotguns means that the controls needed to exclude firearms be extended to ammunition as well.
124. States must establish adequate evidence to authorize the acquisition and incorporation of new weapons into their regulatory mechanisms, and have criteria for the type of multidisciplinary and independent experts who can do so without having conflicts of interest with commercial activities. Standards should be developed to regulate critical aspects of weapons safety. For instance, the composition and concentration of chemical irritants, shock levels in electrical devices, volume and frequency of new acoustic weapons, as well as the precision levels required for projectiles should all be regulated. In

to protect against an imminent threat to life and that it may not be used merely to disperse a gathering.” Human Rights Council, Resolution A/HRC/25/L.20, 24 March 2014, para. 10.

<sup>1934</sup> IACHR, Annual Report 2015, Chapter IV A, para. 82.

<sup>1935</sup> IACHR, Annual Report 2015, Chapter IV A, para. 83.

<sup>1936</sup> The gap in standards has been recognized by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, who stressed the need to “set out how the standards set by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the relevant jurisprudence should be applied to the scenarios created by the new technology” (UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/69/265, 6 August 2014, para. 73).

<sup>1937</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/69/265, 6 August 2014, para. 69.

<sup>1938</sup> IACHR, Annual Report 2015, Chapter IV A, para. 84.

<sup>1939</sup> It has been noted that this type of weapon has been used in some cases in Argentina during operations that have resulted in deaths, although their use and the problems of assigning responsibility that arise from their design are not exclusive to that country.

addition, commercial trade in this type of weaponry should be subject to controls and regulations of the same type as those applied to the conventional arms trade.<sup>1940</sup>

125. States must implement specific training protocols and contents for officers aimed at the safe use of each particular weapon. The protocols should strengthen the prevention of inappropriate or abusive uses that could result in the injury or death of persons, and should provide examples of cases in which the use of these weapons is prohibited in certain contexts or against certain people where there are risks to physical integrity.<sup>1941</sup> For instance, tear gas should not be used in enclosed spaces or against people who have no way to disperse or evacuate.<sup>1942</sup> The use of non-lethal weapons should be preceded by formal warnings, which give people the opportunity to evacuate without causing panic or stampede situations. There should be an obligation to explicitly define who should authorize their use, and guidelines should be drawn up to assign liability for the incorrect use of each type of weapon or device in use.
126. The Commission also believes it is important to pay attention to the development of unmanned, remote-controlled system technologies (e.g., drones). This new field of technological development can be used in the context of social demonstrations or in crowd control. According to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions: “The availability of advanced technology implies higher levels of obligation regarding the decisions on whether and how much force to use, and also accountability and monitoring with regard to the exercise of that discretion.”<sup>1943</sup>
127. In light of the above, the Commission reiterates<sup>1944</sup> that the law should clearly spell out the circumstances that justify the use of force in the context of the protests, as well as the acceptable level of force for addressing various threats. In particular, the states should implement mechanisms to effectively prohibit the use of lethal force in public demonstrations, and guarantee the adequate and proportionate use of less lethal weapons by drawing up protocols for action that are clear and respectful of the relevant international standards.

## **b) Arrests**

128. With regard to any arrests made by the security forces in the context of public demonstrations, this Commission has held that they must comply with all the requirements imposed by domestic laws and international standards.<sup>1945</sup> In their joint report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies maintained that the authority to arrest can play an important protective function in assemblies, by allowing law enforcement to remove from an assembly individuals who are acting violently. The term “arrest” refers to any deprivation of liberty, and is not limited to formal arrest under domestic law. It is critical that arrest powers are exercised consistently with international human rights standards, including those relating to the rights to privacy, liberty, and due process rights.<sup>1946</sup>
129. The force used by police officers to immobilize or arrest someone at a demonstration must be strictly proportional to the intended objective and shall only be applied to the extent necessary according to the resistance offered by the person against whom it is to be used. The IACHR additionally recalls that the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas should be observed during arrests made at social demonstrations and protests. The deprivation of liberty has been defined as “any form of detention, imprisonment, institutionalization, or custody of a person in a public

<sup>1940</sup> See: Amnesty International & The Omega Foundation, *The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment*, p. 8. Amnesty International Ltd. 2015.

<sup>1941</sup> Consideration should be given to restricting the use of this type of weapon against children, pregnant women, persons with a physical disability or health impairment, and the elderly.

<sup>1942</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/69/265, 6 August 2014, para. 71.

<sup>1943</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/69/265, 6 August 2014, para. 67.

<sup>1944</sup> IACHR, Annual Report 2015, Chapter IV A, para. 120.

<sup>1945</sup> I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 51; *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 89; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 106; IACHR, Annual Report 2015, Chapter IV A, para. 121.

<sup>1946</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 44.

or private institution which that person is not permitted to leave at will, by order of or under *de facto* control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses.”<sup>1947</sup>

130. Hence, all persons detained at a public demonstration have the right to live in conditions of detention that are compatible with their personal dignity and the State must guarantee their right to life and to humane treatment. State authorities exercise total control over persons under their custody and therefore States are guarantors of the physical integrity of detainees.<sup>1948</sup> Persons detained in social protests shall not be arrested or transferred with the intention of punishing, repressing, or discriminating against persons deprived of their liberty; nor shall they be carried out under conditions that cause them physical or mental suffering, are humiliating or facilitate public exhibition.<sup>1949</sup>
131. The authorities may not compel persons detained in demonstrations to remain for an unreasonably long period of time under climatic conditions posing a risk to health, nor deprive them of access to food and water, nor of medical care in the event that they are injured<sup>1950</sup> or belong to vulnerable or high-risk groups, such as the elderly, women, children, persons with disabilities, or persons with illnesses requiring special attention.<sup>1951</sup>
132. Similarly, no participant in social protests may be subjected to arbitrary arrest or detention. Article 7 of the American Convention provides that “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto,”<sup>1952</sup> and that “No one shall be subject to arbitrary arrest or imprisonment.”<sup>1953</sup>
133. In its Report on Citizen Security, this Commission stated that “The guarantee of the lawfulness of an arrest established in Article 7 envisages substantive and other formal or procedural aspects. The substantive aspect requires that persons may only be deprived of their liberty in cases and circumstances laid down by the law. The formal or procedural aspect requires that in the arrest of persons fulfilling any of the circumstances established by the law, the rules during the process of detention are observed.”<sup>1954</sup>
134. The Convention also provides that “Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him,”<sup>1955</sup> and that “Any person

<sup>1947</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 143; IACHR, “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,” approved by the Commission during its 131<sup>st</sup> regular period of sessions, held from March 3-14, 2008. See also: General Comment on Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance of the United Nations Working Group on Enforced or Involuntary Disappearances, E/CN.4/1997/34.

<sup>1948</sup> IACHR, Report on Citizen Security and Human Rights, 2009, Art. 151.

<sup>1949</sup> Cf. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas: Principle I, “Humane Treatment - All persons subject to the jurisdiction of any Member State of the Organization of American States shall be treated humanely, with unconditional respect for their inherent dignity, fundamental rights and guarantees, and strictly in accordance with international human rights instruments. In particular, and taking into account the special position of the States as guarantors regarding persons deprived of liberty, their life and personal integrity shall be respected and ensured, and they shall be afforded minimum conditions compatible with their dignity. They shall be protected from any kind of threats and acts of torture (...), cruel, inhuman, or degrading treatment or punishment, sexual violence, corporal punishment, collective punishment, forced intervention or coercive treatment, from any method intended to obliterate their personality or to diminish their physical or mental capacities. Circumstances such as war, states of exception, emergency situations, internal political instability, or other national or international emergencies may not be invoked in order to evade the obligations imposed by international law to respect and ensure the right to humane treatment of all persons deprived of liberty”; Principle IX: “(...) The transfers shall not be carried out in order to punish, repress, or discriminate against persons deprived of liberty, their families or representatives; nor shall they be conducted under conditions that cause physical or mental suffering, are humiliating or facilitate public exhibition.” Approved by the Commission during its 131<sup>st</sup> regular period of sessions, held from March 3-14, 2008.

<sup>1950</sup> In the case of persons injured by security forces during protests, it should be noted that the State has a special duty to provide health care, as described in this report in the section on the planning of operations. See, United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 5.

<sup>1951</sup> Cf. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas: Principle X: “Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being, including amongst other aspects, (...) measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as: the elderly, women, children, persons with disabilities, people living with HIV-AIDS, tuberculosis, and persons with terminal diseases”; Principle XI: “Food - Persons deprived of liberty shall have the right to food in such a quantity, quality, and hygienic condition so as to ensure adequate and sufficient nutrition, with due consideration to their cultural and religious concerns, as well as to any special needs or diet determined by medical criteria. Such food shall be provided at regular intervals, and its suspension or restriction as a disciplinary measure shall be prohibited by law. Drinking Water: Every person deprived of liberty shall have access at all times to sufficient drinking water suitable for consumption. Its suspension or restriction as a disciplinary measure shall be prohibited by law.”

<sup>1952</sup> American Convention on Human Rights, art. 7.2.

<sup>1953</sup> American Convention on Human Rights, art. 7.3.

<sup>1954</sup> IACHR, Report on Citizen Security and Human Rights, 2009, Art. 145.

<sup>1955</sup> American Convention on Human Rights, art. 7.4.

detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time.”<sup>1956</sup>

135. With regard to the need for States to provide all necessary means to ensure that detained persons and their family members receive accurate information regarding the grounds for detention and the location of the detention facility,<sup>1957</sup> the Inter-American Court has established that “the detainee and those with legal custody or representation of the detainee have the right to be informed of the causes and reasons for his or her detention at the time it occurs, which ‘constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individual’s right to defense.’”<sup>1958</sup> In the case of persons detained at demonstrations, such records should be publicly accessible.
136. In addition, States must put in place mechanisms to ensure special protection for persons under the age of 18, in particular with regard to immediate communication to the competent judge and the parents or guardians, as well as the performance of a medical examination certifying their health status at the time of detention.<sup>1959</sup>
137. The Inter-American Court has held that detentions must be reviewed by a judge without delay. This oversight is a measure designed to prevent arbitrary or unlawful arrests, taking into account that in a State governed by the rule of law it is up to the judge to guarantee the detainee’s rights, to authorize the adoption of precautionary or enforcement measures—when strictly necessary—and to ensure, in general, that the accused is treated in a manner consistent with the presumption of innocence. The judge must hear the detainee personally and assess all the explanations that the latter provides, so as to decide whether it is in order to release him or to maintain the deprivation of liberty. Otherwise, it would be tantamount to stripping the judicial review established in Article 7(5) of the Convention of its effectiveness.<sup>1960</sup>
138. In particular, States should refrain from mass, collective, or indiscriminate arrests in the context of social protest. The Inter-American Court has found that police tactics involving collective arrests, such as so-called “*razzias*”<sup>1961</sup> “are incompatible with respect for fundamental rights, including presumption of innocence, existence of a court order for detention—except in situations of flagrancy—and the obligation to notify those in charge of the minors.”<sup>1962</sup>
139. In another precedent on mass arrests, the Inter-American Court also held that “a massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest.”<sup>1963</sup>
140. The Commission reiterates that also in relation to operations carried out in the context of protests, States should adapt the domestic legal system and institutional procedures and practices so that they are able to prevent and, where necessary, investigate and punish cases of arbitrary detentions by agents of the State. This involves, *inter alia*, the following obligations:<sup>1964</sup>
  - i. stipulating that no person shall be deprived of his or her liberty except under the circumstances that the law specifically prescribes;
  - ii. guaranteeing that persons in the custody of State authorities will receive decent treatment;
  - iii. incorporating into its domestic laws the obligation of State agents to immediately inform the person detained of the reasons for his or her detention;

<sup>1956</sup> American Convention on Human Rights, art. 7.5.

<sup>1957</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, Chapter V, C. “Right to Personal Liberty and Security”; IACHR, Annual Report 2015, Chapter IV A, para. 122.

<sup>1958</sup> I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, note 4, para. 96.

<sup>1959</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 232, “Specific recommendations,” p. 108.

<sup>1960</sup> I/A Court H.R., *Case of Bayarri v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, para. 65.

<sup>1961</sup> Police operations aimed at surrounding a property, a street, a neighborhood or an event, preventing the movement of people who are trapped within this enclosure and depriving them of their liberty or transporting them to police facilities. I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 56.

<sup>1962</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003, para. 137.

<sup>1963</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 93.

<sup>1964</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 232, “Specific recommendations,” p. 108.

- iv. immediately reporting the detention to the competent judge for a determination of the detained person's rights;
- v. informing the detained person's next of kin and loved ones of his or her whereabouts and the reasons for the detention;
- vi. guaranteeing the detained person the services of legal counsel from the moment of his or her arrest; and
- vii. organizing a public record of persons taken into custody.

### c) Evictions

141. Some social protests take place in a context of prior rights violations and may include actions of resistance to State action, in which case demonstrators are particularly exposed to police repression. In this regard, the Inter-American Commission has underscored that the authorities must provide appropriate responses to the complex conditions under which many of the demonstrations and demands take place in the region.<sup>1965</sup>
142. As previously stated, forms of protest are varied and include, but are not limited to, occupations—whether of a public or private building or school campus<sup>1966</sup>—and roadblocks. The State often responds to such actions with eviction operations.
143. In many cases forced evictions take place in the context of public or even private undertakings and are resisted by the inhabitants, peasants, indigenous people, or workers who occupy the place. The high concentration of land ownership in some countries of the region has also resulted in the mobilization of social sectors seeking better distribution of agricultural land, which has provoked violent reactions from large landowners who, in some cases, have enjoyed the acquiescence and complicity of local officials.<sup>1967</sup>
144. This Commission has repeatedly stated that, in accordance with international norms and standards, States must restrict forced evictions and are obligated to take measures to protect persons and communities harmed by such operations,<sup>1968</sup> as cases of forced evictions are “*prima facie* incompatible” with the principles of international law.<sup>1969</sup> In the event that they are carried out, the necessary measures must be taken to minimize their impact on the affected population,<sup>1970</sup> in particular with respect to vulnerable groups such as children, persons with disabilities, older adults, women, and indigenous peoples, among other marginalized groups and sectors.<sup>1971</sup>
145. Since it generally involves an intensified use of force, the order in which such operations are to be carried out and the manner in which they are to be carried out must meet specific criteria for guaranteeing rights, particularly when the right to social protest is involved. States should assess these circumstances in such a way that their response to protest situations can be geared, in each case, toward protecting persons in vulnerable situations, including specific measures and guidelines for supervising the use of force by security forces. In no case should State intervention lead to the violation of other rights, such as the right to life and physical integrity, the rights of participation in public affairs, freedom of expression, freedom of assembly and association, or the right to housing, among others.

<sup>1965</sup> Cf. IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 59.

<sup>1966</sup> See, e.g., thematic hearing “Brazil: Student protests in Sao Paulo.” IACHR, 157<sup>th</sup> Session (April 2016).

<sup>1967</sup> See, e.g., IACHR Report No. 25/09, Case 12.310, Merits, Sebastiao Camargo Filho v. Brazil. March 19, 2009.

<sup>1968</sup> American Convention (Articles 21 & 26), the American Declaration (Articles IX, XI, and XXIII), the International Covenant on Economic, Social, and Cultural Rights (art. 11); and other instruments and declarations, such as: General Comments No. 4 (1991) and No. 7 (1997) of the Committee on Economic, Social and Cultural Rights; the Guiding Principles on Internal Displacement; the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in Resolution 60/147; UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

<sup>1969</sup> UN. ESCR Committee. General Comment No. 4 (1991), para. 18. See also: ESCR Committee. General Comment No. 7 (1997) (E/1998/22). Annex IV, para. 18.

<sup>1970</sup> States must provide compensation and alternative accommodation, or restitution, except in cases of *force majeure*; in addition to guaranteeing “as a minimum” and “without discrimination”: “(a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.” UN Basic Principles and Guidelines on Development-based Evictions and Displacement. Annex I to the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, para. 52.

<sup>1971</sup> IACHR, Annual Report 2015, Ch. IV A, para. 166.

146. The Commission has stated that when executing eviction or arrest warrants for persons in an occupation, police officers cannot act with unlimited discretion in carrying out their law enforcement duties. The occupation of another's property and the existence of arrest warrants by virtue of that fact cannot, by themselves, justify using lethal force or jeopardizing people's physical integrity. The Commission has stressed that crimes against property do not necessarily include an element of violence. The use of lethal force merely to execute arrest warrants when acts of violence are not involved is unnecessary and disproportionate.<sup>1972</sup> It has further considered that the fact of negotiating with occupants for just a few hours before undertaking a violent raid is not sufficient to establish that it is impossible to enforce the law without resorting to the use of extreme force.<sup>1973</sup>
147. In the case of school takeovers and occupations as a way for students to voice their criticisms, demands, and complaints to State authorities, the Commission has stressed that these are legitimate forms of exercising the right to social protest, particularly in contexts where children and adolescents lack other channels to express their grievances about policies that affect them.<sup>1974</sup>
148. The Commission considers that guaranteeing the right to protest of children and adolescents means that forced eviction from a building occupied as part of a social action must be carried out by means of an express order based on a serious risk to the life or physical integrity of the person and where no other less harmful measures are available to protect those rights. The special duty of protection that the State has in relation to this group requires that dialogue and negotiation be the priority and predominant method of action of State agents.<sup>1975</sup> Even when the authorities make a lawful and legitimate decision to vacate a building, the eviction order must be clearly communicated and explained, to allow the demonstrators to understand and comply, giving them sufficient time to disperse without resorting to police force.<sup>1976</sup>
149. Resistance to an eviction may, in some cases, constitute a form of protest when the operation amounts to a violation of the right to housing. The Committee on Economic, Social, and Cultural Rights has considered that "Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats."<sup>1977</sup>
150. In such cases, evictions can only be justified in exceptional situations, with the caveat that they should not result in people becoming homeless or exposed to violations of other human rights.<sup>1978</sup> In the event that children, elderly persons, indigenous people, or other vulnerable groups or persons are present, States must exhaust all existing measures for the peaceful channeling of conflicts, dialogue, and negotiation, in keeping with the principles of absolute necessity and proportionality in the use of force.
151. In the case of a violent eviction of a landless people's camp by private actors, the Inter-American Court also stressed that when authorities have knowledge of a situation of real risk to an individual or group of individuals due to the acts of third parties or individuals, they have a responsibility to prevent or avert that risk.<sup>1979</sup>

#### **d) Forced dispersal or break-up**

152. This Commission has stated that certain regulations enabling the execution of police operations aimed at dispersing or restricting protests can often lead to a number of human rights violations.<sup>1980</sup>
153. This is the reason why the dispersal or break up of demonstrations by force—which entails direct interference with the legitimate exercise of a right and may affect the life or safety of persons—can only be permitted in very exceptional cases, by means of an express order based on a serious risk to the life or

<sup>1972</sup> Cfr. IACHR, Report No. 57/02, Case of Finca la Exacta v. Guatemala. Merits. October 21, 2002, paras. 38-41.

<sup>1973</sup> Cfr. IACHR, Report No. 57/02, Case of Finca la Exacta v. Guatemala. Merits. October 21, 2002, para. 54.

<sup>1974</sup> Cfr. IACHR thematic hearing "Brazil: Student protests in Sao Paulo." IACHR, 157<sup>th</sup> Session (April 2016).

<sup>1975</sup> Cfr. IACHR thematic hearing "Brazil: Student protests in Sao Paulo." IACHR, 157<sup>th</sup> Session (April 2016).

<sup>1976</sup> Amnesty International, "Good Practice for Law Enforcement Officials Policing Demonstrations," available at: [http://www.amnestyusa.org/sites/default/files/good\\_practice\\_for\\_law\\_enforcement\\_for\\_policing\\_demonstrations2.pdf](http://www.amnestyusa.org/sites/default/files/good_practice_for_law_enforcement_for_policing_demonstrations2.pdf)

<sup>1977</sup> UN. ESCR Committee. General Comment No. 4 on "the right to adequate housing" (1991), para. 8 a).

<sup>1978</sup> ESCR Committee. General Comment No. 7 on "the right to adequate housing," para. 16. Cited in: IACHR, Annual Report 2015, Ch. IV A, para. 166.

<sup>1979</sup> IACHR, Sebastião Camargo Filho v. Brazil, Report No. 25/09, 2009, paras. 80 & 83.

<sup>1980</sup> IACHR, Annual Report 2015, Chapter IV A, para. 67.

physical integrity of persons and where no other less harmful measures are available to protect those rights.<sup>1981</sup>

154. Forced dispersal or break-up is often defended on the grounds that there is a need to free up traffic on public roads. In this context, it is appropriate to reiterate the salient point made in chapter 4.1 of this report, that the right to protest is one of the cornerstones of any democratic structure.<sup>1982</sup> Demonstrations should be allowed to cause a certain level of disruption to daily life, for example in relation to traffic and commercial activities, so as not to deprive the freedom of peaceful assembly of its essence.<sup>1983</sup> Moreover, imposing the requirement of prior authorization to hold gatherings and demonstrations cannot be an argument for allowing the automatic dissolution, by the use of force, of those public demonstrations for which permission has not been granted by the authorities.<sup>1984</sup>
155. When the authorities make a lawful and legitimate decision to break up a protest, the order to disperse must be clearly communicated and explained, to allow the demonstrators to understand and comply, giving them sufficient time to disperse without resorting to police force.<sup>1985</sup> The IACHR considers that the indiscriminate persecution of demonstrators following the dispersal of a protest exacerbates tension and is not justified by the criteria of necessity and proportionality in the use of force.

## **7. Police operations, protocols, and institutional structure of the security forces and exclusion of the armed forces**

156. Proper use of the force necessary to respect, protect, facilitate, and promote the right to social protest requires the organization of all the structures through which government power is exercised in such a way that they are able to legally ensure the free and full exercise of human rights.<sup>1986</sup> In turn, Article 2 requires States to take measures “of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.”<sup>1987</sup> It is understood that the protection of these rights entails not only the obligation of the State not to interfere with their exercise, but also the duty to take, under certain circumstances, positive measures to ensure them.<sup>1988</sup>
157. The holding of meetings, demonstrations, and protests is a central activity of many associations and organizations. In this regard, States have the duty to provide the necessary means for them to conduct their activities freely; to protect them when they are threatened in order to prevent attacks on their life and safety; to refrain from imposing obstacles that might hinder their work; and to investigate seriously and effectively the violations committed against them, thus combating impunity.<sup>1989</sup>
158. As part of their obligations, States must design specific protocols of action for security forces operating in situations of social protest and public demonstrations. The relevance of developing specific rules of action derives from two empirical findings: First, the way in which political authorities and police institutions work with regard to their actions in public demonstrations often follows a logic that is distinct from other

<sup>1981</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, paras. 61-63.

<sup>1982</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 93.

<sup>1983</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 32. See also: IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para.198; ECtHR, *Kuznetsov v. Russia*, 23 October 2008, para. 44.

<sup>1984</sup> IACHR, Annual Report 2015, Chapter IV A, para. 69.

<sup>1985</sup> Amnesty International, “Good Practice for Law Enforcement Officials Policing Demonstrations,” available at: [http://www.amnestyusa.org/sites/default/files/good\\_practice\\_for\\_law\\_enforcement\\_for\\_policing\\_demonstrations2.pdf](http://www.amnestyusa.org/sites/default/files/good_practice_for_law_enforcement_for_policing_demonstrations2.pdf)

<sup>1986</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166; I/A Court H.R., *Case of Godínez Cruz v. Honduras*, Judgment of January 20, 1989, Series C No. 5, para. 175.

<sup>1987</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 207; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 108; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 178; I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 172.

<sup>1988</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 192; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 2011, para. 133.

<sup>1989</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. 161.

routines. These are operations with particular orders and design, for which it is necessary to have action protocols that systematize the standards applicable to the use of force in said situations. Second, these are circumstances involving practices that may violate a number of fundamental rights, and the definition of clear rules of action therefore may lead to the development of more appropriate oversight mechanisms and bodies.

159. These criteria and standards of action organize police operations and regulate the use of force. As the Commission has previously maintained, these directives should be aimed at enabling police officers to act “with the certainty that their job is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right.”<sup>1990</sup> This development of national and local laws contributes to the perception, both by security officers and the general population, of the scope of police powers, and hence to the establishment of conditions for proper oversight and accountability.<sup>1991</sup>
160. The planning of operations must take into account, in particular, the duty of States to protect the physical integrity of demonstrators and nearby third parties during a protest, including in relation to acts committed by private or non-state actors.<sup>1992</sup> The protection of the life and physical integrity of police officers should also be considered. Threats or actions of other demonstrators or third parties that pose a certain risk to life, or to the physical integrity of persons—whether or not they are participating in the protest—requires the State to take action to prevent them. In this case, the use of force may be necessary, within the limits of legality and proportionality.<sup>1993</sup>
161. States must, in any event, do everything in their power to minimize harm and injury, whether caused by State agents or by third parties. In particular, it should include an assessment of the impacts of all measures taken on the physical integrity of persons. The Commission understands that the principle of pre-eminence of the right to life and physical integrity means, for example, that operations should provide sufficient and safe pathways for the dispersal of demonstrators and third parties present. Police operations should facilitate and refrain from obstructing major dispersal routes, including access to means of transport, such as train stations or underground transport.
162. Operations planning should also make provisions ensure that medical assistance is provided in cases where persons are injured or killed in the course of a demonstration, whatever the cause and whoever is responsible. The officers in charge of the operation should prioritize medical care and should also provide accurate and timely information about the events to the relatives or close friends of those affected. States should, as a preventive measure, ensure that medical services and/or other health measures are provided during the demonstration.<sup>1994</sup>
163. The Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary, or arbitrary executions on the proper management of assemblies makes clear that the State’s obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance, and clean-up services. Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.<sup>1995</sup>
164. A human rights approach to these protocols and to the design of operations also requires attention to the security and rights of State agents, including members of the police.<sup>1996</sup> Equipment is essential for the protection of the rights of demonstrators, third parties, and police officers. On the basis of a risk assessment, equipment for law enforcement officials deployed during assemblies should include both appropriate personal protective equipment, and when necessary, officers should be appropriately protected with equipment, such as shields, helmets, and stab-and/or bulletproof jackets, with a view to

<sup>1990</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 193; IACHR, Annual Report 2015, Chapter IV A, para. 79.

<sup>1991</sup> UN, OHCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36, para. 29.

<sup>1992</sup> Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II.Doc. 34, June 28, 2007, para. 43; IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 63.

<sup>1993</sup> UN, OHCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36, para. 72.

<sup>1994</sup> UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 5. The State’s obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance, and clean-up services. Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.

<sup>1995</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 40.

<sup>1996</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 224.



decreasing the need for any use of weapons.<sup>1997</sup> Police officers must be equipped and trained in such a way that any provocations or attacks they may have to tolerate in the course of their activities do not affect their dignity or professional performance. States have an obligation to protect and ensure the professional rights of the members of its police force and to provide them with the training, infrastructure and equipment needed to perform their duties properly.<sup>1998</sup>

165. In the design and implementation of operations, special attention should be paid to the disproportionate and illegitimate ways in which the use of force may affect certain individuals and/or groups depending on their particular characteristics, such as women,<sup>1999</sup> children and adolescents,<sup>2000</sup> persons with disabilities, and older adults. Accordingly, protocols for police action and the implementation and oversight of operations should contain provisions and establish special measures to prevent discriminatory and aggravated effects. In particular, States must safeguard the physical integrity of minors, as established in the UN Convention on the Rights of the Child.<sup>2001</sup>
166. At the same time, the Inter-American Court has pointed out the relationship between the activity of civil society organizations and associations and the exercise of political rights established in Article 23 of the ACHR, especially those groups that represent the interests of marginal sectors or those who face difficulties in exercising their rights.<sup>2002</sup>
167. Similarly, provision should be made for specific actions for the special protection and care of persons belonging to groups that must be specially protected or require special care. States are further under the obligation to respect and guarantee the free and full exercise of the right to protest and to participate in public demonstrations without discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status (art. 1 ACHR). Taking into account the diversity of identities and groups expressing themselves in large social demonstrations and protests, officers should make sure that their verbal communication, body language, gestures, and any type of indirect communication are not perceived by the organizers and participants as intimidating, offensive, or insulting.<sup>2003</sup>
168. Where necessary, arrangements should be made for the intervention of specially organized sections with selected officials who undergo ongoing training to intervene in large demonstrations and At the same time, the manner in which these departments coordinate and communicate with other sections of the security institutions and with other State agencies should be regulated, as should the respective democratic oversight of the operations.<sup>2004</sup>
169. The selection, education, and training of the government personnel and police officers involved must take into account the complexity and variety of the tasks required of them. The selection of personnel with the necessary qualities, initial training, and continuous retraining are essential for the development of

<sup>1997</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, paras. 53-54.

<sup>1998</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 224.

<sup>1999</sup> In its Resolution on the promotion and protection of human rights in the context of peaceful protests, the Human Rights Council "Urges States to pay particular attention to the safety and protection of women and women human rights defenders from acts of intimidation and harassment, as well as gender-based violence, including sexual assault, in the context of peaceful protests" (A/HRC/25/L.20).

<sup>2000</sup> In its Resolution on the promotion and protection of human rights in the context of peaceful protests, the Human Rights Council "Reaffirms that States must take all necessary measures to ensure the safety and protection of children, including while they exercise their rights to freedom of peaceful assembly, expression and association, including in the context of peaceful protests" (A/HRC/25/L.20).

<sup>2001</sup> The Convention on the Rights of the Child stipulates that the authorities of the State shall, in all actions taken by them, take into account the best interests of the child and undertake to "ensure the child such protection and care as is necessary for his or her well-being, taking into account [their] rights." See: Convention on the Rights of the Child, art. 3.

<sup>2002</sup> I/A Court H.R., *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127.

<sup>2003</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 38.

<sup>2004</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 56: "The member states must put together reliable indicators so that they are able to constantly evaluate the following, *inter alia*: (1) human resources, from the quantitative and qualitative standpoints; (2) the mechanisms for selecting and providing basic and specialized training to the civil servants in the institutions in question and their career service; (3) the working conditions and pay of these civil servants, and (4) the equipment, means of transportation and communications available to perform the assigned functions."

communication skills, use of force, use of deterrent and defensive equipment, organization of functions, hierarchical division, and registration and supervision required for participation in these operations.<sup>2005</sup>

170. As discussed more extensively in the accountability chapter of this report, the design of operations should include: a detailed record of orders, participating officials, respective responsibilities, and actions for the purposes of prevention, subsequent assessment of actions taken, and any judicial and administrative investigations into any situation involving abuse. The Commission believes that, where appropriate, provision should be made for the protection of the scene of the crime as a fundamental part of the concept of due diligence.<sup>2006</sup> The policy maker and/or police officer in charge of the operation must ensure the preservation of the scene and the collection and preservation of all evidence. Of particular importance is the preservation of the communications of the personnel involved in the operation<sup>2007</sup> and of all the audio and video recordings produced by the security institutions present in their original formats, both directly related to the particular sequence of events and to the entire operation at its various levels.
171. The recording of orders and activities, as well as the visible identification of personnel and equipment is not only effective for the purposes of possible administrative and judicial investigations, but is also fundamental for the prevention of abuses and the intentional or accidental use of improper equipment.
172. In all cases involving the use of force, and in particular the use of weapons—whether justified or not—the policy makers and/or police officers responsible for the operation must take a number of measures to reduce the harm caused by the extreme measure they have taken and to submit such action to administrative and/or judicial review. This requires the proper recording of any incident involving the use of weapons, whether or not it affects the safety of any person.
173. Given the imperative social interest in the exercise of the rights involved in the contexts of protest for peaceful demonstrations for the democratic life of a nation, the Commission considers that in this specific sphere those considerations are all the more important for ruling out the participation of military and armed forces in such situations.<sup>2008</sup>
174. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has expressed particular concern over the adverse effects of categorizing certain groups of demonstrators as “domestic extremists.”<sup>2009</sup> In some countries, the broad characterization, by different State agencies, of people who participate or organize protests as supposed threats to security has created the conditions to allow the Armed Forces to participate in security operations or prior intelligence activities.
175. Police corps hold an “irreplaceable” mission for the proper functioning of the democratic system and to ensure the safety of the population; in addition, the IACHR has stated that due to their “national coverage and variety of its functions, it is one of the state institutions that are most frequently related to citizens.”<sup>2010</sup>
176. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has said that “The modern State [...] cannot function without the police. The human rights system as such also cannot be effective without the police and, in some cases, without the use of force [since they] play an important role in protecting society from violence, enforcing justice, and securing the rights of people.”<sup>2011</sup>

<sup>2005</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, paras. 115, 120 & 193. Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, paras. 42, 52, & 55.

<sup>2006</sup> The Inter-American Court of Human Rights has held that, “The failure to protect the scene of a crime properly can impair the investigation, since this is an essential element to enable it to be successful” (I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*, *supra* nota 4, para. 166), and the UN Human Rights Council has urged “States to investigate any death or significant injury committed during protests, including those resulting from the discharge of firearms or the use of non-lethal weapons by officials exercising law enforcement duties” (CDH ONU, A/HRC/25/L.20, para. 12).

<sup>2007</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68 c).

<sup>2008</sup> IACHR, Annual Report 2015, Chapter IV A, para. 38

<sup>2009</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom (14-23 January 2013) (A/HRC/23/39/Add.1).

<sup>2010</sup> IACHR, Annual Report 2015, Chapter IV A, para. 36; Report on the Situation of Human Rights in Venezuela, 2003, chapter III, “State Security: The Armed Forces and the Police,” para. 294; Report on Citizen Security and Human Rights, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 77.

<sup>2011</sup> UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, 1 April 2014, para. 22.

177. In this sense, the Commission has indicated that domestic situations of security and violence should be handled by a civilian police force, effective and respectful of human rights, and not by turning to the armed forces, who are trained and equipped for other types of external conflict.<sup>2012</sup> “The history of the hemisphere shows that, broadly speaking, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances. Therefore, practice teaches us that it is advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations.”<sup>2013</sup>
178. The IACHR has emphasized that the police bodies and armed forces are “two substantively different institutions, insofar as the purposes for which they were created and their training and preparation are concerned.”<sup>2014</sup> As such, the clear and precise separation between domestic security as a function of the Police and national defense as a function of the Armed Forces is fundamental.<sup>2015</sup>
179. The Inter-American Court reiterated this opinion in its decision in the case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, holding that: “the States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces.”<sup>2016</sup>
180. Another phenomenon that hinders the establishment of a citizen security policy is the militarization of police forces. Police bodies, in their interventions aimed at preserving internal order, would appear to have recourse to the use of force as a first resort, which is characteristic of military formations.<sup>2017</sup> As the IACHR noted with respect to the police in the United States, “[...] The main concerns related to excessive or arbitrary use of force is focused on militarization of the police in terms of the equipment used, the type of training they receive, the action protocols they use, and the difficulty with which police officers who are guilty of abuse or excessive use of force are held criminally liable and prosecuted.”<sup>2018</sup>

## 8. Dialogue and negotiation bodies

181. The Commission has emphasized that, regardless of the format adopted by those who exercise this right, the action of the police should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. For this reason, police operations should be oriented towards guaranteeing the exercise of this right.<sup>2019</sup> It has similarly reiterated that “the State’s obligation is to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims.”<sup>2020</sup>
182. The IACHR recommends the promotion of spaces for communication and dialogue prior to demonstrations, and the engagement of liaison officers with demonstrators, in order to coordinate the unfolding of demonstrations and protests and public security operations, avoiding conflict situations.<sup>2021</sup> Consensus has been strengthened among experts and international institutions,<sup>2022</sup> governmental agencies, and civil society that dialogue and negotiation-focused approaches are more effective in managing protests and preventing acts of violence.<sup>2023</sup>

<sup>2012</sup> IACHR, Annual Report 2015, Chapter IV A, para. 37.

<sup>2013</sup> IACHR, Annual Report 2015, Chapter IV A, para. 37; Report on Citizen Security and Human Rights, 2009, pp. 42-43.

<sup>2014</sup> IACHR, Annual Report 2015, Chapter IV A, para. 49; Report on the Situation of Human Rights in Venezuela, 2003, Chapter III, “State Security: The Armed Forces and the Police,” para. 272.

<sup>2015</sup> IACHR, Report on Citizen Security and Human Rights, 2009, pp. 42-43.

<sup>2016</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 78.

<sup>2017</sup> IACHR, Annual Report 2015, Chapter IV A, para. 40.

<sup>2018</sup> IACHR, Annual Report 2015, Chapter IV A, para. 40; Report on Violence, Children, and Organized Crime. OAS/Ser.L/V/II.Doc. 40/15, November 2, 2015, para. 191.

<sup>2019</sup> IACHR, Annual Report 2015, Chapter IV A, para. 68.

<sup>2020</sup> IACHR, Annual Report 2015, Chapter IV A, para. 68; Amnesty International, *Use of force — Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, August 2015, p. 150.

<sup>2021</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para.68 e).

<sup>2022</sup> The UN Human Rights Council has underscored “the important role that communication between protestors, local authorities and officials exercising law enforcement duties can play in the proper management of assemblies, such as peaceful protests, and calls on States to establish appropriate channels in that regard” (A/HRC/25/L.20).

<sup>2023</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, has called for a “negotiated” approach to social protest, including the active use of communication, negotiation, cooperation, information gathering, and an emphasis on preventive police policies ( A/HRC/17/28), and Amnesty International has stressed that dialogue with demonstrators plays an important role in reducing levels of violence (Amnesty International, *Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*).

183. In this regard, the political authority must provide the appropriate mechanisms for genuine channels of communication with demonstrators in order to manage, first, the procedural aspects of the protest action (use of public space, duration, etc.) and, second, to direct complaints to the relevant institutional channels in order to identify opportunities for communicating and coordinating with the interested authorities.
184. These means of coordinating and responding to demands are essential when it comes to marginalized, vulnerable groups with limited access to existing channels of political representation.<sup>2024</sup> These political channels, moreover, should allow for the filing of complaints related to irregularities and non-compliance with legal and regulatory provisions on the part of police and security forces.

## 9. The duty to not criminalize leaders and participants in demonstrations and protests

185. The application of criminal law to the acts of participants in a demonstration constitutes a serious restriction with far-reaching consequences for freedom of expression, as well as the rights of assembly, association, and political participation, which under the principles developed above can only be used on a very exceptional basis and is subject to a heightened level of scrutiny.
186. In its Second Report on the Situation of Human Rights Defenders in the Americas, the Commission noted that “During the last years, there is a growing trend in some countries to bring criminal charges against people who participate in social protests,”<sup>2025</sup> and in another report on the Criminalization of the Work of Human Rights Defenders, the IACHR noted that social protests are one of the most common contexts in which this serious problem arises.
187. Similarly, in its 2005 Annual Report, the Office of the Special Rapporteur for Freedom of Expression of the IACHR maintained that:

“(...) in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly. In other words, it must be examined whether the application of criminal sanctions is justified under the standard, established by the Inter-American Court, that said restriction (criminalization) satisfies a pressing public interest necessary for the operation of a democratic society. It is also necessary to examine whether the imposition of criminal sanctions is, in fact, the least harmful means to restrict the freedom of expression, exercised through the right of assembly, in turn exercised through a demonstration on a thoroughfare or in a public space.”<sup>2026</sup>

188. The criminalization of social protest consists in the use of the punitive power of the State to deter, punish, or prevent the exercise of the right to protest,<sup>2027</sup> and in some cases, to social and political participation more broadly, through the arbitrary, disproportionate, or repeated use of the criminal justice system against demonstrators, activists, and social or political leaders for participating in or allegedly organizing a social protest, or for being part of the organizing or convening group or entity. As the Inter-American Commission has pointed out, its effects often include arbitrary and prolonged prosecution for misdemeanor or criminal offenses, the imposition of fines, and/or arbitrary arrests with or without a conviction.
189. The Commission has repeatedly observed that the prosecution of human rights defenders is a common trend in Latin America. This misuse of the criminal law occurs more frequently where there are tensions or conflicts of interest, including in the context of social protest, during or after the staging of a demonstration, blockade, sit-in, or mobilization, for the simple fact of having participated in these acts.<sup>2028</sup>
190. The IACHR has underscored in this regard that the people who promote and lead demonstrations are often the hardest hit, and are used to send a message to other people and organizations that participate

<sup>2024</sup> Charter of the Organization of American States. Article 45(f) & (g). I/A Court H.R., *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127. Concurring opinion of J. García Ramírez 25, 27; Concurring opinion of J. Diego García Sayán, 31.

<sup>2025</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. 107.

<sup>2026</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2005. Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 96. Similarly, see: IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2002, Ch. IV, para. 35.

<sup>2027</sup> Cf. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 12.

<sup>2028</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 4.

in the protests.<sup>2029</sup> Some cases have gone so far as to accuse social leaders of acts carried out in demonstrations where they were not even present. This reveals an application of the criminal law that is explained less by the aim of regulating the use of public space and guaranteeing the rights of third parties, than by a persecutory and restrictive purpose that seeks to curtail the social and political activity of these people and their organizations.

191. Criminal proceedings and judgments, as well as administrative penalties or fines and pecuniary reparations, have a systemic effect on the general conditions for peaceful protest as an exercise of freedom of expression. In addition to the individual and institutional (regarding organizations) dimension of the impact of these measures, criminalization has a “chilling effect” on society as a whole, and may lead to the prevention or inhibition of this type of expression.<sup>2030</sup> As the Office of the Special Rapporteur for Freedom of Expression has maintained, criminalization has collective and social effects:
192. “It should be recalled that (...) criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition within the state body from which the object of the claim arose. Curtailing free speech by imprisoning those who make use of this means of expression would have a dissuading effect on those sectors of society that express their points of view or criticisms of the authorities as a way of influencing the processes whereby state decisions and policies that directly affect them are made.”<sup>2031</sup>
193. The criminalization of persons participating in or leading public demonstrations not only has an impact on the right to freedom of expression and assembly, but also has serious and systemic effects on the exercise of the rights to freedom of association and political participation. In particular, criminalization has a number of repercussions on the free operation and coordination of the organizations, political parties, trade unions, networks, movements, or other groups to which the accused persons belong.
194. By affecting the free development of political activities and the maximum plurality of speech on issues of public interest, this abuse of the criminal law can constitute a serious infringement of political rights (Articles 23 of the ACHR and 24 of the Declaration) given that, as this Commission has held, “governments have, in the face of political rights and the right to political participation, the obligation to permit and guarantee: the organization of all political parties and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socioeconomic development; the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will.”<sup>2032</sup> Attacks on these organizations may also be contrary to the obligations imposed by Article 45 (c), (f) and (g) of the Charter of the Organization of American States.<sup>2033</sup>
195. The criminalization of the right to protest is often the result of applying criminal definitions that, because of their vagueness or ambiguity, violate the principle of legality and inter-American standards. In other cases, conduct that is part of a social protest is penalized directly, such as criminal penalties for lack of prior authorization or contempt (*desacato*). It also tends to occur through a formalistic application of criminal concepts, which isolates the behaviors it seeks to punish from the context in which they occur (the exercise of the right to social protest), and develops a literal interpretation of the criminal texts that contradicts constitutional norms, or unduly extends the scope of application of the criminal provision.
196. The set of criminal definitions used to criminalize protest is similar in the different countries of the region. Some of the most common offenses charged in this context are: obstruction of public roads; resistance to

<sup>2029</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 218.

<sup>2030</sup> IACHR, “Matter of Fernando Alcibíades Villavicencio Valencia et al., Ecuador,” Precautionary Measure No. 30-14. March 24, 2014, paras. 34-36.

<sup>2031</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2002, Ch. IV, para. 35.

<sup>2032</sup> IACHR, Annual Report 2002, Ch. IV, Cuba, para. 12.

<sup>2033</sup> Charter of the Organization of American States. Article 45: The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: [...] c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws; [...] f) The incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system. The encouragement of all efforts of popular promotion and cooperation that have as their purpose the development and progress of the community; g) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process.”

authority and crimes of indecency and contempt; disturbance of public peace or public order; advocacy of crime; damage to public or private property; sabotage; trespass and unlawful occupation of property; criminal conspiracy and instigation to commit a crime; incitement to rebellion; sedition and mayhem; riot; extortion or aggravated coercion; and even crimes of terrorism.

197. Criminalization may also be the product of criminal proceedings based on circumstances for which there is no evidence or where the evidence is directly false and which lead to the authorization of measures that are distressing to individuals, their families, and organizations, such as the unwarranted ordering of pretrial detention, seizures, raids, and often violent searches.

**a) The creation of broad, vague, or ambiguous criminal offenses in violation of the principle of legality**

198. In its report on the criminalization of human rights defenders in the Americas, the Commission stressed that the formulation of criminal offenses contrary to the principle of legality can give rise to processes of criminalization.<sup>2034</sup> It noted that, although it is up to the State in the exercise of its crime policy to determine which acts are to be classified as crimes, Article 9 of the American Convention enshrines the principle of legality and entails elements that must be observed by States when exercising their power to define criminal offenses.<sup>2035</sup>

199. The principle of legality requires the legislature to enact a provision in accordance with the procedure required by the domestic law of each State (procedural legality);<sup>2036</sup> and that criminal definitions are formulated unambiguously, in strict, precise, and unequivocal terms, which clearly define the punishable acts as crimes, establishing their specific elements and the factors that distinguish them from other punishable acts under other criminal concepts (substantive legality).<sup>2037</sup>

200. The Inter-American Court has stated that, “Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.”<sup>2038</sup> Furthermore, this type of ambiguity may lead to a number of restrictions on due process guarantees since, depending on whether one offense or another is involved, there is a variation in the penalty to be imposed.<sup>2039</sup> The Court has held that in these situations there is a lack of certainty about the criminal acts, their elements, the objects or interests against which they are committed, and the effects on society as a whole.<sup>2040</sup>

201. This is notably the case with counter-terrorism laws. The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stated that, “The adoption of overly broad definitions of terrorism therefore carries the potential for deliberate misuse of the term—including as a response to claims and social movements of indigenous peoples—as well as unintended human rights abuses. Failure to restrict counter-terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature also pose the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the

<sup>2034</sup> Cf. IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 57.

<sup>2035</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 241.

<sup>2036</sup> I/A Court H.R., *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 29.

<sup>2037</sup> IACHR, *Second Report on the Situation of Human Rights in Peru (2000)*, OEA/Ser.L/V/II.106, Doc. 59 rev. 2, June 2, 2000, paras. 80, 168; IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 225; I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 121; *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, para. 157; *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 174; *Case of De La Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, para. 79; *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 188; *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 55.

<sup>2038</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 121; *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 174.

<sup>2039</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 119; I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, para. 119.

<sup>2040</sup> I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004, para. 117.

principles of necessity and proportionality that govern the permissibility of any restriction on human rights.”<sup>2041</sup>

202. The Inter-American Court has established that, when defining offenses of a terrorist nature, the principle of legality requires that a necessary distinction be made between such offenses and ordinary offenses, so that every individual and also the criminal judge have sufficient legal elements to know whether an act is punishable under one offense or the other. This is especially important with regard to terrorist offenses because they merit harsher prison sentences, as well as ancillary penalties and disqualifications with major effects on the exercise of other fundamental rights.<sup>2042</sup>

**b) Criminal definitions that violate inter-American standards by punishing activities typical of social protest**

203. This report has already pointed out that the provision of criminal penalties for failure to comply with a requirement that contravenes international law, such as prior authorization, is incompatible with the obligations arising from the American Convention because it violates the prohibition of prior censorship.<sup>2043</sup>
204. The Commission has also received information on the use of the criminal offense of contempt (*desacato*) to arrest and prosecute demonstrators when they respond verbally to police violence during protests. The Commission and the Inter-American Court have been emphatic in maintaining that critical expressions referring to public officials enjoy greater protection under the inter-American human rights system.<sup>2044</sup>
205. In that regard, States may not detain or prosecute a demonstrator merely for expressing criticism, verbal condemnation, or insults to a State agent in a situation of conflict or social protest. In fact, it bears recalling that the mere criminalization of contempt (*desacato*) is an infringement of the right to freedom of expression protected under Article 13 of the American Convention and Article IV of the American Declaration of the Rights and Duties of Man.<sup>2045</sup>
206. In particular, when social protest falls within the scope of speech that criticizes or condemns public officials and authorities or refers to matters of public interest, it is especially protected by Article 13 of

<sup>2041</sup> UN General Assembly, Human Rights Council, A/HRC/16/51, Report of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, 22 December 2010, paras. 26-27.

<sup>2042</sup> I/A Court H.R., *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, para. 163.

<sup>2043</sup> ACHR, Art. 13.2: “The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability (...);” The Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, has indicated that the failure of organizers to give prior notice to the authorities should not result in the imposition of criminal or administrative penalties resulting in fines or imprisonment, especially in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer (A/HRC/20/27, 21 May 2012, para. 29).

<sup>2044</sup> IACHR, Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. OEA/Ser.L/V/II.88. doc. 9 rev. February 17, 1995; IACHR, Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (“Desacato” Laws and Criminal Defamation). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005, paras. 155 *et seq.*; IACHR, Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, pp. 245 *et seq.*; I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74; *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107; *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111; *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135; I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177. Technical note on the international parameters regarding freedom of expression and crimes against honor and the adequacy of the provisions regarding crimes against honor present in the draft amendment of the Brazilian Criminal Code. November 4, 2013, in: IACHR, Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter 88 (Evaluation of the State of Freedom of Expression in the Hemisphere), para. 125. November 4, 2013; IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 101.

<sup>2045</sup> Principle 11 of the Declaration of Principles on Freedom of Expression adopted by the IACHR provides that: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information”; IACHR, Declaration of Principles on Freedom of Expression Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>; Similarly, see: IACHR, Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. OEA/Ser.L/V/II.88. doc. 9 rev. February 17, 1995; IACHR, Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (“Desacato” Laws and Criminal Defamation). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005, paras. 155 *et seq.*; IACHR, Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. pp. 245 *et seq.*; IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 103.

the ACHR. The Inter-American Commission has asserted that in cases where there is “...a criminal conviction or an arrest warrant which, in principle, results from the exercise of a fundamental right in a specially protected area which, in turn, is one of the bases for the proper functioning of any democracy (...),” it can be concluded that: (i) “there is an obvious connection between the protected conduct (the exercise of freedom of expression and the right to lodge complaints against authorities) and the conviction or arrest warrant” and that (ii) “the execution of the criminal sentence would have multiple adverse effects because it could affect not only the personal freedom but also the right to freedom of expression of the detainee, his peers, and society as a whole.”<sup>2046</sup>

**c) The formalistic and broad application of the criminal law to criminalize social protest**

207. Criminalization also tends to occur through the abusive or widespread application of criminal concepts or forms of criminal participation, which is also characterized by a narrow, biased, or decontextualized interpretation of the facts.
208. The Commission stresses that States should stop applying criminal definitions that characterize conduct commonly observed in protests as criminal acts, such as roadblocks or disorderly acts that, in themselves, do not affect interests such as the life, safety, or freedom of persons;<sup>2047</sup> in the context of protests, these acts constitute forms of exercising the rights to freedom of expression, assembly, and association.<sup>2048</sup>
209. As highlighted in the chapter on restrictions, justice authorities should make certain that any limitation on the exercise of the right is necessary for the functioning of a democratic society. For instance, in weighing the right to freedom of movement against the right to social protest, “t should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure: the undermining of freedom of expression directly affects the central nerve of the democratic system.”<sup>2049</sup> On this issue, the IACHR has maintained that “(...) in principle, criminalization *per se* of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly.”<sup>2050</sup>
210. The Commission has also observed the manipulation of criminal law to arbitrarily detain and bring unfounded criminal proceedings against persons who participate in, call for, or organize public demonstrations. The Commission has stated that criminal offenses related to maintaining public order, such as “incitement to rebellion,” “terrorism,” “sabotage,” “incitement to crime,” and “attack or resistance to public authority,” tend to be arbitrarily applied by the authorities to criminalize the work of human rights defenders.<sup>2051</sup> In general, justice authorities have a duty to refrain from applying these criminal definitions to acts typically carried out in these contexts.
211. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has underscored that, “The criminalization of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them).”<sup>2052</sup> This Commission has in turn stated that the same standard should apply to cases where there is an intention to accuse a person for offenses such as treason or rebellion, or the dissemination of ideas or information that is uncomfortable for government authorities.<sup>2053</sup>
212. Broad interpretations of forms of criminal involvement such as “instigation to commit crimes” also deserve to be challenged. This concept has been used to criminalize social leaders on the grounds that they organized protests for which—since they were not present—they could not be prosecuted as direct perpetrators.

<sup>2046</sup> IACHR, “Matter of Fernando Alcibíades Villavicencio Valencia et al., Ecuador.” Op. Cit., paras. 24 -25 (emphasis added).

<sup>2047</sup> IACHR, *A Hemispheric Agenda for the Defense of Freedom of Expression*, Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II IACHR/RELE/INF. 4/09, of February 25, 2009, para. 71.

<sup>2048</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2002, Ch. IV, para. 35.

<sup>2049</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, Para. 126.

<sup>2050</sup> IACHR, Annual Report 2007, Chapter IV, para. 266.

<sup>2051</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 6.

<sup>2052</sup> IACHR, Annual Report 2013, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.149 Doc.50, December 31, 2013, para. 391.

<sup>2053</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 144.



213. The IACHR has also noted that the criminal definitions of unlawful occupation enshrined in the Guatemalan criminal code have reportedly been used excessively and unjustifiably against indigenous peoples and peasants who occupy lands whose ownership is in dispute with landowners or companies. The statutory definition of unlawful occupation does not clearly define the adverb “illegally, for any purpose,” nor does it clearly describe the requisite intent of the perpetrator needed to meet the elements of the crime. Consequently, indigenous people and peasants who—although lacking formal title—have for years been in possession of the lands they consider to be their ancestral or rightful property, have often been criminally prosecuted.<sup>2054</sup>

**d) Failure to observe fundamental guarantees**

214. In addition to issues of legality or the interpretation of criminal definitions, the various actors involved in the criminal proceedings often commit violations such as fabricating false evidence, holding defendants in pretrial detention, or taking other excessive procedural measures. In its 2011 Annual Report, the Commission underscored the tendency of some judges, prosecutors, ministers, and law enforcement officers to manipulate the punitive power of the State for purposes of criminalization.<sup>2055</sup> The authorities in charge of investigating the crime—perhaps due to a lack of precision in the criminal codes themselves, or due to a lack of diligence in the investigation—proceed with the criminal indictment before gathering the necessary evidence to verify that the unlawful conduct has occurred.<sup>2056</sup> There have also been complaints of prosecutors obtaining false statements from witnesses receiving State benefits, and of failing to individually identify each defendant’s role in the alleged facts when establishing the circumstances of time, place, and manner.<sup>2057</sup>

215. The IACHR has noted in particular that in some cases human rights defenders been charged with crimes like robbery, murder, and kidnapping based on false and fabricated evidence, and in the absence of any unlawful or guilty conduct.<sup>2058</sup> Similarly, in contexts of social protest, the authorities have accused demonstrators of crimes such as property damage, coercion, threats, kidnapping, or terrorism, sometimes adapting the criminal definitions so that they can be applied to the acts of demonstrators they wish to punish in order to justify their arrest.<sup>2059</sup> It is also common in protest contexts for prosecutors to overcharge demonstrators in order to justify the use of pretrial detention.<sup>2060</sup>

216. The Inter-American Court has held that prosecutors must ensure the proper application of the law and the search for the truth about the events that occurred, acting with professionalism, good faith, and procedural fairness, considering both elements that can prove the crime and the guilt of the accused, as well as any exculpatory evidence that mitigates his or her criminal responsibility.<sup>2061</sup> Clear evidence of guilt is a prerequisite for criminal punishment, in such a way that the burden of proof falls on the prosecution and not on the accused. Thus, the lack of presentation of convincing evidence of responsibility in a guilty verdict is a violation of the principle of presumption of innocence, which is essential for the effective realization of the right to a defense.<sup>2062</sup>

217. The violation of the presumption of innocence and due process in criminal proceedings affects not only the human rights defenders who are criminally prosecuted, who must spend their time and resources on their legal defense, neglecting his or her work or that of his or her organization; criminalization also has a chilling and crippling effect on other human rights defenders who, for fear of retaliation, may stop working to promote and protect human rights.<sup>2063</sup>

218. In particular, the Commission considered that lengthy criminal proceedings particularly affect human rights defenders and have a discouraging effect on their ability to defend human rights.<sup>2064</sup> No human

<sup>2054</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 2011. OEA/Ser.L/V/II. Doc.66, p. 37.

<sup>2055</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 55.

<sup>2056</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 58.

<sup>2057</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 61.

<sup>2058</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 180.

<sup>2059</sup> The same dynamic has been identified in the more general framework of the criminalization of human rights work. Cf. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 180.

<sup>2060</sup> Cf. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 200.

<sup>2061</sup> I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 165.

<sup>2062</sup> I/A Court H.R., *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 128.

<sup>2063</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 227.

<sup>2064</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 179.

rights defender may be subject to a criminal proceeding indefinitely; such a situation would infringe on the guarantee of a reasonable time period. This guarantee, in addition to being a basic element for the right to a trial in accordance with the rules of due process, is especially essential to prevent unwarranted criminal proceedings from preventing defenders from doing their work.<sup>2065</sup>

219. At the same time, police officers and members of the security forces are active participants in criminalization processes. They are generally in charge of conducting investigative activities and carry out searches and arrests; in many cases, they also serve as witnesses in court. There have been numerous complaints of arbitrary arrests, false testimony and evidence, and the unjustified collective attribution of conduct in criminal proceedings related to social protests.
220. The Commission stresses that when justice authorities find themselves faced with manifestly unfounded criminal accusations and complaints and the protection of the right to protest is involved, they have an obligation to investigate the source or sources of this type of arbitrary complaint and impose the appropriate penalties. This duty includes the obligation to ensure that no violation goes unpunished, thereby preventing future abuses. The Commission recalls that the obligation of States to investigate conduct affecting the rights protected in the American Convention and the American Declaration remains, irrespective of the agent who may eventually be held responsible for the violation.<sup>2066</sup>
221. Finally, the Commission underscored in its 2015 Annual Report that the use, in criminal cases, of precautionary measures such as the prohibition of public assembly or demonstration may constitute a strategy to prevent participation in public demonstrations and therefore a misuse of the criminal law.<sup>2067</sup>

#### e) Prohibition of arbitrary arrests

222. Criminalization, understood as the abusive or arbitrary use of the criminal law against demonstrators, often begins or occurs through arbitrary arrests of demonstrators during the course of protests. It is very common for mass detentions of human rights defenders to take place, especially in contexts of social protest. Many times when carrying out such arbitrary detentions, the persons affected are released within a few hours, but in other cases they remain preventively deprived of their liberty for unreasonable periods of time.<sup>2068</sup>
223. The right to personal freedom and safety and the right to freedom from arbitrary arrest or detention are established in Article XXV of the American Declaration and in Article 7 of the American Convention on Human Rights. The IACHR has underscored that the exercise of personal liberty and its full guarantee that it will not be restricted by unlawful action is a basic need for the full exercise of human rights defense.<sup>2069</sup>
224. Therefore, the Commission considers it vitally important to re-emphasize that arrests made by security forces in connection with social protests must strictly comply with all requirements imposed by domestic laws and international standards.<sup>2070</sup>
225. The IACHR recalls that the general requirements of the system for the prevention of arbitrary arrests also apply in protest contexts. First, no one may be deprived of liberty except for reasons expressly defined in the law, or in a manner contrary to the procedures objectively defined therein. In accordance with these principles, no one may be arrested except on the grounds established under domestic law, and subject strictly to all procedural formalities which judicial and police authorities are required by law to follow. In addition, States should ensure that no person is subjected to detention or imprisonment based on reasons and methods which, even if deemed legal, may be considered incompatible with respect for fundamental individual rights because they are, *inter alia*, unreasonable, unpredictable, or disproportionate.<sup>2071</sup>

<sup>2065</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 181.

<sup>2066</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 144; *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 101.

<sup>2067</sup> Cf. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 210.

<sup>2068</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 183.

<sup>2069</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 48.

<sup>2070</sup> IACHR, Annual Report 2015, para. 121.

<sup>2071</sup> Cf. I/A Court H.R., *Case of Durand and Ugarte v. Peru*. Judgment of August 16, 2000. Series C No. 68, paras. 52-56, para. 85; *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63; *Case of Suárez Rosero*, Judgment of November 12, 1997. Series C No. 35, para. 43; *Case of Gangaram Panday*, Judgment of January 21, 1994. Series C No. 16, para. 47.

226. The Commission has found that, “A detention is arbitrary and unlawful if not done on the grounds and by the formalities prescribed by law, when executed without observing the procedures that the law prescribes, and when there has been an abuse of the powers of arrest, i.e., when the arrest is made for purposes other than those that the law prescribes and requires. The Commission has also held that a detention for improper purposes is itself a punishment constituting a sort of sentence without trial, or an unlawful penalty that violates the guarantee against imposition of punishment without benefit of trial, [and that] the term ‘arbitrary’ is synonymous with ‘irregular, abusive, contrary to law.’”<sup>2072</sup> Similarly, the deprivation of a person's liberty must be based on a specific act justifying the arrest. Such a specific act must be criminal, as established by law, and the arrest therefore cannot be based on the danger that a person may commit a crime.<sup>2073</sup>
227. According to the inter-American standards, a detention may be lawful and yet arbitrary and contrary to Article 7.3 of the Convention. The Inter-American Court has held that all detentions must meet the following criteria: i) the purpose of measures that deprive or restrict a person's liberty is compatible with the Convention; ii) the measures adopted are appropriate for complying with the intended purpose; iii) the measures are necessary, in the sense that they are absolutely indispensable for achieving the intended purpose and that no other measure less onerous exists, in relation to the right involved, to achieve the intended purpose, and iv) the measures are strictly proportionate.<sup>2074</sup>
228. An arrest based exclusively on the act of participating in a protest or public demonstration does not meet the requirements of reasonableness and proportionality established by international standards. The deprivation of liberty during a demonstration has the immediate effect of preventing the detainee from exercising the right to protest and has a chilling effect on participation in public demonstrations, all of which affects the enjoyment and exercise of the right to social protest.
229. States should also refrain from conducting mass, collective, or indiscriminate arrests at public demonstrations. The Inter-American Court has ruled that, “a massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest.”<sup>2075</sup> These types of practices are incompatible with respect for fundamental rights, including presumption of innocence, existence of a court order for detention—except in situations of flagrancy.<sup>2076</sup>
230. The Commission also notes with concern the existence of cases in which lawyers have been attacked and arbitrarily detained for representing clients accused of or detained in the context of social protests. Principle 16 of the United Nations Basic Principles on the Role of Lawyers provides that “Governments shall ensure that lawyers (...) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.” Furthermore, Principle 18 states that “Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions,” and Principle 20 establishes that “Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.” For its part, the International Bar Association has affirmed that, “No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions or harassment by reason of his or her having legitimately advised or represented any client or client's cause.”<sup>2077</sup>
231. All detainees and their relatives also have the right to receive—and the State has an obligation to provide— accurate information regarding the reasons for detention and the place where detainees will be taken, in simple, non-technical language. This right, as the Inter-American Court has stressed, “is a mechanism to avoid illegal or arbitrary detentions, from the very moment when a person is deprived of his or her liberty. It also ensures the right to defense of the detainee.”<sup>2078</sup>

<sup>2072</sup> IACHR, Report No. 35/08, Case 12.019, Admissibility and Merits, Antonio Ferreira Braga, Brazil, July 18, 2008, para. 68.

<sup>2073</sup> United Nations Working Group on Arbitrary Detention. Opinions adopted by the Working Group on Arbitrary Detention at its 69<sup>th</sup> session (22 April - 1 May 2014), A/HRC/WGAD/2014/9, para. 24.

<sup>2074</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 166.

<sup>2075</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006, para. 93.

<sup>2076</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations, and Costs. Judgment of September 18, 2003, para. 137.

<sup>2077</sup> International Bar Association, IBA Standards for the Independence of the Legal Profession, 1990.

<sup>2078</sup> I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 82.

## **f) Intelligence**

232. A particularly serious aspect of the criminalization of protest is the State practice, reported in several countries in the region, of conducting espionage, monitoring, infiltration, and a variety of covert intelligence activities against demonstrators, public figures, leaders, lawyers, human rights defenders, organizations, and their media, and against social or political movements that participate in or organize public demonstrations or are linked in various ways—closely or not—to these events.
233. While the objective of the State’s intelligence activities is to provide its authorities with input for decision-making in areas such as national defense and crime policy, their orientation towards social leaders and organizations engaged in activities that are fundamental to democratic life seriously affects freedom of expression, as well as the rights to assembly, association, and political participation. These covert activities are usually disproportionate and excessive in relation to the legal interests to be protected or the effects to be prevented, and constitute a discriminatory practice against social movements for criticizing some aspect of public policy.
234. In its 2015 Report on the Criminalization of the Work of Human Rights Defenders, the Inter-American Commission noted that criminal cases are preceded on occasion by secret preliminary investigations. These investigations “may include intelligence activities or collecting intelligence reports by the army or police, prior to, as part of, or even in the absence of a criminal investigation against a human rights defender.”<sup>2079</sup> In fact, politically motivated cases of illegal espionage persist in the region. Victims include human rights defenders and organizations of various kinds, such as trade unions, social movements, and the media.
235. Illegal espionage practices pursue different objectives and may affect the rights of protesters in a number of ways, such as the presence of undercover agents in a specific situation such as protests and the activities leading up to them, as well as sustained infiltration and other espionage actions in political parties, or in a particular organization or movement over a period of time under a false identity. The Office of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has expressed its concern over “the use of embedded undercover police officers in groups that are non-violent and take peaceful direct action by exercising their right to freedom of peaceful assembly.”<sup>2080</sup>
236. These practices often include filming and/or photographing demonstrators, resulting in data registries on individuals or organizations. Their telephone conversations or their private communications through digital media may also be monitored. Cases in which these clandestine records are used to produce documents, files, and databases in intelligence, security, and justice institutions that stigmatize political parties, organizations, and social movements are particularly serious. This kind of information has even become part of judicial proceedings in cases that criminalize demonstrators and social leaders.
237. The Commission takes the view that the monitoring of the regular activities of political and social organizations and the recording and storage of information obtained by means of their infiltration is unlawful and contrary to inter-American standards, and violates the rights to freedom of assembly and association and political participation. What’s more, they constitute undue interference in a sphere of private life. Requiring that actions of this type be approved by court order allows for their external oversight.
238. The Commission has also considered on previous occasions that participation in security operations by plainclothes police or without their respective identification presents problems for the administrative and/or judicial review of possible irregularities and/or violations of rights. The lack of proper identification is an additional obstacle to the assignment of responsibility in contexts where reconstructing the events is complex in itself. The reconstruction of the facts and the value of audiovisual records and testimony as evidence is severely limited if it is not possible to identify the officers directly involved as State agents and with their personal identity.<sup>2081</sup>
239. The uniform and identification of security officers in a protest have a preventive function, since officers act with a higher expectation of accountability.

<sup>2079</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 59.

<sup>2080</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom (14-23 January 2013) A/HRC/23/39/Add.1, para. 24.

<sup>2081</sup> IACHR, *Annual Report 2015*, ch. 4A, para. 225.

**g) Stigmatization and criminalization in the speech of political leaders**

240. Often, the misuse of the criminal law is preceded by statements made by public officials in which human rights defenders are accused of committing crimes and there is no ongoing proceeding or judicial decision to confirm these allegations.<sup>2082</sup>
241. The Inter-American Commission has established that, based on the presumption of innocence, “States must refrain from public incrimination of a defender whose alleged crimes have not been legally proven. The governments should not tolerate any effort on the part of State authorities to cast in doubt the legitimacy of the work of human rights defenders and their organizations. The IACHR has indicated that public officials must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because of engaging in their work to promote and protect human rights.”<sup>2083</sup>
242. Given the State’s obligation to guarantee, respect, and promote human rights, it is the duty of public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored,<sup>2084</sup> which includes not harming or inhibiting the right to social protest. They must also make sure 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>2085</sup>
243. The Inter-American Court, in turn, has stated that “public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action.”<sup>2086</sup>
244. The Inter-American Court has stated that the demands of independence and impartiality also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings;<sup>2087</sup> “in the absence of these requirements, the State cannot subsequently exercise effectively and efficiently its authority to bring charges and the courts cannot conduct the judicial proceedings that this type of violation calls for.”<sup>2088</sup>

<sup>2082</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 6.

<sup>2083</sup> IACHR, “Second Report on the Situation of Human Rights Defenders in the Americas,” 2011. OEA/Ser.L/V/II. Doc.66, para. 124.

<sup>2084</sup> IACHR, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, OEA/Ser.L/V/IIIACHR/RELE/INF.2/09/, December 30, 2009, para. 203.

<sup>2085</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights 2013, Volume II, *Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/ser.L/V.II/Doc.50, December 31, 2013, para. 911.

<sup>2086</sup> I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

<sup>2087</sup> I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 133.

<sup>2088</sup> I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 133.

**CHAPTER V**

**OBLIGATION TO GUARANTEE RIGHTS**

## V. THE OBLIGATION TO GUARANTEE RIGHTS

245. The need to implement oversight and accountability mechanisms over the actions of State agents in protest contexts is derived from the general obligation to guarantee rights, established in Articles 1.1 of the American Convention; the right to due process of law, provided for in Article 8 of the ACHR and in Article XXVI of the American Declaration; and the right to access to justice for violations of fundamental rights, provided for in Article 25 of the American Convention on Human Rights, as well as in Article XVIII of the Declaration.
246. This obligation entails first and foremost the duty to investigate and punish any violation that occurs within the framework of a public demonstration. In these contexts, the absence of an exhaustive investigation when rights such as life and physical integrity have been violated has an intimidating effect that is particularly serious because of the impact it has on the exercise of the rights to assembly, freedom of expression, and association. Consequently, there is a compelling need for investigations to be carried out with due diligence and within a reasonable period of time.
247. Oversight mechanisms are also a democratic mode of security governance, which should create the real expectation of accountability and the assignment of various types of responsibility. By creating an expectation of accountability, the oversight tools make it possible to model the actions of the security forces on democratic standards consistent with international human rights law. In this respect, they play an important role among the positive measures aimed at ensuring the right to protest, since in addition to constituting a guarantee of non-repetition of violations of rights, they function as an instrument for public policy assessment and improvement. The State's obligation to supervise the performance of security forces in protest situations has different dimensions.
248. First, accountability creates responsibilities for governments. Executive branch officials should design operations in such a way that they can be monitored and responsibility can be assigned for decisions and actions taken, particularly in the event of violations of rights. *A posteriori*, they are responsible for promoting and supporting administrative investigations and cooperating with judicial investigations, facilitating access to all relevant documentation and information, such as regulations, internal protocols, and the identification of witnesses and evidence.
249. A second dimension has to do with the institutional design of the security system, whose rules and structures must function subject to administrative monitoring and investigation. To this end, it should have a disciplinary code defining infractions and punishing practices that violate rights, as well as an administrative procedure that provides the appropriate guarantees for victims and the public servants under investigation. There should be bodies and mechanisms for the filing and referral of complaints, both by members of the security forces and private individuals. With regard to the former, guarantees must be provided so that the public servants can comply with their obligation to report any violation of human rights, whether perpetrated by a member of the same security force or another.
250. A third dimension concerns the conditions for the design of police operations to allow day-to-day oversight and the development of effective judicial and administrative investigations and penalties. Some of the measures implemented in this regard are: detailed inventories of the weapons and ammunition assigned to personnel and their post-operational review; identification of those responsible for issuing orders for the use of force; keeping and maintaining records of wireless and all other means of communication used by personnel during operations.

### 1. The duty to investigate, prosecute, and punish

251. States have a duty to investigate violations committed within their jurisdiction in order to identify and, where appropriate, punish those responsible.<sup>2089</sup> The duty to investigate is one of the positive measures that the State has to comply with in order to guarantee the human rights recognized in the ACHR,<sup>2090</sup>

<sup>2089</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174.*

<sup>2090</sup> Cfr. I/A Court H.R., *Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 153. Case of Gonzalez Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 127.*

together with restoring the violated right, if possible, and, if appropriate, repairing the harm that the human rights violations caused to the victim.<sup>2091</sup>

252. The IACHR and the Inter-American Court have repeatedly established that States have a legal duty to prevent, in a reasonable manner, violations of human rights<sup>2092</sup> and to create the conditions for individuals to express their ideas without fear of reprisals or threats to their life or safety.<sup>2093</sup>
253. The consistent jurisprudence of the IACHR and the Inter-American Court has affirmed that the State's obligation to investigate human rights violations must be undertaken diligently in order to prevent impunity and the repetition of such acts,<sup>2094</sup> given that, as the Inter-American Court has held, "impunity encourages the repetition of human rights violations."<sup>2095</sup> It is also imperative that the State, when considering a possible human rights violation, prevent all officials involved, including police or judicial personnel, from also being in charge of or having any connection with the investigation against them.<sup>2096</sup>
254. It has been held repeatedly that, "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."<sup>2097</sup> "it is particularly important for the State to adopt measures to investigate the events that may have arisen during the social protest as a result of an abusive use of force by State agents, or else acts of aggression by third parties to the demonstration or among participants themselves, so as to punish those responsible and provide adequate recourse to anyone whose rights may have been violated."<sup>2098</sup>
255. The case law of the inter-American system establishes that, when a public servant in charge of using public force commits a human rights violation, his or her actions should be investigated before the ordinary courts, and an administrative or disciplinary investigation should be carried out to establish his or her responsibility. The disciplinary or administrative courts must determine the circumstances in which the public official committed a "disciplinary offense when the infraction relates directly and inseparably to a violation of international human rights law."<sup>2099</sup>

#### a) **Judicial investigation and penalties**

256. When acts of violence committed against people in a protest—whether they are covering the event as journalists or directly participating in it—go unpunished, this can lead to silence and self-censorship for future protesters.<sup>2100</sup>
257. The State's obligation to investigate means that, once its authorities have knowledge of the occurrence of human rights violations, they must initiate *ex officio* and without delay, an investigation that is serious, impartial, effective,<sup>2101</sup> prompt, exhaustive, and complete, within a reasonable period of time,<sup>2102</sup> by all

<sup>2091</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 214. *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

<sup>2092</sup> Cfr. **I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174.**

<sup>2093</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression. OEA/Ser.L/V/II, IACHR/RELE/INF. 2/09, December 30, 2009, para. 180.

<sup>2094</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216.

<sup>2095</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216. Cfr. I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 319.

<sup>2096</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 201(h); IACHR, Report on the Situation of Human Rights Defenders in the Americas, para. 68.

<sup>2097</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II, IACHR/RELE/INF. 12/13, December 31, 2013, para. 2.

<sup>2098</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. 149.

<sup>2099</sup> Cfr. 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. 207. **I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 374.**

<sup>2100</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30.

<sup>2101</sup> Cfr. *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 371.

<sup>2102</sup> Cfr. IACHR, Criminalization of the Work of Human Rights Defenders. OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 13. I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 20.



available legal means and aimed at the establishment of the truth and the prosecution, capture, trial, and eventual punishment of all perpetrators of the alleged acts,<sup>2103</sup> especially when State officials are or may be involved.<sup>2104</sup> The right to know the truth is a form of reparation<sup>2105</sup> and gives rise to an expectation on the part of the victims that the State must satisfy.<sup>2106</sup> In addition, the State has an obligation to bring criminal proceedings *ex officio* when prosecutable offenses are committed.<sup>2107</sup>

258. The Commission and the Inter-American Court have repeatedly stated that the duty to investigate is an obligation that “is an obligation of means and not of results, which must be assumed by the State as an inherent legal obligation and not as a mere formality preordained to be illusory or as a mere effort on the part of private individuals that depends upon the initiative of the victim or his family or upon their offer of proof.”<sup>2108</sup>
259. The State therefore has the duty to identify and, where appropriate, punish all persons responsible for the acts, including direct perpetrators, masterminds,<sup>2109</sup> participants, and accessories.<sup>2110</sup> The obligation to investigate remains, “whosoever the agent who may eventually be [deemed responsible for] the violation, even private individuals, because, if their acts are not investigated seriously, they would, to a certain extent, be aided by the public authorities, which would involve the international responsibility of the State.”<sup>2111</sup>
260. As part of the State's duty to direct the process of ascertaining human rights violations, it has an obligation to provide effective judicial remedies to victims of human rights violations, pursuant to Article 25 of the ACHR.<sup>2112</sup> These remedies must be litigated in accordance with the rules of due process<sup>2113</sup> established in Article 8.1 of the Convention. This obligation is part of the State's duty to ensure the protection of the “the free and full exercise of the rights recognized by the Convention for all people under their jurisdiction,”<sup>2114</sup> under Article 1.1 thereof.
261. The State must ensure “full access and capacity to act to the victims or their next of kin at all stages of the investigation and prosecution of those responsible, in accordance with domestic law and the provisions of the American Convention.”<sup>2115</sup>
262. Effective judicial protection requires judges to direct the proceedings in a way that avoids undue delays and hindrances that could result in impunity <sup>2116</sup> “thus thwarting the due judicial protection of human

<sup>2103</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216. I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177.

<sup>2104</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216. I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156.

<sup>2105</sup> Cfr. I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 167; I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 165.

<sup>2106</sup> Cfr. I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 167; I/A Court H.R., *Case of Castillo Páez v. Peru*. Merits. Judgment of November 3, 1997. Series C No. 34, para. 90.

<sup>2107</sup> Cfr. IACHR, Criminalization of the Work of Human Rights Defenders. OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 13; IACHR, Report No. 52/97, Case 11.218, Admissibility, Arges Sequeira Mangas, Nicaragua, February 18, 1998, para. 99; IACHR, Annual Report 1997, OEA/Ser.L/V/II.98, February 17, 1998, paras. 96-97.

<sup>2108</sup> IACHR, Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015, para. 145; IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 187.

<sup>2109</sup> Cfr. IACHR, Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015, para. 145; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110.

<sup>2110</sup> Cfr. I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 217.

<sup>2111</sup> I/A Court H.R., *Case of Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 98; I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177.

<sup>2112</sup> Cfr. IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 178; I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 154.

<sup>2113</sup> Cfr. I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 154; *Case of Lysias Fleury et al. v. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Series C No. 236, para. 105.

<sup>2114</sup> I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 154; Cfr. I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91.

<sup>2115</sup> I/A Court H.R., *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 559.

<sup>2116</sup> Cfr. I/A Court H.R., *Case of Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 99; I/A Court H.R., *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 93.

rights.”<sup>2117</sup> In this connection, “judges, as conductors of the proceedings, are obliged to direct and guide the judicial proceeding so as not to sacrifice justice and due process of law to formalism and impunity.”<sup>2118</sup>

263. As part of access to justice for victims of human rights violations—in addition to the duty to undertake an investigation with due diligence—the State has a duty to carry out an investigation to ascertain the truth about what happened and to punish the perpetrators within a reasonable period of time.<sup>2119</sup> Therefore, it has been held that the reasonableness of the time limit must be assessed in relation to the total duration of the proceedings until a final judgement is reached.<sup>2120</sup> The Inter-American Court has stated that “proceedings followed through up until their conclusion and that fulfill their purpose are the clearest sign of zero tolerance for human rights violations, contribute to the reparation of the victims, and show society that justice has been done.”<sup>2121</sup>
264. To ensure proper investigation, States have a duty to provide all relevant means to offer the necessary protection to justice authorities, investigators, witnesses, and the victims’ next of kin from harassment and threats aimed at obstructing the proceedings and preventing the establishment of the facts and the identity the perpetrators,<sup>2122</sup> “because, to the contrary, this would have an intimidating effect on those who could be witnesses, seriously impairing the effectiveness of the investigation.”<sup>2123</sup>
265. The results of the investigation must be publicly disclosed in order for society to know the truth of the facts.<sup>2124</sup> The authorities responsible for undertaking investigations into human rights violations must have the necessary and sufficient human and material resources,<sup>2125</sup> and it is crucial that an adequate institutional and regulatory framework is in place to investigate human rights violations.<sup>2126</sup>
266. When it comes to violations of the right to life due to the excessive use of force, the State has the duty to initiate—*ex officio* and immediately—an investigation aimed at finding all those responsible for the arbitrary deprivation of life, as well as to guarantee and protect the physical integrity and safety of persons participating in demonstrations.<sup>2127</sup>

<sup>2117</sup> I/A Court H.R., *Case of Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 99; I/A Court H.R., *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 93.

<sup>2118</sup> I/A Court H.R., *Case of Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 99; I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 115, y *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 93.

<sup>2119</sup> Cfr. I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 188; Cfr. *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 188. The concept of reasonable time is established in Article 8 of the ACHR and is closely linked to the effective, simple, and prompt remedy enshrined in Article 25. The jurisprudence of the Inter-American Commission and Court has established four aspects to examine compliance with reasonableness: the complexity of the matter; the conduct of the authorities; the procedural activity of the interested party; and the impact on the legal situation of the person involved in the process.

<sup>2120</sup> Cfr. I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 188; *Case of García Lucero et al. v. Chile*. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 121.

<sup>2121</sup> I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 153; Cfr. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of January 27, 2009, para. 21.

<sup>2122</sup> Cfr. I/A Court H.R., *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 376; Cfr. *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 199.

<sup>2123</sup> I/A Court H.R., *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 376; Cfr. I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 106.

<sup>2124</sup> I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 258.

<sup>2125</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II, IACHR/RELE/INF. 12/13, December 31, 2013, para. 175.

<sup>2126</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II, IACHR/RELE/INF. 12/13, December 31, 2013, para. 175.

<sup>2127</sup> *Inter alia*, IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela, Press Release No. 073/16, June 9, 2016; IACHR Expresses Concern Regarding Restrictions in the Exercise of Fundamental Rights in Venezuela, Press Release No. 132/16, September 14, 2016; IACHR Laments the Death of a Student during Protests in Venezuela, Press Release No. 022/15, March 3, 2015; IACHR Condemns Violence in Oaxaca, Mexico, Press Release No. 083/16, June 22, 2016; IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela, Press Release No. 17/14, February 21, 2014.

267. The investigation of violations of life or integrity committed in the context of protests must be carried out with the strictest adherence to due diligence and must be completed within a reasonable period of time, given the seriousness of the crimes and the nature of the rights violated in connection with freedom of expression,<sup>2128</sup> association, and assembly. The failure to properly investigate sends a clear message of intimidation and inhibition<sup>2129</sup> to those who wish to exercise the right to social protest in the future.
268. In its Report on Citizen Security and Human Rights, the IACHR recommended three specific measures to States in relation to investigating perpetrators of crimes against life.<sup>2130</sup> In addition, the Inter-American Commission and the Court have established some necessary guidelines to follow in death investigations. Cases of deaths in social protests should endeavor: “a) to identify the victim; b) to gather and preserve evidence pertaining to the death so as to aid in the possible criminal investigation of the perpetrators; c) to identify potential witness and obtain their statements regarding the death under investigation; d) to determine the cause, manner, place and time of death, as well as any pattern or practice that might have caused the death.”<sup>2131</sup>
269. In addition to the duty to have full knowledge of the scene and the material circumstances of the crime, it is essential to “to analyze the awareness of the power structures that allowed, designed and executed it, both intellectually and directly.”<sup>2132</sup> There is also a duty to examine all the individuals who took part in the said violations in different ways, together with their respective responsibilities.<sup>2133</sup> In this way, the crime is placed within a context that provides the necessary elements to understand the complexity of the event,<sup>2134</sup> such as a death that occurred during a social protest.
270. In addition, whenever a person has failed to return from a protest and there are reasonable grounds to suspect that an individual has been subjected to forced disappearance,<sup>2135</sup> it is essential that the prosecution and judicial authorities take prompt and immediate action, ordering timely and necessary measures to determine the whereabouts of the missing person.<sup>2136</sup> Any State authority, public official, or private individual who has received information of acts aimed at the forced disappearance of persons, must report it immediately.<sup>2137</sup>
271. In cases of excessive use of police force resulting in injuries to persons participating in social protests, the State must initiate, *ex officio* and immediately, an impartial, independent and meticulous investigation that allows the nature and origin of the injuries observed to be determined, those responsible to be identified, and their prosecution to commence.<sup>2138</sup> Similarly, where a person arrested at a demonstration alleges that he or she has been tortured or subjected to cruel, inhuman, or degrading treatment, the State must provide a satisfactory and convincing explanation,<sup>2139</sup> backed by appropriate evidence.<sup>2140</sup> There is a

<sup>2128</sup> Cfr. IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 203

<sup>2129</sup> Cfr. IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 203

<sup>2130</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, Specific recommendation No. 12.

<sup>2131</sup> IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 204; IACHR Report No. 25/09, Case 12.310 Merits, Sebastião Camargo Filho, Brazil, March 19, 2009, paras. 111-112; Cfr. United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/12 (1991).

<sup>2132</sup> I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 119.

<sup>2133</sup> Cfr. I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 119; I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 219.

<sup>2134</sup> Cfr. I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 119.

<sup>2135</sup> Cfr. I/A Court H.R., *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 241; I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 65.

<sup>2136</sup> Cfr. I/A Court H.R., *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 241; I/A Court H.R., *Case of Gonzalez Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 218.

<sup>2137</sup> Cfr. I/A Court H.R., *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 241; Cfr. *Case of Anzualdo Castro v. Peru*, para. 65; *Case of the Río Negro Massacres v. Guatemala*, para. 223.

<sup>2138</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 130.

<sup>2139</sup> I/A Court H.R., *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 177; Cfr. I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, paras. 99-100.

<sup>2140</sup> Cfr. I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 111; I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 343.

presumption “that the State is responsible for ill-treatment exhibited by a person who has been in the custody of State agents,”<sup>2141</sup> and it is up to the State to prove otherwise.

272. In cases where it is suspected that a State agent has perpetrated gender-based or sexual violence against a person in the context of a demonstration, the investigation must comply with a number of provisions in order to identify, prosecute, and punish those responsible. Such an investigation must: “i) document and coordinate the investigation procedures and process the evidence diligently, taking sufficient specimens, performing tests to determine the possible perpetrator of the act, preserving other evidence such as the victim’s clothes, inspecting the scene of the incident immediately, and ensuring the proper chain of custody; ii) provide free legal assistance to the victim during all stages of the proceedings, and iii) provide both emergency and, if necessary, continuing medical, prophylactic and psychological care to the victim, using a treatment protocol aimed at lessening the consequences of the offense.”<sup>2142</sup> In cases of alleged acts of violence against women, the criminal investigation should include a gender perspective and be conducted by officials with experience in similar cases and in providing attention to victims of discrimination and gender-based violence.<sup>2143</sup>
273. The duty to investigate and punish also covers unlawful and arbitrary arrests. The Inter-American Court has established that any improper action on the part of State agents in their interaction with the persons they must protect, “represents one of the main threats to the right to personal liberty, which, when violated, generates a risk of violation to other rights, such as humane treatment and, in some cases, life.”<sup>2144</sup> When the person is detained illegally or arbitrarily, he or she is in a state of total helplessness, which can lead to the violation of other rights, such as the right to be treated with dignity.<sup>2145</sup>
274. The IACHR has expressed its deep concern about the numerous mass arrests of people in social protests. It has demanded that the right to humane treatment be respected and that, in the event that the arrests were not carried out in keeping with inter-American standards, a diligent investigation be undertaken within a reasonable period of time in order to avoid impunity, thereby encouraging this practice in future protests and mass demonstrations.<sup>2146</sup> Specifically in cases of mass arrests at protests, States should seek to determine who was responsible for the decision to authorize multiple police officers to make a number of simultaneous arrests.

## **b) Administrative investigation and penalties**

275. The Inter-American Court has stated that disciplinary justice proceedings “can be assessed to the extent that [they contribute] to clarifying the facts and that [their] decisions are relevant as regards the symbolic value of the message of censure that this type of sanction can signify for public officials and members of the armed forces.”<sup>2147</sup> While a disciplinary investigation may complement a criminal investigation, it does

<sup>2141</sup> Cfr. I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 95 & 170; I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 343.

<sup>2142</sup> I/A Court H.R., *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 242; Cfr. 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, para. 194.

<sup>2143</sup> I/A Court H.R., *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 242; I/A Court H.R., *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 188.

<sup>2144</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 87.

<sup>2145</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 127; Cfr., I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 96; I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 90.

<sup>2146</sup> IACHR Annual Report 2015. Chapter IV A – Use of Force, para. 123; “IACHR Expresses Concern Regarding Restrictions in the Exercise of Fundamental Rights in Venezuela,” Press Release No. 132/16, September 14, 2016. “IACHR Condemns Violence in Oaxaca, Mexico,” Press Release No. 083/16, June 22, 2016. “IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela,” Press Release No. 17/14, February 21, 2014. Joint Declaration of 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 OAS Inter-American Commission on Human Rights, “Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests,” September 13, 2013.

<sup>2147</sup> I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 133; Cfr. I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 215.

not replace it in cases of human rights violations;<sup>2148</sup> rather, it serves as an additional accountability mechanism.<sup>2149</sup>

276. In its Report on Citizen Security and Human Rights, this Commission recommended that States put in place internal control mechanisms that complement external oversight bodies, whether political or parliamentary, judicial or quasi-judicial,<sup>2150</sup> to ensure that all responsible authorities are held accountable. The IACHR recently stated that these mechanisms are “autonomous mechanisms for states to supervise their officials’ discharge of the public duties assigned to them.”<sup>2151</sup>
277. The Inter-American Court has stressed the importance of disciplinary proceedings as a means of overseeing the actions of public officials.<sup>2152</sup> As such, administrative penalties play “an important role in creating the appropriate type of capability and institutional culture deal with” highly complex situations of violence.<sup>2153</sup> Allowing those responsible for serious offenses to remain in office or hold positions of authority can create a climate of impunity, and “conditions that allow the factors that produce the context of violence to persist or deteriorate.”<sup>2154</sup> Internal control mechanisms to monitor the performance of the police force “may result in a change or cessation of the function of the agents involved in the violation of a human right, [and therefore are in the] public interest.”<sup>2155</sup> Along these same lines, the Inter-American Court has in various cases ordered States to conduct administrative or disciplinary investigations in addition to criminal investigations in the regular justice system.<sup>2156</sup> The obligations of oversight and accountability should also be included in the design of police operations.
278. The rules and structures of security agencies and bodies must lend themselves to administrative oversight and investigation. First, security institutions must have a disciplinary code that defines infractions and punishes practices that violate rights. There should also be bodies and mechanisms for the filing and referral of complaints, both by members of the security forces and private individuals.
279. For an administrative or disciplinary investigation to be effective, the persons in charge of it must be independent both hierarchically and institutionally from the persons and agencies involved in the facts under investigation.<sup>2157</sup> The latter should not participate in the investigation of the case.<sup>2158</sup> Victims should be able to participate, if they so wish, in cases where their rights under the Convention have been violated.<sup>2159</sup>
280. The IACHR has noted that, “In some countries, [administrative and disciplinary accountability mechanisms] are exclusively employed to investigate disciplinary matters and are not considered a remedy for inadequate policing. In such jurisdictions, victims are excluded from the proceedings on the grounds that their interests are irrelevant to the institutional interests of the police force. The Commission considers that even in those cases States must ensure the participation of the victims

<sup>2148</sup> IACHR, Annual Report 2015, Chapter IV. A, The Use of Force, para. 228; Cfr. I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 133; Cfr. I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 203.

<sup>2149</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163; IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68.

<sup>2150</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 132.

<sup>2151</sup> IACHR, Annual Report 2015, Chapter IV. A, The Use of Force, para. 228.

<sup>2152</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. 206; I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205*, para. 373.

<sup>2153</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 377.

<sup>2154</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 377.

<sup>2155</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163.

<sup>2156</sup> I/A Court H.R., *Case of Herrera Espinoza et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2016. Series C No. 316, para. 225; I/A Court H.R., *Case of Tenorio Roca et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314, para. 275; Cfr. I/A Court H.R., *Case of Uzcátegui et al. v. Venezuela*. Merits and reparations. Judgment of September 3, 2012. Series C No. 249, para. 250; Cfr. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 233(d).

<sup>2157</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163; Cfr. *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 95.

<sup>2158</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163

<sup>2159</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163; IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68.

whenever these proceedings involve accountability for abuse of force, arbitrary detentions or other conduct that may compromise the enjoyment of the rights protected in the American Convention.”<sup>2160</sup>

281. In order for the State’s obligation to investigate to be regarded as consistent with the American Convention, it must be carried out with due diligence,<sup>2161</sup> which entails the obligation of the fact-finding body to perform all actions and investigations necessary to achieve the result sought.<sup>2162</sup> This duty includes all State institutions, both judicial and non-judicial.<sup>2163</sup> In this connection, due diligence also extends to non-judicial bodies whose purview includes pretrial investigations to determine whether there is sufficient evidence to bring criminal proceedings.<sup>2164</sup> In the absence of these requirements, “the State cannot subsequently exercise effectively and efficiently its authority to bring charges and the courts cannot conduct the judicial proceedings that this type of violation calls for.”<sup>2165</sup>
282. This Commission considers that police institutions should require all members of the security forces to report and cooperate with the investigation of any human rights violations committed in the context of a protest of that comes to their attention.<sup>2166</sup> Otherwise, a culture of impunity and secrecy among officials is created. Guarantees must be provided so that officials can comply with their duty to report, whether it is an act perpetrated by a member of the same force or another.
283. Faster and stricter mechanisms for the triggering of disciplinary and administrative proceedings must be in place for cases involving the use of lethal weapons. The IACHR recommended in its Report on Citizen Security and Human Rights that, in relation to the use of lethal force by State agents, States should “establish independent internal and external control systems to give effect to the State’s obligation to investigate any cases in which law enforcement uses lethal means and methods.”<sup>2167</sup>
284. It similarly recommended that they “create the internal and external systems and procedures that will allow for an independent investigation of facts that may constitute torture or cruel, inhuman or degrading treatment or punishment.”<sup>2168</sup> In cases of detention in connection with protests, the effective investigation of alleged or suspected assaults is essential to prevent torture and other cruel, inhuman, or degrading treatment,<sup>2169</sup> most of which occurs when the victims are in the custody of the State. The authorities should diligently investigate any case in which an act of torture is alleged to have been committed, securing any evidence.<sup>2170</sup> This includes the right to medical review and access to operational records and video footage. In particular, the State must guarantee the independence of the medical and health personnel responsible for examining and treating injured persons arrested during protests, so that they can freely perform the relevant medical evaluations.<sup>2171</sup>
285. The disciplinary codes must also respect the concept established by the IACHR that the “officials responsible for the use of force may not allege that they obeyed orders from superiors if they were aware that the order to use force—resulting in the death of a person or serious injuries to a person—was manifestly illicit and they had a reasonable chance to refuse to obey it.”<sup>2172</sup>

<sup>2160</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68; IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163.

<sup>2161</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 217.

<sup>2162</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 217; Cfr. *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 83.

<sup>2163</sup> Cfr. IACHR, Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015, para. 145; I/A Court H.R., *Case of Castillo González et al. v. Venezuela*. Merits. Judgment of November 27, 2012. Series C No. 256, para. 110.

<sup>2164</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 217.

<sup>2165</sup> *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para.133.

<sup>2166</sup> In reference to acts of torture, see: IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, General recommendation No. 14.b.vi.

<sup>2167</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, General recommendation 13(d).

<sup>2168</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, General recommendation 14(b)(iii).

<sup>2169</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 130.

<sup>2170</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 130.

<sup>2171</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 130; I/A Court H.R., *Case of Bayarri v. Argentina*. Judgment of October 30, 2008. Series C No. 187, para. 92.

<sup>2172</sup> IACHR, Annual Report 2015, Chapter IV. A, The Use of Force, para. 233; Basic Principles on the Use of Force, Principle No. 26.

## 2. Response from the authorities

286. The political actors who are ultimately responsible for ensuring that a demonstration takes place without violence on the part of security forces must also respond when demonstrators' rights are not respected, when security forces exceed the limits on the use of force, or when demonstrators are attacked by third parties.
287. Political leaders should refrain from expressing notions that detract from or stigmatize a protest or the people who participate in or organize it, as it may place certain sectors of the population in a situation of greater vulnerability and risk of further attacks.<sup>2173</sup> The same is true when the authorities minimize the seriousness of violations committed during social protests or find that there is no State responsibility for violations committed against demonstrators as a result of the acts or omissions of State agents whose duty is to protect.
288. Along these same lines, the Office of the Special Rapporteur for Freedom of Expression has stated that it is essential that the authorities vigorously condemn attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate such events and punish those responsible,<sup>2174</sup> including when political authorities express ideas that jeopardize or stigmatize the work of journalists.<sup>2175</sup> "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>2176</sup>

## 3. Monitoring and observation of protests

289. Offices of the people's ombudsperson, public defender services, offices for the defense of indigenous and peasant rights, and other state agencies specialized in the promotion and defense of rights also play an important role in protecting demonstrators, building channels for dialogue, and monitoring and supervising the actions of other public servants.
290. Organizations should be able to lodge complaints about crimes committed during social protests, even when close relatives are unwilling or unable to do so, and to intervene in criminal proceedings.<sup>2177</sup> As a civil party or non-party intervenor in the criminal case, they can present evidence, propose lines of investigation, refute theories and, in general and depending on each legal system, be actively involved in the prosecution and punishment of those responsible for human rights violations.
291. Civil society organizations play a vital role in documenting and compiling statistics and information on various acts of violence against journalists.<sup>2178</sup> They are also instrumental in monitoring the measures

<sup>2173</sup> The IACHR has expressed the same view with regard to journalists and media workers. See, e.g., "IACHR Expresses Deep Concern over Acts of Violence in Venezuela and Urges the State to Ensure Democratic Citizen Security," Press Release No. 13/14, February 14, 2014.

<sup>2174</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 37; IACHR. Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: Mexico: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 713.

<sup>2175</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, paras. 37-44.

<sup>2176</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 39. IACHR. Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013, paras. 198-215.

<sup>2177</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 225.

<sup>2178</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, paras. 256 & 257.

taken by States with regard to their duties to prevent crimes against journalists, protect journalists, investigate these crimes, and punish those responsible.<sup>2179</sup>

292. The media themselves play a fundamental role in the accountability process regarding acts of violence committed during social protests. They do this by condemning attacks, following up on the facts, and monitoring the status of investigations into human rights violations as a means of exerting pressure to combat impunity.<sup>2180</sup>
293. Although the State should generally refrain from using force in public demonstrations, it should formulate specific policies to prevent, investigate, and punish violence against journalists, media workers, activists, social movements, representatives, and social leaders in the context of protests, based on the role these stakeholders have played in the prevention, monitoring, and oversight of State action.
294. The media themselves play a fundamental role in the accountability process regarding acts of violence committed during social protests. They do this by condemning attacks, following up on the facts, and monitoring the status of investigations into human rights violations as a means of exerting pressure to combat impunity.<sup>2181</sup>
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<sup>2179</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 284.

<sup>2180</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 278.

<sup>2181</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 278.



**CHAPTER VI**  
**PROTESTS AND THE INTERNET**

## VI. PROTESTS AND THE INTERNET

296. The Internet is now a fundamental communication tool that enables people to link up and connect in an adaptable, fast, and effective manner, and is considered a tool with unique potential for the exercise of freedom of expression. Among the new powers enabled by the Internet are the ability to associate and assemble that people have acquired in the digital age, which in turn enhances the full realization and enjoyment of other civil, political, economic, social, and cultural rights. Meetings and associations in the digital age can be organized and held without prior notice, on short notice, and at low cost. The Internet is also now a fundamental tool for monitoring and reporting human rights violations during demonstrations and meetings.
297. The Internet can be seen and analyzed as a means of organization or as an enabling platform for protests.<sup>2182</sup> In practice, it works as a means of disseminating, convening, and publicizing meetings and physical gatherings (using social networks, blogs, or forums, for instance) to be carried out in a tangible public place, expanding the boundaries of participation. The Internet also offers the possibility of organizing an online protest, providing a common meeting space, shortening distances and times, and simplifying formalities and agendas.<sup>428</sup> Both settings must be protected and promoted to the extent that they contribute to the full exercise of human rights.<sup>2183</sup>
298. The international standards developed within the inter-American system and the universal system on the rights to freedom of expression, association, and peaceful assembly are fully applicable to the Internet.<sup>2184</sup>
299. In recent years there have been various instances of protest on the Internet that include email chains, petitions, demonstrations, and campaigns developed on social networks, etc. In the same way that States must ensure access to public spaces—such as streets, roads, and public squares—for the holding of gatherings, they must also ensure that the Internet is available and accessible to all citizens in order to provide a space for the organization of associations and assemblies for purposes of taking part in the political life of the country.<sup>2185</sup>
300. Limitations on access to the Internet before or after peaceful gatherings, including total or partial disconnections, the slowdown of Internet service, and the temporary or permanent blocking of different sites and applications, constitute unlawful restrictions on the rights of association and assembly.<sup>2186</sup> The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stressed the need to ensure access to the Internet at all times, including during periods of political unrest.<sup>2187</sup>

<sup>2182</sup> Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, 24 April 2013, A/HRC/23/39. Association for Progressive Communication (APC), *The Rights to Freedom of Peaceful Assembly and Association and the Internet*, Submission to the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, para. 14. Instituto Nacional de Derechos Humanos (INDH), *Internet y Derechos Humanos*, Serie de Cuadernillos de Temas Emergentes [National Human Rights Institute, *Internet and Human Rights*, Emerging Topics Booklet Series] (December 2013), p. 29.. [“The Internet’s importance lies in its ability “to increase the opportunities and capabilities of the general public and net citizens to form associations, improve the management and organization of associations, and expand the membership and reach of associations.”]

<sup>428</sup> Instituto Nacional de Derechos Humanos (INDH), *Internet y Derechos Humanos*, Serie de Cuadernillos de Temas Emergentes [National Human Rights Institute, *Internet and Human Rights*, Emerging Topics Booklet Series] (December 2013), p. 29.

<sup>429</sup> United Nations, Human Rights Council, Resolution 24/5, *The rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/RES/24/5 (8 October 2013). See also: United Nations, Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, UN Doc. A/HRC/20/27 (21 May 2012), para. 84, recommendation k.

<sup>430</sup> United Nations, Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, UN Doc. A/HRC/23/39 (24 April 2013), para. 82(d).

<sup>431</sup> United Nations, Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, UN Doc. A/HRC/20/27 (21 May 2012).

<sup>2187</sup> United Nations, Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, UN Doc. A/HRC/17/27 (16 May 2011), para. 79.

<sup>433</sup> United Nations, Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, UN Doc. A/HRC/23/39 (24 April 2013).

<sup>434</sup> United Nations, Human Rights Council, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, UN Doc. A/HRC/23/39 (24 April 2013).

301. In no case can mere participation in protests, or in their announcement or organization, justify the violation of the right to privacy with respect to private communications made by a person, whether in writing, by voice or images, and regardless of the platform used. The right to privacy encompasses not only individual communications, but also communications that take place in closed groups to which only members have access.
302. There have been reports in the region of police and military officers infiltrating social networks or using false identities in order to obtain information about social movements and the organization of demonstrations and protests. Such a practice may be considered a serious violation of the rights of assembly and freedom of association, and even of the right to privacy. Under no circumstances are online intelligence actions allowed to monitor people who organize or take part in social protests.
303. States should permit and encourage the open and free use of the Internet, as well as all other forms of communication, and exceptions to such access must be clearly established in law and satisfy the three-part test established in the inter-American system. The laws regulating so-called "cybercrime" must be clearly and specifically drafted to ensure the principle of legality, have a legitimate purpose, be necessary in a democratic society, and be proportionate; under no circumstances can they be used to prohibit, obstruct, or hinder a peaceful assembly, demonstration, or protest.<sup>2188</sup>
304. The guarantee of privacy and anonymity are also part of the rights of association and assembly.<sup>2189</sup> Without prejudice to the foregoing, it does not cover all types of expressions or associations. On the contrary, "*the anonymity of the sender would in no way protect anyone who disseminates child pornography, war propaganda, or hate speech that constitutes incitement to violence or publicly and directly incites genocide.*"<sup>2190</sup> States should guarantee the full protection of anonymous speech and regulate specific cases and conditions when such anonymity must be lifted. This requires sufficient judicial oversight and the full application of the principle of proportionality with respect to measures aimed at identifying the person in question.

<sup>435</sup> IACHR, *Freedom of Expression and the Internet*, Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II. CIDH/RELE/INF.11/13 (December 31, 2013).

<sup>436</sup> IACHR, *Freedom of Expression and the Internet*, Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II. CIDH/RELE/INF.11/13 (December 31, 2013).

**CHAPTER VII**  
**ACCESS TO INFORMATION**

## VII. ACCESS TO INFORMATION

305. Social protest is an essentially public event and constitutes the exercise of the rights to freedom of expression and political participation, among other things. This results in broad criteria for access to information and the subsequent obligation of the State to produce information and records. Broad access to information is not only related to accountability and the way in which the State facilitates protest, but is also crucial to helping channel, display, and disseminate the speech and actions of demonstrators.
306. Recording information and ensuring access to it are fundamental both for guaranteeing the right to protest and for preventing violations of fundamental rights such as life, physical integrity, and freedom, as well as for purposes of accountability. The production of, and access to, information in connection with social protest is an essential component of positioning the exercise of the right to protest and demonstrate as a core activity of political participation and democratic coexistence.
307. Access to information applies to both pre-protest matters and other matters arising during the protest, as well as subsequent requests for information. This information has several dimensions, some of which are discussed in this section, but the list is not intended to be exhaustive.
308. First and foremost, and as a general principle, the State must guarantee and facilitate the right of all persons “to observe, and by extension monitor, assemblies. (...) The concept of monitoring encapsulates not only the act of observing an assembly, but also the active collection, verification and immediate use of information to address human rights problems.”<sup>2191</sup>
309. This duty of the State has special characteristics when it comes to “to protect the rights of assembly monitors. This includes respecting and facilitating the right to observe and monitor all aspects of an assembly, subject to the narrow permissible restrictions outlined in article 19(3) of the International Covenant on Civil and Political Rights,”<sup>2192</sup> and States should “fully investigate any human rights violation or abuse against monitors, and should pursue prosecution and provide adequate remedy. The protections afforded to monitors apply irrespective of whether an assembly is peaceful.”<sup>2193</sup>
310. The right to access information includes the right to “to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent — sometimes referred to as the right to ‘record back.’ The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.”<sup>2194</sup>
311. The State also has the duty to document and record the actions of its agents, in order to allow for the review and improvement of their actions, as indicated in the previous chapter. The accessibility and conservation of these records also facilitate the necessary oversight of any reported irregularities.

All regulations governing social protest must be accessible and published. These regulations include not only laws, decrees, and ordinances, but also general protocols, procedural manuals, and specific orders on how to conduct operations.<sup>2195</sup> The knowledge and disclosure of these protocols and ethical norms reduce the arbitrary margins of decisions and actions of State agents in relation to social protests. The knowledge and dissemination of these rules and orders is essential not only to guide police operations

<sup>2191</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 68.

<sup>2192</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 70.

<sup>2193</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 70.

<sup>2194</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 71.

<sup>2195</sup> European Code of Police Ethics. Recommendation Rec(2001)10 of the Committee of Ministers to member states. on the European Code of Police Ethics. II 4) “Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public and clear.”

312. but also to allow monitoring and control by civil society organizations, journalists, and oversight institutions.
313. The open disclosure of these regulations is necessary for democratic institutions and civil society to monitor whether these orders are consistent with the constitutional and human rights principles referred to in this report. There is a need to develop and publish manuals for equipment training and use—both deterrent and defensive—as well as to make available the respective training plans prepared by the responsible officials.
314. It is the duty of the State to keep a detailed record of assigned weapons and ammunition. It is essential to establish procedures and forms of supervision so that, in the context of demonstrations, only authorized officials are assigned the weapons permitted for potential use. This is done by individually assigning weapons and ammunition, as well as identifying the officers responsible for supervising and documenting proper and effective compliance with these provisions. Detailed inventories of weapons and ammunition, as well as their proper storage, are basic conditions for appropriately maintaining these records on the allocation of material, weapons, and ammunition in the context of social protests.<sup>2196</sup>
315. Records should also include communications equipment and its assignment. These records and access to them are essential elements for the reconstruction and clarification of events and those responsible for them. The Commission has previously stated that in the context of protests the State should implement “a communications records system to monitor operational orders, those responsible for them, and those carrying them out.”<sup>2197</sup> This obligation includes preserving these records for any further investigation and prohibiting communication between officials by means that are not capable of being recorded.
316. The Commission has also noted the need for “the identification of political officials responsible for law enforcement operations during marches, particularly in the case of scheduled marches or prolonged social conflicts or circumstances in which potential risks to the rights of the demonstrators or others are anticipated, so that such officials are tasked with supervising the field operation and ensuring strict compliance with norms governing the use of force and police conduct.”<sup>2198</sup> In addition, there should be a record of the instructions given by these officials. This measure is fundamental for establishing an appropriate line of responsibility for State action.
317. It is also important that the operational planning instructions identify the senior command officers responsible for the operation and the participating units. The main orders and instructions given during the operation must also be recorded and substantiated. Protocols should clearly set out the levels of responsibility for different orders.<sup>2199</sup>
318. The names and positions of the judicial and supervisory authorities involved in or with jurisdiction over the matter should be made public. Police officers being investigated for irregularities in operations carried out in the context of social protests may not participate in security operations during demonstrations until their respective administrative or criminal responsibilities are ascertained. The State should take steps to document and allow monitoring of compliance with this provision.
319. Where permitted by law, any measure of cooperation or technical or financial support that private companies provide to security institutions must be documented and publicly accessible, in order to supervise and avoid conflicts, as well as to establish any potential civil or criminal liability of the private actor.
320. Beyond the regulations and information to be published, access to the documents of public authorities—including police forces—should only be restricted where there is a compelling reason for withholding

<sup>2196</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 11; IACHR, Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II.Doc. 34, June 28, 2007 Chapter I, Introduction, para. 45 b).

<sup>2197</sup> IACHR, Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II.Doc. 34, June 28, 2007 Chapter I, Introduction, para. 45 c); See also: IACHR. Report on the Situation of Human Rights Defenders in the Americas, para. 68.

<sup>2198</sup> IACHR, Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II.Doc. 34, June 28, 2007 Chapter I, Introduction, para. 45 f). See also: IACHR. Report on the Situation of Human Rights Defenders in the Americas, para. 68.

<sup>2199</sup> The Human Rights Handbook on Policing Assemblies, OSCE/ODIHR 2016, p. 103, states, “When a decision is made to use force to disperse a violent assembly, the authorization must come from the operational commander. The decision must be fully documented, giving a full rationale for the options chosen.”

information, which is established by law and which overrides the public interest in having access to information.<sup>2200</sup> Such restrictions should not jeopardize the enjoyment of a right and restrictions should not be used to conceal human rights violations or to promote any other improper purpose.<sup>2201</sup>

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<sup>2200</sup> United Nations Human Rights Committee, General Comment No. 34 (2011) on Freedoms of opinion and expression, para. 18; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, 4 February 2016, para. 81; Joint Declaration by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur for Freedom of Expression (December 6, 2004).

<sup>2201</sup> See: OSJI Guidelines.

**CHAPTER VIII**  
**STATES OF EMERGENCY**



## VIII. STATES OF EMERGENCY

321. The Inter-American Commission has documented that the dispersal and repression of social protest often occurs under states of emergency that include the suspension of fundamental guarantees. Faced with manifestations of social unrest or internal conflict, States tend to resort to the suspension of guarantees in order to authorize the deployment of military forces to quickly repress the threat to order.
322. The inter-American human rights system has taken particular care to set out the strict conditions under which the temporary suspension of some of the rights and guarantees enshrined in international treaties may be admissible. The legal framework governing states of emergency in the inter-American human rights system is contained in Article 27 of the Convention.<sup>2202</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>2203</sup> and the International Covenant on Civil and Political Rights<sup>2204</sup> provide standards similar to those of the ACHR.<sup>2205</sup>
323. In Advisory Opinion No. 8, the Inter-American Court addressed the requirements set out in Article 27 of the ACHR, and it established some general guidelines for the imposition of states of emergency: 1) the emergency must be invoked in order to preserve democracy; and 2) the need for declaring a state of emergency must be objectively justifiable.<sup>2206</sup>
324. Similarly, this Commission has maintained that states of emergency should be reserved exclusively for truly exceptional cases—extremely serious situations—that endanger the life of the nation. In all other situations, routine administrative measures should be taken.<sup>2207</sup>
325. In the region, the suspension of guarantees has been ordered in various cases that severely limited public demonstrations and the rights of its participants, based on emergency grounds that do not conform to inter-American standards. Some States tend to declare a state of emergency in the jurisdictions or areas in which demonstrations take place, allowing for the suspension of rights, changes in the way rights are guaranteed, or the intervention of the armed forces under their domestic law.

<sup>2202</sup> ACHR, Article 27: “1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.”

<sup>2203</sup> Article 15 of the European Convention provides: 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision. 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

<sup>2204</sup> Article 4 of the International Covenant on Civil and Political Rights states: 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

<sup>2205</sup> Although the American Declaration of the Rights and Duties of Man does not explicitly provide for the possibility of restricting or suspending the rights it prescribes, the IACHR has considered that the criteria for suspension derived from the American Convention and the general principles of law are duly considered and applied in the context of the Declaration. Cfr. IACHR, *Towards the Closure of Guantánamo*, OEA/Ser.L/V/II. Doc. 20/15, June 3, 2015, para. 91.

<sup>2206</sup> Cfr. IACHR, Report No. 48/00, Case 11.166, *Walter Humberto Vásquez Vejarano – Peru*, April 13, 2000, para. 24.

<sup>2207</sup> Cfr. IACHR, *Second Report on the Situation of Human Rights in Colombia 1993*. Recommendation 2; See also: IACHR, *Annual Report 2015*, Chapter IV. B Venezuela, para. 66.

326. This Commission considers that public protests and demonstrations, as legitimate and protected forms of the exercise of various rights and a fundamental instrument of democratic coexistence—even when they express social unrest—cannot be used as a justification for declaring states of emergency or for suspending rights in other ways. Many of the nuisances caused by these events are inherent to the exercise of the rights involved in protest, and any violent events that may occur in the context of demonstrations should be prevented, investigated, and punished as they normally would, without the need to resort to the suspension of rights.
327. Controlling disturbances that may be produced internally by social protest demonstrations is up to the police, whose function is geared toward public security and not the security of the State.<sup>2208</sup> The declaration of states of emergency should not be used to circumvent the domestic proscription against using the armed forces in the context of demonstrations.<sup>2209</sup>
328. The Commission has emphasized just how inadequate and dangerous it can be to decree a state of emergency to address tense social conflicts or to fight crime in view of the numerous human rights violations that consistently occur as a result, and considering that these are not sustainable or effective responses for taking on and resolving such challenges.<sup>2210</sup>
329. Although the rights of assembly and association are among those that can be suspended under the states of emergency authorized by the Convention<sup>2211</sup> if the conditions accepted by international law for the temporary suspension of certain rights are met, this does not mean the automatic and/or unlimited interruption of protests and public demonstrations. Even in this context, States must respect the restrictions that accompany the exceptional suspension of rights, including: the strict protection of rights that cannot be suspended, as well as the necessity, proportionality, and limited duration of each temporary impairment of rights that can be suspended.<sup>2212</sup>

<sup>2208</sup> Cfr. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011. Inter-American Commission on Human Rights, para. 148.

<sup>2209</sup> The Inter-American Court has had occasion to establish a violation of Article 27.1 because the State used measures that were not necessary to control the alleged emergency situation. The Court emphasized the extreme care that States should exercise when using the armed forces as a means of controlling social protest, holding that States should limit to the greatest extent possible the use of the armed forces for the control of domestic disturbances, since their training is aimed at defeating the enemy rather than at protecting and controlling civilians, which is what the police are trained to do.

<sup>2209</sup> I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 51; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 78.

<sup>2210</sup> Cfr. IACHR, Annual Report 2015, chapter 4.A, Use of Force, para. 139. In its *Follow-Up Report on Compliance by the Republic of Ecuador with the Recommendations Offered by the Inter-American Commission on Human Rights in its 1997 Report on the Situation of Human Rights in Ecuador*, the IACHR stated that, while it was aware of the difficult economic situation facing the State of Ecuador and the social unrest that this had produced, the State had an obligation to take the necessary measures to guarantee citizen security through methods that respected human rights standards within the framework of a democratic society. The IACHR was of the opinion that alleviating the social unrest arising from the economic situation and fighting crime through the suspension of individual guarantees under the state of emergency did not meet the requirements of the American Convention for the declaration of an emergency; the State has—and is required to have—other mechanisms for channeling social unrest and fighting crime that do not involve suspending the population's fundamental guarantees. Although, as has been mentioned in this Report, some forms of public demonstrations may create inconveniences or disturbances, or even situations of violence that must be prevented and investigated, in a democracy these cannot be considered exceptional situations that allow States to suspend guarantees. IACHR, *Follow-Up Report on Compliance by the Republic of Ecuador with the Recommendations Offered by the Inter-American Commission on Human Rights in its 1997 Report on the Situation of Human Rights in Ecuador*, paras. 44 *et seq.*

<sup>2211</sup> Most of the rights that the State cannot suspend, however serious the emergency, are mentioned in Article 27.2 of the ACHR. Along with this enumeration the IACHR considers that there are other rights that are not subject to suspension, such as freedom of opinion. Cfr. IACHR, Annual Report 2015, Chapter IV.B Venezuela, paras. 216-217; similarly, see: UN Human Rights Committee. International Covenant on Civil and Political Rights. General Comment No. 34. 12 September 2011.

<sup>2212</sup> The Human Rights Committee established that if States intend to invoke the right to suspend obligations assumed under the Covenant during, for example, a natural disaster, they must be able to show that a large-scale demonstration with incidents of violence not only constitutes a danger to the life of the nation, but also that all provisions derogating from the provisions of the Covenant are strictly necessary according to the exigencies of the situation. "In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, (...) freedom of assembly (art. 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation." UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency. CCPR/C/21/Rev.1/Add.11 31 August 2001 para. 5. See also Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 19. The Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai recalled that, "The legitimate combat against terrorism, and other security considerations, has been used as a justification for the adoption of a state of emergency or other stricter rules to void the rights to freedom of peaceful assembly and of association, (...) and noted that, "On different occasions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed in a report to the General Assembly that 'States should not need to resort to derogation measures in the area of freedom of assembly and association. Instead, limitation measures, as provided for in ICCPR, are sufficient in an effective fight against terrorism' (A/61/267, para. 53)," UN, *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, A/HRC/20/27, 21 May 2012, para. 21. Within the framework of the domestic judicial oversight of provisions governing states of emergency in Colombia, the Constitutional Court has held in evaluating Article 44 of Law 137 of 1994 that not even in states of emergency can the Government establish formulas that generally limit the rights involved in social protest. In this regard, it held that,

330. The measures that may be taken in any of these emergencies must be tailored to “the exigencies of the situation,” and what is permissible in one context may not be permissible in another. The lawfulness of the measures taken to deal with each of the special situations referred to in Article 27.1 will depend, moreover, upon the character, intensity, pervasiveness, and particular context of the emergency and upon the corresponding proportionality and reasonableness of the measures.<sup>2213</sup>

331. The Commission underscores that Article 27.2 of the ACHR also establishes that “the judicial guarantees essential for the protection of such rights” cannot be suspended.<sup>2214</sup> According to the case law developed by the Inter-American Court, the judicial guarantees that cannot be suspended during states of emergency are essentially: the writ of habeas corpus, the writ of *amparo* [petition for a constitutional remedy], remedies for the preservation of the rule of law and, in general, other judicial procedures that are ordinarily suitable for guaranteeing the full exercise of the non-derogable rights referred to in Article 27.2 of the Convention, which, even under a state of emergency, must always be adjudicated.<sup>2215</sup> The guarantees must be not only essential but also judicial; that is, they require the active involvement of an independent and impartial judicial body having the power to pass on the lawfulness of measures adopted in a state of emergency.<sup>2216</sup>

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*“In the exercise of the powers deriving from the declaration of a state of internal unrest, the Government cannot criminalize legitimate acts of social protest.”* Constitutional Court, Judgment C-179 of 1994, J. Carlos Gaviria Díaz.

<sup>2213</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 22; **Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275**, para. 139; *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, **para. 117**.

<sup>2214</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 23.

<sup>2215</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 38. See also: IACHR, Report No. 48/00, *Case 11.166, Walter Humberto Vásquez Vejarano – Peru*, April 13, 2000, para. 51.

<sup>2216</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30.

**CHAPTER IX**  
**CONCLUSIONS AND RECOMMENDATIONS**

## **IX. CONCLUSIONS AND RECOMMENDATIONS**

332. The right to free demonstration and peaceful protest is an essential element of the functioning and very existence of the democratic system, as well as a channel that allows individuals and different groups in society to express their demands, dissent, and complain about the government or their particular situation, as well as to demand access to and compliance with political rights and economic, social, cultural, and environmental rights.
333. States must ensure the enjoyment of the rights to freedom of expression, assembly, and association to all persons and to all types of organizations and associations without the need for prior authorization. They should establish by law, clearly and explicitly, the presumption in favor of the lawfulness of demonstrations and peaceful protest, which means that security forces should not act under the assumption that protest constitutes a threat to public order.
334. In particular, States should take positive measures to guarantee this enjoyment to women; children and adolescents; people of African descent; victims of discrimination based on their gender identity or sexual orientation; migrants and non-nationals; indigenous peoples; and groups demanding access to economic, social, and cultural rights.

### **a. General recommendations**

335. It is essential that all levels and agencies of the State respect and ensure that no one will be criminalized for exercising the rights to freedom of expression, assembly, and association in the context of demonstrations and protests, nor be subjected to threats, harassment, violence, persecution, or retaliation for participating in protests.
336. Any restrictions on the rights involved in demonstrations and protests may only be stipulated by law, based on one of the legitimate interests recognized by the American Convention, and must be necessary and proportionate to protect that interest, in accordance with the inter-American human rights instruments.
337. Ensure that security forces intervening to protect and control the conduct of demonstrations and protests prioritize the defense of individual life and safety by refraining from cruel, inhuman, or degrading treatment of demonstrators, from arbitrarily depriving them of their liberty, or from otherwise violating their rights.
338. Ensure that individuals and groups who are victims of violations and abuses of their fundamental rights in the exercise of protest have effective access to justice and that any violations of their fundamental rights will be redressed.
339. Investigate, identify, and punish the perpetrators of attacks, violence, threats, harassment, and the excessive use of force in the context of protest, whether they are State or non-state actors.
340. Respect and guarantee the exercise of freedom of expression, freedom of assembly, and the right of association through the Internet, applying the same guarantees as in offline spaces.

### **b. Recommendations to the Executive Branch and political authorities**

341. The authorities should facilitate the exercise of the right to demonstrate and protest as the general rule and should not regard them as a threat to public order or domestic security.
342. The armed forces should not participate in activities related to the protection of public demonstrations or the control of any form of protest, occupation of land or housing, prison riots, etc.
343. The authorities should give priority to dialogue and negotiation in the management of any form of protest, and not resort to the use of force during demonstrations, occupations, or protests, except when absolutely necessary. In no case should force be used indiscriminately in the context of protests.

344. The holding of demonstrations and protests must not be subject to prior authorization by the authorities. Where prior notification is required by law, it must be simple, accessible, nondiscriminatory, and not onerous; where a restriction is established, it must be in writing, and a timely and expedited appeal to an independent tribunal must be available.
345. Spontaneous demonstrations and protests must not be prohibited by law and must be exempt from any notification requirements.
346. Simultaneous counter-demonstrations and protests cannot be prohibited simply because they are held at the same time, and the State must take reasonable and timely positive measures to protect participants in all of them. The State must ensure that they do not interfere with each other so that demonstrators will not have cause to fear violence from their opponents.
347. Individuals, groups, and social or political movements participating in demonstrations and protests must be protected from undue interference in their right to privacy.
348. Intelligence activities in the context of protests are in principle contrary to inter-American standards. Any intelligence activity related to the political freedoms and rights involved in a protest must have a warrant and external oversight.
349. States must ensure the free and unrestricted operation of organizations and associations without discrimination of any kind, even in the absence of registration or legal personality.

### **c. Recommendations to security bodies and agencies acting in the context of demonstrations and protests**

350. The design of police operations that are ordered in connection with demonstrations and protests must take into account the variety of aspects related to the protection of the rights of demonstrators, third parties, and the safety of police officers.
351. States must, in any event, provide all means to protect the life and physical integrity of persons in the context of protests, be it from acts committed by public officials or by third parties.
352. The use of force must adhere to strict principles of exceptionality, necessity, progressivity, and proportionality. Under these principles, the use of firearms with lethal ammunition has almost never been justified in the context of demonstrations, and it is therefore recommended that the carrying of firearms by security officers be restricted in these operations.
353. The use of less lethal weapons should be strictly regulated. Any incident involving the use of any type of weapon by the security forces must be documented, whether or not the physical integrity of any person is affected.
354. A detailed record should be kept of the orders given, the officers involved, and their levels and areas of responsibility in the operation, and the actions taken should be subsequently evaluated.
355. Security operations must take into account the protection of security agents and provide the police with adequate protective equipment. A record must be kept of the weapons and equipment assigned to law enforcement officers, and officers should receive ongoing training in their proper use.
356. State security operations and interventions should pay attention to the special protection that should be afforded to certain individuals or groups such as women,<sup>2217</sup> children, adolescents,<sup>2218</sup> people with disabilities, or older adults, as well as groups that defend the rights of LGBTI persons, in order to guarantee their rights in the context of demonstrations.

<sup>2217</sup> In its resolution on the promotion and protection of human rights in the context of peaceful protests, the UN Human Rights Council "Urges States to pay particular attention to the safety and protection of women and women human rights defenders from acts of intimidation and harassment, as well as gender-based violence, including sexual assault, in the context of peaceful protests" (A/HRC/25/L.20).

<sup>2218</sup> In its resolution on the promotion and protection of human rights in the context of peaceful protests, the UN Human Rights Council "Reaffirms that States must take all necessary measures to ensure the safety and protection of children, including while they exercise their rights to freedom of peaceful assembly, expression and association, including in the context of peaceful protests" (A/HRC/25/L.20).

357. It should be especially borne in mind that it is the job of journalists, film crews, photojournalists, and media workers covering protests to gather and disseminate information on what happens in demonstrations and protests, including the actions of security forces; freedom of expression protects the right to record and disseminate any incident.
358. Journalists should not be detained for their work, or harassed or attacked by law enforcement; on the contrary, the State has a duty to protect them when they are the victims of acts of violence by third parties. Their equipment and materials cannot be retained, confiscated, or destroyed.
359. Prompt and effective medical attention must be guaranteed in cases where persons are injured or become ill during a demonstration, whatever the cause and whoever is responsible.
360. Mass, collective, or indiscriminate arrests should not be made. Arrests based on the mere fact of participating in a public demonstration or protest does not meet the standards of reasonableness and proportionality.
361. When the use of force by law enforcement officers causes death or injury, an investigation should be opened *ex officio* by independent and impartial authorities that have the necessary tools to determine the facts within a reasonable period of time, and to identify the individuals involved and their degrees of responsibility, in order to ensure accountability, prosecution, punishment, and appropriate reparation for the victims' next of kin.
362. Regularly and consistently gather disaggregated data to generate official statistics on investigations opened and proceedings brought against law enforcement officers who have used force, specifying the authority that took cognizance of the case, the charges brought, and the results obtained.
363. Take the necessary measures to ensure that law enforcement officers who are prosecuted—whether administratively or judicially—for acts allegedly committed by the abusive or disproportionate use of force are removed from public contact while their case is pending.

#### **d. Recommendations to the federal or national legislature and local legislative councils.**

364. Legislative bodies should bear in mind that it is in principle inadmissible to penalize street demonstrations *per se* when they are carried out within the framework of the right to freedom of expression and the freedom of assembly.
365. Laws on demonstrations and protests must comply with the three-part test established in the inter-American human rights instruments: the provisions must be provided for by law, justified by one of the legitimate interests recognized in the Convention, and must be necessary and proportionate to protect that interest.
366. Organizations and organizers of a demonstration or protest should not be held responsible in their capacity as such for any acts of violence that may be committed by participants and third parties.
367. Legislative bodies should refrain from creating vague criminal offenses or offenses that criminalize conduct that is part of a social protest, such as criminal penalties for lack of authorization or contempt (*desacato*), or for disrupting traffic. Such criminal definitions violate the principle of legality and inter-American standards.
368. Any criminal law that may affect the right to hold demonstrations and protests must strictly comply with the principle of legality. Policies against terrorism or organized crime should not be legislated in such a way as to restrict human rights or create a widespread chilling effect on the exercise of the rights of assembly, association, freedom of expression, and political rights in the contexts mentioned in this report.
369. Regulate by law and in a detailed and precise manner the use of lethal and less lethal force by law enforcement officials, in accordance with inter-American standards, the Principles on the Use of Force, the International Code of Conduct for Public Officials, and other relevant international instruments. Legal regulations should include the scope of operation of private security companies, proscribing their involvement in citizen security tasks.

370. Adapt existing legislation to regulate situations in which states of emergency are declared, specifying that they may be invoked only in the event of war, public danger, or other emergency that threatens the independence or security of the State party. Specify expressly which rights would be restricted—excluding those non-derogable rights and guarantees—and when and where the state of emergency would be in force to address the identified threat. Make it clear that the State has the obligation to immediately notify the General Secretariat of the Organization of American States of the adoption of such a measure.

#### **e. Recommendations to justice institutions**

371. Appropriately and effectively investigate and punish the arbitrary use of force by law enforcement officers during protests, applying the aggravating circumstances prescribed by law when the force has been directed against vulnerable groups that have been subjected to historical discrimination on the basis of ethnicity, race, sex, sexual orientation, thought and expression, among other grounds.
372. Train justice authorities at all levels in the interpretation of the content and scope of the rights to freedom of expression, peaceful assembly, and association in the context of demonstrations and protests, in accordance with international human rights standards.
373. In general, justice authorities have a duty to refrain from applying criminal provisions that ambiguously protect public order, such as “incitement to rebellion,” “terrorism,” “sabotage,” “advocacy of crime,” and “attack or resistance to public authority,” “obstruction of traffic routes,” and other criminal offenses that tend to be applied arbitrarily by authorities to criminalize protesters.
374. The Commission stresses that when justice authorities find themselves faced with manifestly unfounded criminal accusations and complaints and the protection of the right to protest is involved, they have an obligation to investigate the source or sources of this type of arbitrary complaint and impose the appropriate penalties.

#### **f. Recommendations to national human rights institutions**

375. National human rights institutions should play a fundamental role in the promotion and implementation of the rights to freedom of expression, assembly, and association in connection with protest.
376. These institutions should track and establish spaces to monitor demonstrations and protests as they occur, as well as mechanisms to receive complaints of possible abuses and violations of human rights in this type of context.



## TWENTIETH ANNIVERSARY JOINT DECLARATION: CHALLENGES TO FREEDOM OF EXPRESSION IN THE NEXT DECADE

**The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,**

*Having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression, and the Centre for Law and Democracy (CLD);*

*Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010, 1 June 2011, 25 June 2012, 4 May 2013, 6 May 2014, 4 May 2015, 4 May 2016, 3 March 2017 and 2 May 2018;*

*Noting that, for twenty years, we, the inter-governmental mandates for freedom of expression and media freedom, have issued Joint Declarations with the aim of interpreting human rights guarantees for freedom of expression, thereby providing guidance to governments, civil society organisations, legal professionals, journalists and media outlets, academics and the business sector;*

*Stressing that the Joint Declarations have contributed to the establishment of authoritative standards which address a wide range of issues and challenges, and also underline the importance of freedom of expression to democracy, sustainable development, the protection of all other rights, and efforts to counter terrorism, propaganda and incitement to violence;*

*Alarmed by the ongoing violence against and prosecution of journalists, right to information activists, human rights defenders and others for exercising their right to freedom of expression, as well as the fact that impunity for killings and attacks prevails;*

*Welcoming the significant contributions that digital technologies have made to expanding global communications and the possibility for people everywhere to access information and ideas and to speak and be heard, while noting the continuing imperative of providing universal and affordable access to the Internet;*

*Acknowledging the need to address, within the framework of international human rights law, serious problems that arise in the context of digital technologies, including disinformation; incitement to hatred, discrimination and violence; terrorist recruitment and propaganda; arbitrary and unlawful surveillance; interference with the use of encryption and anonymity technologies; and the power of online intermediaries*

*Expressing concern about the ongoing and deepening threats to media diversity and independence as a result, among other things, of a significant reduction in advertising revenues for legacy media, undermining news production and especially local and investigative journalism; increased concentration of media ownership; political control over and insufficient financial allocations to public service media; a failure to develop community broadcasting sufficiently ; and ongoing attempts to exert control over the private media, including through regulation;*

*Denouncing the continued prevalence of undue legal restrictions on online expression and their abusive application, and stressing the importance of States respecting the obligations set out in Article 19 of the International Covenant on Civil and Political Rights when imposing restrictions on freedom of expression, which include ensuring that any restriction is necessary and proportionate, and the availability of independent judicial oversight over the application of these restrictions;*

*Deploring arbitrary disruptions and shutdowns to restrict access to telecommunications networks and the Internet;*

*Highlighting the importance of the right to access information held by public authorities, as reflected in the Sustainable Development Goals Target 16.10;*

*Observing* that private companies have responsibilities to respect human rights and remedy violations, and that addressing the challenges outlined above requires multi-stakeholder support and the active engagement of State actors, media outlets, intermediaries, civil society and the general public;

*Adopt*, in London, on 10 July 2019, the following Twentieth Anniversary Joint Declaration: Challenges to Freedom of Expression in the Next Decade:

### 1. Creating an Environment that Enables the Exercise of Freedom of Expression

The protection and promotion of freedom of expression, especially but not only in the digital environment, requires the protection and appropriate legal rules and regulatory systems. To create enabling environments for freedom of expression, States should:

- a. Take immediate and meaningful action to protect the safety of journalists and others who are attacked for exercising their right to freedom of expression and to end impunity for such attacks.
- b. Ensure protection of freedom of expression as a matter of domestic legal, regulatory and policy frameworks in accordance with international standards, including by limiting criminal law restrictions on free speech so as not to deter public debate about matters of public interest.
- c. Promote media diversity, including by supporting efforts to give voice to groups which are marginalised and at risk of discrimination, developing rules on transparency of ownership of the media and telecommunication infrastructure, adopting and implementing effective rules on access to information, and narrowly defining content restrictions to what is permissible under international human rights law.
- d. Ensure that regulatory bodies for the media are independent, operate transparently and are accountable to the public, and respect the principle of limited scope of regulation, and provide appropriate oversight of private actors.
- e. Address the major economic challenges faced by independent journalists and media outlets, including by supporting local media and regulating to mitigate the negative impacts caused by the dominance of online advertising companies.
- f. Respect international human rights standards, including those of transparency, when seeking to regulate or influence expression on online media platforms.
- g. Refrain from arbitrary or unlawful restrictions on the use of encryption and anonymity technologies.
- h. Take both immediate and longer-term steps to prohibit unlawful or arbitrary surveillance and the unaccountable trafficking in tools of the commercial spyware industry that have substantial detrimental effects on the exercise of freedom of opinion and expression.
- i. Devote significantly greater attention and resources to media-, information- and digital-literacy, over the short- and long-term, to address the particular literacy challenges of the modern digital communications environment.

### 2. Building and Maintaining a Free, Open and Inclusive Internet

The exercise of freedom of expression requires a digital infrastructure that is robust, universal and regulated in a way that maintains it as a free, accessible and open space for all stakeholders. Over the coming years, States and other actors should:

- a. Recognise the right to access and use the Internet as a human right as an essential condition for the exercise of the right to freedom of expression.
- b. Protect freedom of expression in accordance with international human rights law in legislation that can have an impact on online content.
- c. Refrain from imposing Internet or telecommunications network disruptions and shutdowns.
- d. Expand significantly initiatives to provide universal and affordable Internet access.
- e. Respect and reinforce the principle of network neutrality.
- f. Ensure that major technological developments, such as the transition to 5G mobile networks and expansion of the 'Internet of Things' (IOT), respect human rights, particularly through robust human rights due diligence in the development of infrastructure, network service, interoperability, and privacy-by-design.
- g. Avoid measures that risk fragmenting the Internet and limiting access to the global Internet.

### 3. Private Control as a Threat to Freedom of Expression

A transformative feature of the digital communications environment is the power of private companies, and particularly social media, search platforms and other intermediaries, over communications, with enormous

power concentrated in the hands of just a few companies. In order to protect against unaccountable private domination of the environment for freedom of expression, we urge the development of the following:

- a. Independent and multi-stakeholder oversight, transparency and accountability mechanisms to address private content rules that may be inconsistent with international human rights and interfere with individuals' right to enjoy freedom of expression.
- b. Regulatory measures that address the ways in which the advertising-dependent business models of some digital technology companies create an environment which can also be used for viral dissemination of, *inter alia*, deception, disinformation and hateful expression.
- c. Company implementation of responsibilities under the UN Guiding Principles on Business and Human Rights, backed up by State regulation or oversight, to mitigate human rights harms by developing policy commitments and ongoing human rights impact assessments that are disclosed to the public.
- d. Legal and technological solutions that allow for transparent algorithmic curation and moderation of content, and full disclosure and audit-ability of the data that informs Artificial Intelligence.
- e. Human rights sensitive solutions to the challenges caused by disinformation, including the growing possibility of "deep fakes", in publicly accountable and targeted ways, using approaches that meet the international law standards of legality, legitimacy of objective, and necessity and proportionality.
- f. Effective rules and systems to address, in relation to companies providing digital communications services, undue concentration of ownership and practices which represent an abuse of a dominant market position.



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