

# Annual Report of the Inter-American Commission on Human Rights 2018

## VOLUME II

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

Edison Lanza  
Special Rapporteur for Freedom of Expression



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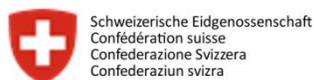
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ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION  
2018

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## TABLE OF ACRONYMS AND REFERENCES

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



## 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

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<sup>1</sup> With regard to freedom of expression, the General Assembly of the OAS has adopted resolutions in different years through which it re-stated 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.

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.

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>

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

8. During its twenty-one 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.

9. This section of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2018:

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

10. 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.

11. 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.

12. 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>

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

—*Carvajal Carvajal et al. v. Colombia*. Judgment of March 13, 2018. The Inter-American Court found that the Colombian State is to be held responsible for violating the judicial guarantees due to the

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

<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.

extraordinary delays and inadequate investigation of Journalist Nelson Carvajal Carvajal's murder; Moreover, it also held the State responsible for the victim's right to life and freedom of expression. Regarding the second aspect, the decision acknowledges, as it was stated by the IACHR and its Office of the Special Rapporteur, that there is a "close" and "intimate" relationship between "the guarantees of the right to life and freedom of expression of journalists and social communicators." In fact, it is the first time it is recognized at the IAHR Court level that a journalist's murder due to his/her work, followed by impunity due to the lack of adequate investigation, implies a violation to the victim's right to life and freedom of expression. "In effect, Nelson Carvajal's freedom of expression was precisely affected by the fact that he could not continue practicing it due to his death and the lack of its adequate investigation," said the Court during the judgment (para. 176). In this case, the Inter-American Court also links the investigation of crimes against journalists to the attack and impunity contexts in Colombia during the time of the events.

Nelson Carvajal Carvajal was murdered in 1998 in Pitalito, Colombia, in an insecurity context for journalists. This year, Colombia has been considered as the most dangerous place in the world for the press, being number one in the global ranking of murdered journalists. Carvajal had reported corruption scandals of the local government and money-laundering by drug traffickers.

—*San Miguel Sosa et al. v. Venezuela*. Judgment of February 8, 2018. The Court considered that the State of Venezuela is to be held responsible for the deviation of power and political discrimination, due to the fact that in 2004, three government officials were dismissed since they signed a petition asking for a referendum revoking the mandate of the then-President Hugo Chávez. The State said that since the victims had not participated in a public tender for their positions, it was not compulsory to justify the dismissals; however, at that time, Hugo Chávez had allegedly stated that those signing against Chávez were actually signing against their homeland. The National Electoral Council, a body responsible for validating signatures to request the referendum, delivered lists with the names of the people who had signed the referendum to Congressman Luis Tascón, who disseminated such them in his web page, accusing the signers of participating in a "mega-fraud," which was allegedly confirmed by President Chávez. The judgment also established that the lack of explanations by the State strengthened the hints that the women were dismissed due to political reasons and "without an effective guarantee to freedom of expression, the democratic system weakens and they suffer the break of pluralism and tolerance" (para. 154).

The decision constitutes a significant framework to establish that the signing of a political petition is also protected by the right to freedom of expression and opinion, and that government officials shall have those rights guaranteed at their workplaces. The IAHR Court stated that "pursuant to Article 13.1 of the Convention, freedom of expression can be exerted 'by means of any other proceeding of their choice' and, given the context, the act of signing can be considered as one of those other proceedings."

—*Herzog et al. v. Brazil*. Judgment of March 15, 2018. The Inter-American Court considered that Journalist Vladimir Herzog's arrest, torture, and murder carried out in Sao Paulo in 1975 shall all be considered as crimes against humanity, and it also establishes that the Brazilian State is guilty on the lack of investigation, prosecution, and punishment to the perpetrators. This decision represents an important step in search for truth and against impunity in Brazil. Journalist Vladimir Herzog was murdered in 1975 in Sao Paulo during the last military coup in Brazil, as a consequence of the torture acts committed by State agents when testifying at an army station. Herzog was the director of "TV Cultura" when he was arrested and he had already been in exile some years in London to escape from repression. Pursuant to the judgment, the civil-military coup, according to the Court, sparked systematic and generalized repression against the civil society considered as "opposition," especially media professionals and members of the Brazilian Communist Party. "Around the end of September and beginning of October 1975, the DOI/CODI of Sao Paulo intensified repression acts against journalists. (...) On the day previous to Vladimir Herzog's deprivation of liberty, on October 24, 1975, 11 journalists were allegedly arrested." At that time, the crime was registered and presented as suicide and it was never duly investigated because, at the end of the regime, a self-amnesty act was passed, which also forgave the crimes committed by State agents.

Regarding the demanded reparations, the Court declared Vladimir Herzog's family as beneficiary victims. As it was a crime against humanity, the Court ordered the State to re-conduct the investigations with due diligence, not to obstruct actions, to remove obstacles such as imprescriptibility, and to provide

security to the family. Likewise, it was ordered to publish and disseminate the judgment and compensations to the victims for actual damage, non-material damage, and expenses. The Court did not admit the victims' requests to adopt measures providing further autonomy and transparency to the torture prevention mechanism and to transfer land in Sao Paulo to build a museum in memory of the journalist.

—*Poblete Vilches et al. v. Chile*. Judgment of March 8, 2018. The judgment is about Mr. Vinicio Antonio Poblete Vilches' violation of his right to health. Among other items, it also declared that the State violated the right to obtain an informed consent due to substitution and the right to access information regarding health, to the detriment of Mr. Poblete and his family. Specifically, the IACHR Court states that the Tribunal "establishes that the informed consent is part of the item of accessibility to information" and "therefore, of the right to health (Article 26)." In addition, the Tribunal states that "Because of this, the access to information included in Article 13 of the American Convention acquires an instrumental nature to assure and respect the right to health. In this way, the right to access information is a guarantee to carry out the derivation of the right included in Article 26 of the Convention, with the possibility of achieving other related rights, pursuant to this case's particularities."

14. In 2018, the Office of the Special Rapporteur prepared five admissibility reports and one report on the merits (publication).

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

## **2) Precautionary Measures**

16. 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.

17. During 2018, the Office of the Special Rapporteur collaborated in the study of 26 requests of precautionary measures. The following requests were granted: PM 309-18 (Ecuador)/PM 310-18 (Colombia), Javier Ortega, Paúl Rivas and Efraín Segarra Abril, April 12;<sup>7</sup> PM 739-17 Daniel Silva Orrego regarding Colombia, May 5; PM 693-18, Aníbal Toruño Jirón and other members of Radio Darío regarding Nicaragua, July 2; PM 669-18, Migueliuth Sandoval Cruz et al. regarding Nicaragua, June 12; PM 688-18, Pedro Patricio Jaimes Criollo regarding Venezuela, October 4; PM 873-18, Miguel Mora Barberena, Leticia Gaitán Hernández and their families regarding Nicaragua, December 13.

18. 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**

19. 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.

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<sup>7</sup> The IACHR and its Office of the Special Rapporteur set up the Special Follow-Up Team (ESE) in Quito on July 25, for the case of journalists Javier Ortega Reyes, Paúl Rivas Bravo and worker Efraín Segarra, from "El Comercio" newspaper from Quito, who were murdered in the frontier between Ecuador and Colombia in April 2018. Representatives of Ecuador's and Colombia's government agreed with the IACHR to constitute a Special Follow-Up Team (ESE) in order to support the investigation of the murders, and the search and recovery of the bodies, in the framework of Precautionary Measure 309-18.

20. Below is a summary of the hearings in which the Office of the Special Rapporteur participated during 2018:

State / Regional	Periods of Sessions	Title of Hearing	Date / Place
Regional	167 – Special Period of Sessions of the IACHR - Bogotá, Colombia	Situation of the rights to freedom of expression and freedom of press in South America	February 28, 2018
Regional	167 – Special Period of Sessions of the IACHR - Bogotá, Colombia	Digital intelligence, cybersecurity, and freedom of expression in America	February 28, 2018
Argentina (ex-officio)	167 – Special Period of Sessions of the IACHR - Bogotá, Colombia	Situation of the right to protest in Argentina (ex-officio).	March 1, 2018
Dominican Republic.	168 – Special Period of Sessions of the IACHR - Washington, D.C.	Hearing: Human Rights and follow-up of the peace treaty in Colombia	May 9, 2018
Dominican Republic.	168 – Special Period of Sessions of the IACHR - Washington, D.C.	Ex-officio hearing: Electoral process and its impact on the general human rights situation in Venezuela	May 10, 2018
Dominican Republic.	168 – Special Period of Sessions of the IACHR - Washington, D.C.	Harassment reports against human rights defenders, journalists, and means of communication in Venezuela.	May 11, 2018
Dominican Republic.	168 – Special Period of Sessions of the IACHR - Washington, D.C.	Hearing: Religious freedom and lay State in Latin America (ex-officio)	May 11, 2018
El Salvador	169th Special Period of Sessions of the Inter-American Commission on Human Rights	Hearing: Search process of persons who have disappeared during the armed conflict in El Salvador.	October 1, 2018 – Boulder Colorado
Peru	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Corruption crisis in Peru and its impact on human rights and freedom of expression.	October 1, 2018 – Boulder Colorado
Bolivia	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Guarantees of legal independence and justice operators in Bolivia.	October 1, 2018 – Boulder Colorado
Cuba	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Complaints of criminalization filed by social activists and journalists in Cuba	October 1, 2018 – Boulder Colorado
Nicaragua	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Reports of protests and repression in Nicaragua	October 2, 2018 – Boulder Colorado

Venezuela	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Situation of the people deprived of liberty in the context of politics in Venezuela	October 4, 2018 – Boulder Colorado
Brazil	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Situation of human rights defenders in Brazil	December 5, 2018 Washington, D.C.
Venezuela	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Reports of serious political rights violations and arbitrary arrests in the context of the human rights crisis in Venezuela	December 5, 2018 Washington, D.C.
Bolivia	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Re-elections in Bolivia, judgment 84/17, and the American Convention	December 5, 2018 Washington, D.C.
El Salvador	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Judicial independence and selection process of Attorney General in El Salvador.	December 6, 2018 Washington, D.C.
Bolivia	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Guarantees of legal independence and justice operators in Bolivia.	December 6, 2018 Washington, D.C.
Regional	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Public security militarization in the Americas	December 6, 2018 Washington, D.C.
Nicaragua	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Repression and human rights violations in Nicaragua	December 6, 2018 Washington, D.C.
Ecuador	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Precautionary Measure - Special Follow-Up Team (Ecuador)	December 6, 2018 Washington, D.C.
Colombia	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Hearing: Precautionary Measure - Special Follow-Up Team (Colombia)	December 6, 2018 Washington, D.C.

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

21. 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 one (21) 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.

22. 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.

23. 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.

24. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2018.

Dates / Places	Event	Organizers	Observation
January 23, 2018, Washington, D.C.	Live news event	The Washington Post	Special Rapporteur for Freedom of Expression Edison Lanza participated in this event, where they discussed how social platforms affect the way in which messages are disseminated and reach the public. Moreover, they also discussed the challenges to fighting against misinformation and fake news.
January 25, 2018, Brussels	11th International Conference on Computers, Privacy, and Data Protection 2018 (CPDP) "The Bodies' Internet"	Google	Special Rapporteur Edison Lanza participated as panelist in the framework of this conference within the section "Innovation based on data, privacy and national sovereignty in a global world."
February 14 and 15, 2018, Atlanta, Georgia USA	International conference: "Women and the right to access information: To inform women, to change lives."	Carter Center's Global Program on Access to Information	Participation of Special Rapporteur Edison Lanza in panel "Advancing toward women's right to access information: The role of international instruments and institutions."
February 19, 2018, Bogotá, Colombia	IACHR's consultation to Civil Society on the Resolution Corruption and Human Rights	IACHR	The objective was to receive concrete supplies on the topics presented in the conceptual note, for the carrying out of a draft resolution which will be presented to the IACHR in the framework of its 167th Regular Period of Sessions. Some participants: Office of the United Nations High Commissioner for Human Rights for Central America (OHCHR); Inter-American Dialogue; University of Los Andes; Carter Center; Konrad Adenauer Stiftung (KAS); Washington Office for Latin America (WOLA); Center for Justice and International Law (CEJIL); Due Process Foundation (DPLF), and Freedom House.
February 20, 2018, Bogotá, Colombia	Consultation with civil society and journalists for the project "Women and Freedom of Expression"		To strengthen the preliminary diagnosis carried out by RFOE on the exercise of women's right to freedom of expression. At the meeting, they collected information on the States' international obligations on this issue, as well as potential recommendations to give to Member States and other actors involved in this topic. Among the participants, there were some civil society representatives: Article 19 Brazil, Reproductive Rights Center, Karisma Foundation, CIMAC, Dejusticia, and journalists such as Jineth Bedoya and Claudia Julieta Duque.
February 22 - March 2, 2018, Bogotá, Colombia	167th Special Period of Sessions of the IACHR	Inter-American Commission on Human Rights (IACHR)	Participation in thematic hearings and meetings with civil society, journalists, and government officials.

March 5, 2018, Lima, Peru	State advertising and means of communication: State conference on the impact of a blind regulation regarding informative liberties	Press and Society Institute (IPYS) and the Peruvian Press Council (CPP)	Participation of the IACHR Special Rapporteur for Freedom of Expression, Edison Lanza; the President of the Ministries' Council (PCM), Mercedes Aráoz; IPYS President, Augusto Álvarez Rodrich; the president of the Peruvian Press Council (CPP), Bernardo Roca Rey, among others. The Special Rapporteur gave a lecture on Inter-American standards regarding freedom of expression.
March 5, 2018, Lima, Peru	Discussion group about the right to be forgotten	Co-organized by the Peruvian Press Council, the Inter-American Press Society, and Empeñe UP from Universidad del Pacífico	Special Rapporteur Edison Lanza participated as panelist in panel "Europe and the restrictions to the right to be forgotten" together with Catalina Botero (University of Los Andes) and Walter Gutierrez (Peruvian Ombudsman). The objective was to reflect on freedom of expression and its persistence on the Internet if removal of data were to be ordered. In addition, they analyzed the right to privacy and access to public information.
March 13, 2018, New York, USA	"Discussion board: Violence against female journalists."	Jointly organized by the International Network of Journalists with Gender Perspective (RIPVG); CIMAC; Media and Gender Global Alliance (GAMAG).	Side event at the NGO Forum of the 62nd Period of Sessions of the Commission on the Legal and Social Status of Women. RFOE Senior Attorney Ona Flores participated as panelist at the meeting, where they addressed the issues women face in the media.
March 14, 2018, New York, USA	"Media and information technologies: A double-edged sword for women's progress."	Reporters without Borders (RSF), CPJ, and IWPF	RFOE Senior Attorney Ona Flores participated in the capacity of expert. Likewise, she discussed the RFOE's work regarding the protection of female journalists in the region.
March 21, 2018, Washington, D.C., USA	Conference: "The Media and Democracy in the Americas"	Jointly organized by Fundamedios; OAS; The Dialogue; IACHR; Colpin, and IPYS	The aim of the conference is to create a supportive community among Hispanic and Latin American journalists. The event focused on three thematic areas: Progress and setbacks regarding Access to Information; Protection Mechanisms for Freedom of Press, and Journalism and the Fight against Corruption. Rapporteur Edison Lanza participated in the capacity of specialist in the panel "Government v. Journalists? Impunity and freedom of expression."
March 22, 2018, Washington, D.C., USA	Submission of annual reports 2017 of the IACHR and IAHR Court.	IACHR and IAHR Court	The Office of the Special Rapporteur for Freedom of Expression of the IACHR submitted its Annual Report regarding the situation of freedom of expression in the continent during 2017, as part of the Annual Report submitted by the Commission to the OAS' Member States.
March 23, 2018, Washington D.C.		IWPR	Attorney Tatiana Teubner conducted via Skype training to journalists on the protection mechanisms of the IACHR.
April 5, 2018, Buenos Aires, Argentina	Reflections on Argentina's freedom of expression agenda	Argentinian Journalism Forum (FOPEA); Center for Studies on Freedom of Expression and Access to Information (CELE), and the IACHR's Office of the Special Rapporteur for Freedom of Expression	Edison Lanza, Special Rapporteur, participated as keynote speaker during the seminar. At the meeting, they discussed critical issues regarding Argentina's freedom of expression agenda and at regional level at present. Likewise, the meeting addressed the main challenges of the digital era.
April 9, 2018, Montevideo, Uruguay	Seminar on journalism, freedom of expression, and human rights - New regulatory framework	Organized by CAinfo with the support of UNESCO and PIDC	At the seminar, they analyzed the new regulatory framework relative to journalism, freedom of expression, and human rights. Aimed at judges, prosecutors, and journalists, the first seminar addressed the issue on the Code of Criminal Procedure and guarantees to practice journalism. Special Rapporteur Edison Lanza participated as expert together with Jorge Díaz (Court Prosecutor and Procurator-General of the Nation), Raúl Oxandabarat (Director of the Institutional Communication Division of the Supreme Court of Justice) and Marcelo Pesce (General Deputy Director of Administrative Services of the Judiciary).

April 11, 2018, Lima, Peru	Forum: "Democracy, Transparency, and Internet in the Americas"	Inter-American Dialogue	The Special Rapporteur participated in this high profile forum, which aimed at influencing the VIII Summit of the Americas' Agenda, regarding the significance of the Internet and Tics in the strengthening of democracy. Participants in the capacity of lecturers: Edison Lanza (RFOE), Alberto Rodríguez (World Bank); Elaine Ford (ISOC Peru); Elizabeth Salazar (Journalist); Esmeralda Arosemena (IACHR); Gina Romero (RedLad); Jose Ugaz (International Transparency); Magaly Robalino (Unesco Peru); Marta Gaba (Electoral Transparency); Michael Camillieri (Inter-American Dialogue); Pedro Less (Google); Sebastian Grundberger (Konrad Adrenauer Foundation Peru).
April 11, 2018, Lima, Peru	Public Forum "Promoting further standards on access to information and transparency in the extractive sector" (VIII Summit of the Americas)	Due Process of Law Foundation, DAR and RFOE.	The Special Rapporteur made a presentation on the project about transparency and access to information in extractive industries. Participants: Enrique Mendoza <i>Director of the National Authority on Transparency and Access to Information of Peru</i> and Soledad García Muñoz, <i>Rapporteur (ESCER)</i>
April 11, 2018, Lima, Peru	Event "Open data: Democratic Governance against Corruption". VIII Summit of the Americas.	Department for Effective Public Management of the Secretariat for Hemispheric Affairs OAS	The Special Rapporteur participated in his capacity of speaker in the discussion panel "Open data at the service of freedom of expression" in the framework of the VIII Summit of the Americas.
April 11, 2018, Lima, Peru	"Presentation of the IACHR's Resolution on Corruption and Human Rights."	IACHR	The Special Rapporteur participated in the launch of IACHR resolution on Corruption and Human Right during the VIII Summit of the Americas.
April 11, 2018, Lima, Peru	"Venezuela: A crisis impacting the world" (VIII Summit of the Americas)	IACHR, Transparency Venezuela and the Latin American and Caribbean Network for Democracy.	The Special Rapporteur attended this event, which aimed at analyzing the situation and proposals of Venezuelan Organizations in view of the weakness of human rights. Corruption and its impact on the country, and the establishment of objectives and scopes of international actions taken in view of the Venezuelan crisis.
April 16, 2018, Quito, Ecuador	International seminar "Dialogue on freedom of expression and contemporary challenges to the training of justice operators"	Unesco / RFOE	The Special Rapporteur participated in the discussion group and judges' and trainers' training, in the framework of the continuous education project for the judicial sector carried out by RFOE together with UNESCO.
April 24, 2018	Public forum "Freedom of expression in the Americas: Persistent threats and emerging challenges."	RFOE and Reporters Without Borders	The Office of the Special Rapporteur for Freedom of Expression, Reporters without Borders and the Inter-American Dialogue jointly organized the Public Forum "Freedom of expression in the Americas: Persistent threats and emerging challenges," which aimed at providing a public space for analyzing persistent threats, emerging challenges, and potential solutions to protect freedom of expression in the Americas.
April 25 and 26, 2018, New York, USA	Justice Conference for Freedom of Expression.	Global Freedom of Expression / Columbia University	The Special Rapporteur together with Attorney Ona Flores attended Columbia University's conference "Justice for freedom of expression," where they participated as lecturers in the following forums and debates: (Ona Flores) event on "Private Actors and Human Rights Online". They analyzed human rights implications in view of the use of online domains, which are private or managed through States or companies. (Edison Lanza) He participated as lecturer in the debate "Global challenges: Mild debate on global FOE/I jurisprudential and legal events in 2016-2018: What was the progress? The victories? Current and future challenges?"

May 2 and 3, 2018 Accra, Ghana	Event "World Press Freedom Day."	UNESCO	The Special Rapporteur attended different panels aiming at discussing topics regarding the challenges to defending freedom of expression and the situation of constitutional and political guarantees, as well as technological progress and development. Likewise, it was an opportunity to present the Joint Declaration on the media's independence and diversity in the digital era. Some of the participants were the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), the Special Rapporteur for Freedom of Expression of the Organization of the American States (OAS), and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR).
May 3-12, 2018 Dominican Republic	168th Special Period of Sessions of the Inter-American Commission on Human Rights.	Inter-American Commission on Human Rights (IACHR)	Participation in thematic hearings and meetings with civil society, journalists, and government officials.
May 15, 2018, Washington, D.C.	"Comunicar" Forum in Venezuela: Challenges to Freedom of Expression.	Human Rights Center - Andrés Bello Catholic University, RFOE, and Public Space	The Special Rapporteur participated in this forum via Skype, during which he disclosed the chapter on Freedom of Expression and Thought of the Democratic Institutional Report submitted by the IACHR in February 2018. In addition, the practical implications of these violations regarding freedom of expression were highlighted.
May 17-19, 2018 San Salvador, El Salvador	Roadmap formulation workshop for the strengthening of reporting mechanisms regarding journalists' security in Guatemala, Honduras, and El Salvador	UNESCO	Specialist Melissa Cabrera attended the event representing the Office of the Special Rapporteur and made comments, observations, and suggestions for the Roadmap formulation.
June 8, 2018, Miami, USA	"Declaration on Freedom of Expression in the Digital Era"	Inter-American Press Society	The Special Rapporteur participated in the consultation for the preparation of the Declaration on Freedom of Expression in the Digital Era of the American Press Society.
July 29, 2018 San José de Costa Rica, Costa Rica	Seminar "Media concentration, freedom of expression, and democratic regulation"	OBSERVACOM	The Special Rapporteur took part in this seminar, to which he sent a video with his presentation.
August 17, Washington, D.C.	Conference / Certificate of Advanced Study in Human Rights, Diego Portales University	Diego Portales University	The Special Rapporteur held a conference via Skype on the situation of freedom of expression in the hemisphere as part of the course of studies Certificate of Advanced Study in Human Rights of Diego Portales University.
September 5, 2018, Mexico, Mexico City	Discussion group: "Expanding Democratic Space: <i>Follow-Up Perspectives on International Recommendations regarding Freedom of Expression.</i> "	- Office of the United Nations High Commissioner for Human Rights; UNAM, and - Office of the Special Rapporteur for Freedom of Expression.	The Special Rapporteur for Freedom of Expression and the United Nations Special Rapporteur submitted a report on Inter-American standards regarding freedom of expression. They discussed relevant topics on the promotion and protection of the right to freedom of opinion and expression, and the progress and challenges regarding the implementation of this report's recommendations. Participants: Jan Jarab, OHCHR Mexico Representative - Edison Lanza, Special Rapporteur for Freedom of Expression of the IACHR - David Kaye, UN's Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (video message) - Miguel Ruiz Cabañas. Undersecretary for Multilateral Matters and Human Rights - Lucía Lagunés Huerta, Member of the Consultative Council of the Protection Mechanism and CIMAC's General Director - Luis Raúl González, President of the National Commission on Human Rights - Cinthia Valdez, journalist displaced from Sinaloa

September 6, 2018, Mexico, Mexico City	"Certificate of Advanced Study in the Inter-American System" Héctor Fix-Zamudio  Lecture: Right to freedom of expression, admissible dimensions and restrictions.	Legal Research Institute, National Autonomous University of Mexico in conjunction with the OAS.	The Special Rapporteur gave a lecture on the right to freedom of expression, admissible dimensions and restrictions. Among the participants, there were members of civil society organizations, students, and government officials interested in the topic.
September 6, 2018, Mexico, Mexico City	"Certificate of Advanced Study in the Inter-American System" Héctor Fix-Zamudio  Lecture: - Exercise of freedom of expression and the so-called "fake news"	Legal Research Institute, National Autonomous University of Mexico in conjunction with the OAS.	The Special Rapporteur gave a lecture: - Exercise of freedom of expression and the so-called "fake news" Among the participants, there were members of civil society organizations, students, and government officials interested in the topic.
September 27, 2018, Bogotá, Colombia	Event 50 years Law School, University of Los Andes; Seminar: Freedom of Expression and Rule of Law.	University of Los Andes	The Special Rapporteur was invited to take part in the seminar within the panel "Populism and Freedom of Expression." Some of the participants of said panel were Catalina Botero, Dean of University of Los Andes' Law School; Daniela Salazar, Deputy Dean of San Francisco de Quito University's Law School; Guilherme Canela, Secretary of the Regional Committee and Communication and Information Adviser of UNESCO Montevideo's Office; Carlos Ayala Corao, Rights Center of Andrés Bello Catholic University, among others.
September 27, 2018, Washington D.C.		Inter-American Committee Against Terrorism (CICTE)	Attorney Tatiana Teubner conducted the workshop on "The Right to Privacy: A Look at the Inter-American Human Rights Standards" at the Cybersecurity Symposium held in Washington, DC.
September 30 - October 5, 2018 - Boulder Colorado	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Inter-American Commission on Human Rights (IACHR)	The Special Rapporteur participated in thematic hearings of the Office of the Rapporteur on Corruption Crisis in Peru and its impact on human rights and freedom of expression and reports of criminalization of social activists and journalists in Cuba, as well as meetings with civil society, journalists, and OAS permanent members.
October 2-9, 2018, Brasilia, Brazil.	Electoral Observation Mission of the Organization of American States (EOM/OAS) General elections Brazil, first round of elections.	(DECO) Electoral Observation Mission of the Organization of American States (EOM/OAS)	Attorney Ona Flores was invited by the Electoral Observation Mission of the Organization of American States (EOM/OAS) carried out in Brazil for the first round of general elections, in her capacity of Expert of the Office of the Special Rapporteur for Freedom of Expression, making observations and providing supplies for the visit's final report regarding the dissemination of online disinformation and fake news, access to the media, and freedom of expression in the framework of the electoral context in Brazil
October 11 and 12, 2018, Lima, Peru	Workshop:  "Inter-American standards and national legislation on access to environmental information in the context of extractive industries"	DAR, DPLF, IACHR RFOE.	The RFOE organized the workshop "Inter-American standards and national legislation on access to environmental information in the context of extractive industries," which was supported by civil society organizations DAR and DPLF, and State bodies had great participation during such event. On the workshop's first day, the Special Rapporteur Edison Lanza gave a presentation about Inter-American standards on freedom of expression and State obligations regarding international treaties, specially making reference to the most recent Treaty of Escazú. In addition, RFOE Expert and Consultant Erika Castro addressed the topic of Colombia's compliance with free access to environmental information, and SRESCER Expert Daniel Noroña presented: "Access to information as ESCER's guarantee in the hemisphere." Furthermore, RFOE Project Manager Melissa Cabrera, who was moderator and agenda and logistics coordinator during the workshops, has also attended the event.

October 15, 2018, Montevideo, Uruguay	"Informal consultation for the preparation of regional guidelines on disinformation, freedom of expression, and electoral processes"	Observacom/Fesur, IACHR RFOE	The Office of the Special Rapporteur, counting on the participation of Observacom/FESUR, organized this consultation in which they received civil society organizations' comments on the possibility of presenting an Advisory Opinion to the IAHR Court so that it addressed topics on freedom of expression on the Internet and the presentation of the disinformation project as a result of GA/OAS mandate received by the RFOE. Edison Lanza, Special Rapporteur, and Ramiro Álvarez, external RFOE's consultant, participated in this event. Other participants of the event: Agustina del Campo, CELE Argentina, Eduardo Ferreyra, ADC, Argentina, Javier Pallero, Access Now, Regional, Dafne Plou, APC, Regional, Iara Moura, Interveozes, Brazil, Erly Guedes, Coding Rights, Brazil, Paulo Lara, Art. 19, Brazil, María Paz Canales, Digital Rights, Chile, Danya Centeno, R3D, Mexico, Daniel Lema, CAinfo, Uruguay, Lucas Silva, Verifica, Uruguay, Adriana García, Comprova, Brazil, Gustavo Gómez, OBSERVACOM, Regional, Ramiro Álvarez Ugarte, RFOE, Guillermo Drapper, Search Seminar Uruguay, María Leoni, CEJIL
October 16, 2018, Montevideo, Uruguay	International conference:	RFOE, UNESCO, FESUR, and Observacom.	There was an international conference convened by the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), UNESCO Montevideo's Office, Friedrich Ebert Foundation in Uruguay (FESUR), and OBSERVACOM, sponsored by the National Institution on Human Rights. The Special Rapporteur for Freedom of Expression Edison Lanza participated as lecturer together with Guilherme Canela, UNESCO Information and Communication Adviser for South America, and other famous national and international panelists.
October 16 and 17, 2018, Montevideo, Uruguay	Event: "10 years UAIP - URCDP Insuring our Rights"	Regulatory Unit of Personal Data Monitoring and Access to Public Information Unit, Paraguay	The Special Rapporteur Edison Lanza was invited to the 10th anniversary of UAIP-URCDP by Uruguay's government. In that context, he gave a lecture and moderated the panel "Personal Data and Access to Public Information."
October 19-21, Salta, Argentina	74th General Assembly of the Inter-American Press Society	Inter American Press Association (IAPA)	The Special Rapporteur participated in the Assembly as speaker for the "Digital Declaration" panel and he assisted such panel regarding fake news.
October 30, 2018. Washignton D.C.	Contest "Access to public information and investigative journalism"	COLPIN / IACHR RFOE, Press and Society Institute IPYS	The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) and the Press and Society Institute (IPYS) organized the contest "Access to public information and investigative journalism," which was convened in the framework of the Latin American Conference of Investigative Journalism (Colpin-2018), sponsored by the UNESCO Montevideo's Office. The Office of the Special Rapporteur analyzed the journalistic works submitted and chose the winners according to the criteria established for the contest.
November, 2018. Washignton D.C.		IACHR and IPDDH	Attorney Tatiana Teubner taught together with the Special Rapporteur Edison Lanza Module 9: Production, Access to Information and participation in the cycle of public policies, of the International Course on Public Policies in Human Rights. in November 2018.

November 5 and 6, 2018, Asunción, Paraguay	Workshop "OAS' Model Law on Access to Public Information 2.0"	OAS' International Law Department	Fellow Federico Legal Aguilar participated in this event as representative of the Office of the Special Rapporteur for Freedom of Expression of the IACHR, in the framework of the update of Model Law 2.0, which was a project to be carried out by the OAS International Law Department. During the event, they discussed the active transparency module and the exception regime module. The RFOE suggested including specific topics on environment, education, and human rights, within the information regime subject to proactive dissemination, and it also made some observations on the content of some exceptions included in the current text.
November 6 and 7, 2018, Asunción, Paraguay	RTA's XVI Meeting.	Transparency and Access to Information Network with Eurosocias's support.	During the assembly, several carried out projects and some obtained products were presented; The Office of the Special Rapporteur sent Fellow Federico Legal as delegate, who participated as an observer.
November 8, 2018, Asunción, Paraguay	National seminar on access to public information	Ministry of Justice of Paraguay	Fellow Federico Legal Aguilar participated as listener at the national seminar on access to public information, organized by Paraguay's Ministry of Justice. Finally, the RFOE representative met with the coordinator of the inter-institutional table of protection to journalists and with some civil society's representatives.
November 9, 2018, Santo Domingo, Dominican Republic	XIII Inter-American Meeting of Electoral Authorities.	DECO OAS	Special Rapporteur Edison Lanza participated as panelist in the discussion group "Social media: How to assure data privacy, freedom of expression, and fighting against disinformation at the same time?" In the framework of the XIII Inter-American Meeting of Electoral Authorities.
November 10, 2018, Bogotá, Colombia	2018 Latin American Conference of Investigative Journalism	Colpin, IPYS, Editorial Board, Xavierian University, World Bank, Nordic Trust Fund, Open Society, Konrad Adenauer Stiftung, among others.	Special Rapporteur Edison Lanza traveled to Bogotá in order to attend the RFOE prize awarding ceremony in conjunction with IPYS. There were awards for the best 3 works on Investigative Journalism which exerted the right to Access to Public Information.
November 16, 2018, Washington, D.C.	Podcast: Series "Voices on Human Rights"	Inter-American Moot Court Competition Academy on Human Rights and Humanitarian Law American University	The Special Rapporteur for Freedom of Expression Edison Lanza participated in the recording of the podcast for series "Voices on Human Rights" on the occasion of the International Day to End Impunity for Crimes against Journalists.  The Rapporteur provided information about the work the Office of the Special Rapporteur has been doing regarding the
November 21, 2018 Mexico City	"International Seminar on Legislative Transparency and Open Parliament 2018"	National Institute of Transparency, Access to Public Information, and Personal Data Protection (INAI)	The Special Rapporteur gave a lecture on the importance of transparency, the right to public information, and open parliament.  The Rapporteur also attended the different panels of the seminar, in which they discussed various topics, such as progress and challenges of Mexican congresses regarding
November 27 and 28, 2018 Berlin, Germany	Workshop: From global to local: Hate speech and the challenges to the commitment regarding global online platforms.	United Nations Office of the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression  Law School of the University of California  Federal Ministry for Economic Cooperation and Development, Berlin	Rapporteur Edison Lanza attended the different panels organized at the workshop, where they discussed topics such as the role of communication companies regarding the lack of regulation in view of hate speech disseminated through online platforms in Germany, and the potential bills to regulate the said activities affecting the vulnerable population, such as migrants.

November 29, 2018 Berlin, Germany	7th Annual Freedom Online Conference	Federal Foreign Office Cyber Foreign Policy and Cybersecurity Office	Rapporteur Edison Lanza participated in the capacity of speaker in the panel "Addressing disinformation in the digital era." This panel discussed the challenges of the disinformation phenomenon regarding human rights protection and freedom of expression. They highlighted multilateral and regional initiatives carried out to address said global phenomenon. Particularly, the Rapporteur contributed to the said discussion group by means of providing information regarding regional perspectives and Inter-American standards on disinformation. Furthermore, he explained the work the Office of the Special Rapporteur has been doing, together with the OAS International Law office and the Electoral Cooperation and Observation Department, regarding deliberate disinformation in electoral contexts.
December 3, 2018 Washington, D.C.	Meeting of regional experts in Access to Information and National Security	Open Society Foundations  IACHR RFOE	The Office of the Special Rapporteur for Freedom of Expression held a high-profile experts consultation to consider the thematic draft report on access to public information and national security, which is part of the Office's working plan.  All the RFOE team and the experts mentioned below attended this consultation:  <ul style="list-style-type: none"> <li>- Pablo Contreras Vasquez - Council for Transparency of Chile</li> <li>- Fernando García - International Relations Adviser, Council for Transparency of Chile</li> <li>- Mariana Gatti - Agesic</li> <li>- Ezequiel Santagada - Regional Alliance for Freedom of Expression and Information</li> <li>- Paula Livachky - Director of Justice and Security Area - CELS</li> <li>- Joara Marchezini - Article 19</li> <li>- Edy Tabora - Director of Freedom of Expression Committee, Honduras</li> <li>- Luis Fernando García - Executive Director R3D, Mexico</li> <li>- Jo-Marie Burt - George Mason University</li> <li>- Issa Luna Pla - Academic Secretary - Legal Research Institute UNAM</li> <li>- José Alberto Barrera Santos - Mirna Mack Foundation</li> <li>- Cesar González - International Law Department, OAS</li> <li>- Viviana Kristicevick - Executive Director, CEJIL</li> <li>- David Lovaton, DPLF</li> <li>- Kate Doyle, National Security Archives GWU</li> <li>- Tania da Rosa Pirez - Expert Consultant</li> <li>- Mariana Mas - OSF-JI</li> <li>- Sandra Colliver - OSF-JI</li> <li>- Jillian Winkler - OSF-J</li> <li>- Marinela Balbi - Ipys Venezuela</li> </ul> <ul style="list-style-type: none"> <li>- Kerry Ann Barret - Officer of Cybersecurity Program CICTE</li> <li>- Karen Bozicovich - National Security OAS</li> </ul>
December 6, 2018. Washington D.C.		IACHR and IPDDH	Attorney Tatiana Teubner conducted the workshop on "The Right of Access to Public Information in the Inter-American Human Rights System" in the Specialization in the Inter-American System during the 170th Period of Sessions of the IACHR.
December 7, 2018 Washington, D.C.	Training course on Inter-American and International Systems of Human Rights Protection for civil society	American University - College of Law  Inter-American Institute on Human Rights Robert F. Kennedy Human Rights  OAS - IACHR	Melissa Cabrera, RFOE Project Manager, participated as presenter at the SHDH course for civil society, where she explained RFOE's work highlighting women's rights and the initiatives carried out together with IACHR Office of the Rapporteur on Women's Rights, and projects on gender perspective and prevention and protection regarding violence against women.
December 7, 2018 Washington, D.C.	Conference on the human rights situation in Cuba	General Secretariat - OAS  Justice Cuba International Commission	The Special Rapporteur Edison Lanza participated as panelist at this conference, in the panel "Criminalizing freedom of expression in Cuba."

December 10, 2018 Bogotá, Colombia	Second Inter-American Forum on Human Rights	IACHR  IAHR Court  Office of the Attorney General (Procuraduría General de la	Special Rapporteur Edison Lanza participated as panelist in the forum where he provided information on the situation of human rights defenders, people deprived of liberty, and freedom of expression.
December 12 Washington, D.C.	Information booklet International and Inter-American Standards on Human Rights Protection for Journalists and other Communicators	Human Rights Ministry of Brazil	Special Rapporteur Edison Lanza remotely participated in the launch of the Information Booklet formulated at the 3rd National Meeting of Technical Teams of the Protection Program for Human Rights Defenders, Communicators, and Environmentalists (PPDDH) organized by the Human Rights Ministry of Brazil.
December 14 Washington, D.C.	Interview	Digital Rights Program Article 19 Brazil	Rapporteur Edison Lanza had an interview with Article 19 Brazil, in which he answered questions on the work he has been doing at the Office regarding disinformation in electoral contexts and provided information about international standards on this topic, in order to contribute to the investigation, looking to a publication of this medium on this topic.

### 5) Working visits and meetings

25. Below is a summary of the working visits and meetings carried out by the Office of the Special Rapporteur in 2018:

#### Working visits

Country	Date / Place	Institution	Description
Colombia	167th Special Period of Sessions of the IACHR in Bogota	Inter-American Commission on Human Rights (IACHR)	Participation in thematic hearings and meetings with civil society, journalists, and government officials.
Ecuador	July 23-27, 2018	Official Visit by Special Rapporteur Edison Lanza in the framework of "ESE"	The Special Rapporteur traveled to Ecuador together with the IACHR to constitute a Special Follow-Up Team (ESE) in order to support the investigation of the murders, and the search and recovery of the bodies, in the framework of Precautionary Measure 309-18, which is currently in force.
Honduras	July 28 to August 4	On-site visit to Honduras	The Special Rapporteur for Freedom of Expression Edison Lanza and Attorney Ona Flores attended the visit <i>on-site</i> to Honduras, where they discussed topics related to justice and impunity; violence; inequality; democratic institutionalality; the rights of children, adolescents and youth; economic, social, cultural and environmental rights, and freedom of expression. During such visit, they analyzed the human rights situation in the post-electoral context and specially focused on the situation of human rights defenders and justice operators, people deprived of liberty including adolescents in contact with criminal law, and other groups at particular risk.
Ecuador	August 20-24, 2018	Official visit to Ecuador in order to monitor the situation of freedom in the country.	The Special Rapporteur made a visit to Ecuador together with Attorney Tatiana Guasti in order to analyze the situation of freedom of expression in that country. During the visit, they made preliminary observations and recommendations, which were presented at a press conference on August 24, 2018. In addition, they had working meetings in Quito and Guayaquil, where they met with journalists, civil society representatives, and victims of freedom of expression violations during the previous government's term of office. Likewise, they met with President Lenin Moreno and other representatives of the Executive and the Judiciary, such as the President of the National Court of Justice, Ombudsman, the Ministry of Telecommunications, and the Telecommunications Regulation and Control Agency (ARCOTEL).

<b>Colombia</b>	September 24-26, 2018, Bogotá, Colombia	Official visit to Colombia in the framework of ESE	The Special Rapporteur for Freedom of Expression Edison Lanza made an official visit to Colombia in order to follow-up on the this country's progress regarding the investigation of the three Ecuadorian journalists' murders, in the framework of the Special Follow-Up Team (ESE) (Precautionary Measure 309-18), which is currently in force. During the visit, they had meetings with the prosecutor in charge of the case, the director of the legal medicine institute, the medical team that identified the bodies, and the director of GAULA Anti-kidnapping and extortion, which is a body that was in charge of advising the Ecuadorian State on the said journalists' kidnapping, among other officials and bodies involved in the case's investigation. The Rapporteur and FLIP have also had a meeting in Bogota with journalists from different media who have investigated and followed the case and the situation at the Colombia-Ecuador frontier.
<b>Brazil</b>	November 5-12, 2018, Brasília, Sao Paulo, Rio de Janeiro, Brazil	<i>On-site</i> visit to Brazil	Rapporteur Edison Lanza and RFOE Attorney Tatiana Guasti have traveled to different Brazilian cities, in the framework of the IACHR visit <i>in loco</i> , invited by the State of Brazil on November 29, 2017. The objective was to observe the human rights situation in the country. They held meetings with national authorities and other authorities from different municipal and state bodies, as well as civil society representatives and organizations, social movements and groups, human rights defenders, people of African descent, quilombolas, indigenous peoples, peasants, people living in poverty, homeless people, leaders of movements defending the rights of various groups that have suffered historical discrimination, family members of murdered police officers, leaders of the LGBTI movement, and inhabitants of favelas, among others. The Office of the Special Rapporteur also held meetings with journalists and civil society organizations dedicated to the defense and promotion of freedom of expression. The RFOE team participated in the preparation of the report on preliminary observations on the visit, regarding the standards considered of the mandate, and it also provided supplies.
<b>Ecuador</b>	November 22-24, 2018, Quito, Ecuador	Second Official Visit to Ecuador in the framework of ESE	The Special Rapporteur for Freedom of Expression Edison Lanza and Commissioner Esmeralda Arosemena, in her capacity of ESE Rapporteur, made an official visit to Ecuador in order to follow-up on the this country's progress regarding the investigation of the three Ecuadorian journalists' murders, in the framework of the Special Follow-Up Team (ESE) (Precautionary Measure 309-18), which is currently in force.  During the visit, they held meetings with the State Attorney General, the prosecutor in charge of the investigation, the police unit supporting the investigation, and the technical team of the Ministry of Interior, among other meetings and activities held with different state officials and bodies involved in the case's investigation.  Likewise, they held a working visit with the victims' families to exchange information regarding the findings and progress of the investigation, and the work that has been carried out so far by the Office of the Special Rapporteur and the IACHR, in the framework of ESE.

### **Working meetings**

<b>Date / Place</b>	<b>Meeting</b>	<b>Participants</b>
March 1, 2018, Bogotá, Colombia	Transparency Secretariat of Colombia	Meeting with the Transparency Secretariat of Bogota Presidency to discuss the project on access to information and extractive activities that is being carried out by RFOE.
March 8, 2018, Lima, Peru	Meeting with the Summit Implementation Review Group (SIRG).	Preparatory meeting for the Summit of the Americas held in April 2018.
March 26-28, 2018, Washington, D.C., USA	Meeting with the African Commission on Human Rights and the UN	The Special Rapporteur Edison Lanza held meetings with the ACHR Special Rapporteur for Freedom of Expression Lawrence Murugu Mute, and the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard.
April 6, 2018, Buenos Aires, Argentina	Meeting at the Foreign Ministry with ENACOM and Silvana Giudici.	

April 11, 2018, Lima, Peru	Working meeting Human rights and transparency: consolidation of a common agenda	Attorney Ona Flores participated in this meeting, where they discussed and addressed topics on <i>socio-environmental transparency in international forums: EITI, P10, OGP. Likewise, they discussed and socialized the Regional Study on Transparency and Human Rights: The problems of access to information and the work of environmental defenders and indigenous people in the region.</i>
May 6, 2018 Santo Domingo, Dominican Republic	Meeting with Marcos Carmona (CPDH), Álvaro Leyva (ANPDH), and Heizel Torres (HUMBOLDT) from Nicaragua	They discussed topics and exchanged information regarding serious human rights violations and the serious situation of freedom of expression violations in Nicaragua.
May 7, 2018 Santo Domingo, Dominican Republic	Working meeting with journalists from "Diario de Cuba" and members of the Citizens Committee for Racial Integration.	Meeting with Commissioner Urrejola and Cuban journalists from "Diario de Cuba" Osmel Ramírez Álvarez and Ernesto Carralero Burgos, where they discussed the serious situation of freedom of expression in the island. Juan Antonio Madrazo and Aimara Peña González from the Citizens Committee for Racial Integration also attended this meeting.
July 25, Ecuador	Meeting at the National Assembly of Ecuador	Meeting to present the observations and recommendations of the report prepared by the Office of the Special Rapporteur regarding the reform proposal for the Communications Law in Ecuador. The Rapporteur met with different governmental bodies and jurists to discuss each item of the Inter-American standards on human rights and freedom of expression, among other topics, so that they are considered within the bill debate.
September 5, 2018, Mexico City	Meeting of the civil society Articulation Group on the recommendations of the final report of the consultation with the IACHR Special Rapporteur for Freedom of Expression.	The Special Rapporteur held a working meeting with Mexican Civil Society Organizations to share the recommendations of the visit's final report and discuss the progress of the implementation of recommendations by the authorities. Participants: - Adriana Ramírez, CIMAC, Aleida Calleja, Amedi, Ana Ruelas, Article19, Andrés Díaz, Código-DH, Avexnim Goytí, Cultural Survival, Balbina Flores, Reporters without Borders, Bia'ni Madsa, Cultural Survival, Danya Centeno, R3D, Irina Vásquez, AMARC Mx, Itzia Miravete, Article19, Jan Albert Hootsen, CPJ, Justine Dupuy, Fundar, Luis Fernando García, R3D, Manuel Celaá, OSC Forum, Mario Hurtado, Civic Proposal, Mark Camp, Cultural Survival, Maru Chávez, Cultural Survival, Nancy Torres, Paulina Castaño, Fundar, Samantha Páez, "Periodistas de a Pie," Sara Mendiola, Civic Proposal, Sergio Ferrer, Tlachinollan, Sofía de Robina, ProDH Center
October 3, 2018, Boulder, Colorado, USA	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Working meeting held in the framework of the Special Follow-Up Team (ESE), Precautionary Measure 309-18, which is currently in force. The victims' families, the Special Rapporteur for Freedom of Expression Edison Lanza, and Commissioner Esmeralda Arosemena attended this meeting. They discussed the progress and challenges presented by the Colombian State in the investigation of the three Ecuadorian journalists' murders at the Ecuador-Colombia frontier.
October 3, 2018, Boulder, Colorado, USA	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Working meeting held in the framework of the Special Follow-Up Team (ESE), Precautionary Measure 309-18, which is currently in force. The victims' families, the Special Rapporteur for Freedom of Expression Edison Lanza, and Commissioner Esmeralda Arosemena attended this meeting. They discussed the progress and challenges presented by the Ecuadorian State in the investigation of the three Ecuadorian journalists' murders at the Ecuador-Colombia frontier.
October 4, 2018, Boulder, Colorado, USA	169th Special Period of Sessions of the Inter-American Commission on Human Rights.	Meeting with the Inter-American Association for Environmental Defense (AIDA) and several organizations that defend the environment and human rights. During the meeting, Rapporteur Edison Lanza received information and supplies to be considered within the debate of the hearing on the use of hydraulic fracturing (fracking) and human rights violations against communities and environmental and territorial defenders, given that, within the impacts this activity might cause, there is a lack of awareness on the right to information.
October 20, 2018, Salta, Argentina	Google	Rapporteur Edison Lanza met with Eleonora Rabinovich from Google and Madhav Chinnapa, Director of Strategic Relations with European Media and Policy Expert.

December 1, 2018 Washington, D.C.	Working meeting Transitional Justice in Cuba  170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Rapporteur Edison Lanza attended the meeting where they discussed theoretical outlines of the Transitional Justice concept, and they presented relevant Transitional Justice experiences for the Cuban case debate. Likewise, they presented socio-political characteristics of the Cuban historical process, progress and challenges to Cuban openness, and the applicability of Transitional Justice mechanisms in the country's context.
December 4, 2018 Washington	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Working meeting held in the framework of the Special Follow-Up Team (ESE), Precautionary Measure 309-18, which is currently in force. The victims' families, the Special Rapporteur for Freedom of Expression Edison Lanza, Commissioner Esmeralda Arosemena, and Precautionary Measures Team Coordinator Jorge Meza attended this meeting. They discussed the progress and challenges presented by the Colombian State in the investigation of the three Ecuadorian journalists' murders at the Ecuador-Colombia frontier.
December 4, 2018 Washington	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Working meeting held in the framework of the Special Follow-Up Team (ESE), Precautionary Measure 309-18, which is currently in force. The victims' families, the Special Rapporteur for Freedom of Expression Edison Lanza, Commissioner Esmeralda Arosemena, and Precautionary Measures Coordinator Jorge Meza attended this meeting. They discussed the progress and challenges presented by the Ecuadorian State in the investigation of the three Ecuadorian journalists' murders at the Ecuador-Colombia frontier.
December 5, 2018 Washington	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Rapporteur Edison Lanza and Tatiana Guasti attended this working meeting upon the request of the Regional Alliance for Freedom of Expression and Information, in order to discuss the situation of freedom of expression in Cuba and exchange information and collect supplies for the Alliance, RFOE and the IACHR, regarding the reports in progress on the said country.
December 5, 2018 Washington, D.C.	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Rapporteur Edison Lanza and Fellow Federico Legal attended a working meeting convened by Vilma Núñez, President of the Nicaraguan Human Rights Center-CENIDH, to discuss the serious situation of human rights violations faced by journalist and the media in the said country, and the problem regarding serious restrictions, repressions, and obstructions against freedom of expression and the exercise of the right to protest.
December 6, 2018, Washington, D.C.	170th Special Period of Sessions of the Inter-American Commission on Human Rights.	Working meeting with Fundamedios Bolivia and other civil society organizations, during which they discussed relevant topics related to the situation of freedom of expression in Bolivia.
December 6, 2018, Washington, D.C.	CEJIL	Rapporteur Edison Lanza attended a meeting with the members of the International Coalition of Human Rights Bodies in the Americas, in the framework of the 170th IACHR Special Period of Sessions.

## 6) Annual Report and Development of Expert Knowledge

26. 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.

27. 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), and Chile (2017).

28. In June 2018, the Office of the Special Rapporteur and the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion issued a joint report on "Freedom of Expression in Mexico."<sup>8</sup> Furthermore, the Office of the Special Rapporteur issued the report "Access to public information

<sup>8</sup> IACHR. [Joint Report of the Special Rapporteur for Freedom of Expression of IACHR and the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on their mission to Mexico](#). June 19, 2018.

on violence and discrimination against women: progress and challenges in the Americas”<sup>9</sup> as a follow-up to report “Access to Information, Violence Against Women, and the Administration of Justice in the Americas” issued by the IACHR in 2015. Likewise, during 2018, the Office of the Special Rapporteur finalized two special reports: “Special Report on the Situation of Freedom of Expression in Cuba”; “Women Journalists and Freedom of Expression. Discrimination and gender-based violence faced by women journalists in the exercise of their profession.”

### 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 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>10</sup>

33. On May 2, freedom of expression experts from the UN, OSCE, IACHR, and African Commission on Human Rights issued their 2018 Joint Declaration at an event held in Accra, Ghana. The Declaration covers different current threats to the media’s freedom, such as threats to their safety and legal, political, technological, and economic threats, and the measures States shall adopt in order to face 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 on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Harlem Desir; the Special Rapporteur for Freedom of Expression of the Organization of the 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 2018, 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>11</sup>

Country	Topics	Number	Title	Place / Date
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<sup>9</sup> IACHR. [Access to public information on violence and discrimination against women: Progress and challenges in the Americas](#). 2018.

<sup>10</sup> Available at: <http://www.oas.org/en/iachr/expression/docListCat.asp?catID=16&IID=>

<sup>11</sup> Available at: <http://www.oas.org/en/iachr/expression/artListCat.asp?year=&countryID=&IID=1&catID=1>

Guatemala	Violence against journalists and impunity	R19/18	Office of the Special Rapporteur condemns murder of two journalists in Guatemala, urges State to investigate fully and implement protection mechanism	Washington, D.C. February 5, 2018
Mexico	Violence against journalists and impunity	R28/18	Office of the Special Rapporteur condemns murder of citizen journalist in Mexico, urges authorities to investigate relationship to publications and punish perpetrators	Washington, D.C. February 14, 2018
Regional	Promotion	R57/18	Office of the Special Rapporteur for Freedom of Expression of the IACHR presents its 2017 Annual Report	Washington, D.C. March 23, 2018
Regional	Access to Information and National Security	R67/18	Office of the Special Rapporteur for Freedom of Expression launches a questionnaire for the preparation of the thematic report on the right to access to public information and national security in the Americas	Washington, D.C. March 28, 2018
Haiti	Violence against journalists	R71/18	Office of the Special Rapporteur expresses its extreme concern over the disappearance of journalist Vladimir Legagneur in Haiti, and urges the authorities to take necessary measures to determine his whereabouts	Washington, D.C. March 29, 2018
Regional	Promotion	R72/18	Office of the Special Rapporteur for Freedom of Expression launches multimedia website on the Inter-American standards for a free, open, and inclusive internet	Washington, D.C. April 2, 2018
Colombia and Ecuador	Violence against journalists	R76/18	The Office of the Special Rapporteur of the IACHR expresses extreme concern over the situation of the journalists kidnapped in the border between Ecuador and Colombia, and calls on both States to coordinate	Washington, D.C. April 3, 2018
Regional	Promotion	R78/18	New registration record in the course "International Legal Framework of Freedom of Expression, Access to Public Information and Protection of Journalists"	Washington, D.C. April 4, 2018
Cuba	Criminalization of freedom of expression	R82/18	The IACHR publishes merit report in case related to the criminalization of political opinion and deliberation in Cuba	Washington, D.C. April 11, 2018
Mexico	Regulation / Freedom of Expression Safeguards	R89/18	Mexico: Mexico: Human rights experts call for media independence to be safeguarded in new government advertising bill	Washington, D.C. April 24, 2018
Regional	Promotion	R93/18	Joint Declaration on Media Independence and Diversity in the Digital Age	Washington, D.C. May 2, 2018
Guatemala	Violence against journalists	R95/18	Office of the Special Rapporteur condemns murder of journalist in Guatemala and urges to investigate the relation to his journalistic activity	Washington, D.C. May 4, 2018
Regional	Promotion	R98/18	Office of the Special Rapporteur for Freedom of Expression invites to consultation on access to information, violence against women, and the administration of justice in the Americas	Washington, D.C. May 9, 2018
Mexico	Violence against journalists	R115/18	The Special Rapporteur condemns murder of journalist in Mexico and urged to investigate relationship with his journalistic activity	Washington, D.C. May 24, 2018

Mexico	Violence against journalists	R125/18	Office of the Special Rapporteur condemns the murder of journalists in Mexico and notes with concern the situation of violence against media workers	Washington, D.C. June 1, 2018
Brazil	Violence against journalists	R140/18	Office of the Special Rapporteur condemns the killing of journalist in Brazil	Washington, D.C. June 29, 2018
United States	Violence against journalists	R143/18	Office of the Special Rapporteur of the IACHR expresses alarm and condemns mass shooting inside Capital Gazette newsroom in the United States	Washington, D.C. July 2, 2018
Mexico	Violence against journalists	R149/18	Office of the Special Rapporteur condemns the murder of another journalist in Mexico and urges to investigate the relationship to his journalistic activity	Washington, D.C. July 11, 2018
Peru	Violence against journalists	R151/18	Office of the Special Rapporteur Expresses Concern over Measures Forcing Journalists in Peru to reveal their sources and materials	Washington, D.C. July 12, 2018
Cuba		R152/18	The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for desacato laws in Cuba	Washington, D.C. July 17, 2018
United States	Freedom of Press	R170/18	Trump attacks on the media violate basic norms of press freedom, human rights experts say	Washington, D.C. August 2, 2018
Mexico	Violence against journalists	R173/18	Office of the Special Rapporteur Condemns two new murders of journalists in Mexico and urges the State to implement recommendations	Washington, D.C. August 7, 2018
Ecuador	Promotion	R188/18	Office of the Special Rapporteur concludes its visit to Ecuador and presents its preliminary observations and recommendations on freedom of expression in the country	Washington, D.C. August 24, 2018
Brazil	Violence against journalists	R191/18	The Office of the Special Rapporteur condemns the murder of a Journalist in Brazil and urges the authorities to Investigate Connection to Journalistic Activity	Washington, D.C. August 28, 2018
Nicaragua	Freedom of Expression / Violence against Journalists	R201/18	Office of the Special Rapporteur condemns attacks, political pressure, and indirect censorship against journalists and the media in Nicaragua	Washington, D.C. September 8, 2018
Mexico	Freedom of Expression / Violence against Journalists	R212/18	Office of the Special Rapporteur Condemns Murder of Journalist in Mexico and Urges to Redouble Efforts to Prevent Violence against Journalists	Washington, D.C. September 27, 2018
Regional	Promotion	R214/18	On the International Day of Access to public information, the IACHR's Special Rapporteur for freedom of expression evaluates: The compliance of State obligations regarding "Access to information, violence against women and the administration of justice"	Washington, D.C. September 28, 2018
Nicaragua	Freedom of Expression / Violence against Journalists	R222/18	IACHR and Office of the Special Rapporteur for Freedom of Expression express deep concern over decision to declare protests illegal in Nicaragua	Washington, D.C. October 9, 2018
Paraguay	Violence against journalists	R228/18	Committee of Experts and the Office of the Special Rapporteur of the IACHR express their concern over the threats against journalist Noelia Díaz Esquivel	Washington, D.C. October 30

Regional	Announcement	N/A	Office of the Special Rapporteur announces winner of contest "Access to public information and investigative journalism" and highlights journalism's use of access to information	Washington, D.C. October 30, 2018
Nicaragua	Restrictions to means of communication	R231/18	The Inter-American Commission on Human Rights and its Office of the Special Rapporteur express great concern over Nicaraguan government's new attempt to impose restrictions on "100 % Noticias" TV channel	Washington, D.C. October 31, 2018
Mexico	Violence against journalists	R236/18	RFOE and Experts call Mexico to ensure continued and sufficient funding for the Protection Mechanism for Human Rights Defenders and Journalists	Washington, D.C. November 2, 2018
Regional	Announcement	N/A	Nominations open for 5th edition of online course: International Legal Framework of Freedom of Expression, Access to Public Information and Protection of Journalists	Washington, D.C. November 30, 2018
Mexico	Violence against journalists	R263/18	Office of the Special Rapporteur Condemns Murder of Journalists in Mexico and Calls on New Government to Redouble Efforts to Prevent Violence against Journalists	Washington, D.C. December 13, 2018
Nicaragua	Violence against journalists	R267/18	Experts on freedom of expression of the UN and the Inter-American System condemn attacks and threats against journalists and the media in Nicaragua	Washington, D.C. December 14, 2018
Regional	Announcement	N/A	Public consultation: Disinformation in electoral contexts	Washington, D.C. December 17, 2018

### 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 2018, 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, 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>12</sup>

<sup>12</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

**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 2018, in the capacity of interns, Natalia Peña (Colombia) and Sara Martins (Brazil) collaborated in a constructive and enthusiastic manner to their work at the Office of the Special Rapporteur. In 2018, the Office of the Special Rapporteur has also counted on the participation of Fellow Federico Legal Aguilar (Paraguay) (Fellowship Orlando Sierra, 2018).

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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

### A. Freedom of expression in electoral contexts

7. On March 21, the anticipated general elections to elect a new government took place. On this date, the Labor Party, to which Prime Minister Gaston Browne belongs, obtained fifteen of seventeen seats in Parliament.<sup>1</sup> According to the preliminary reports of the electoral missions that covered the election day, "the voters could cast their vote without intimidation or harassment,"<sup>2</sup> "the elections were held in a peaceful environment and in accordance with the laws of the country"; no acts of violence were recorded; however, there is a "lack of transparency and responsibility regarding the financing of the campaigns."<sup>3</sup>

8. The Office of the Special Rapporteur received information on legal actions initiated for defamation among political actors, despite the fact that the 2015 Defamation Act repealed the penalty and guaranteed that with the regulation of the defamation complaint "[it] does not place unreasonable limits on freedom of expression and, in particular, on the publication and discussion of topics of public interest and importance."<sup>4</sup> For example, on January 22, Rep. Wilmoth Daniel would have sued Prime Minister Gaston Browne for defamation. The latter would have publicly stated in a parliamentary session that the Representative set fire to several buildings with the intention of obtaining money from an insurer. The Representative would have sent a letter by which he would have demanded an apology. Although the prime minister would have apologized, the Representative would have considered it insufficient and, consequently, would have filed the suit<sup>5</sup>.

9. On the other hand, in February, the Eastern Caribbean Supreme Court would have empowered Prime Minister Gaston Browne to sue a member of the United Progressive Party (UPP), Damani. Tabor, for alleged defamation committed in 2017; the defendant, would have appealed the decision<sup>6</sup>. Also, according to available information, the UPP candidate, Chester Hughes, had threatened to sue the Labor Party candidate, Asot Michael, in case he didn't apologize for alleged defamatory statements he had made at a public meeting<sup>7</sup>.

10. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as "the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a 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>8</sup>

11. The Office of the Special Rapporteur recalls that "[e]lections 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>9</sup>

### B. Subsequent liabilities

12. According to the information available, the head of the government's scholarship program, Maurice Merchant, had instructed his legal representative to initiate legal actions for defamation against Crusader

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<sup>1</sup> Caribbean Elections. March 21, 2018. [Antigua and Barbuda General Election Results](#).

<sup>2</sup> Caricom. March 22, 2018. [Preliminary Statement - CARICOM Election Observation Mission, Antigua/Barbuda](#).

<sup>3</sup> The Commonwealth. [Antigua and Barbuda 2018 General Election. Interim Statement](#). March 22, 2018.

<sup>4</sup> Antigua and Barbuda Laws. [The Defamation Act](#). April 23, 2015.

<sup>5</sup> The Daily Observer. January 27, 2018. ['Pitbull' goes after 'World Boss' for defamation](#); Antigua Observer. February 11, 2018. [An opposition MP threatens to sue the PM](#).

<sup>6</sup> Antigua Chronicle. February 15, 2018. [Prime Minister Gaston Browne moves forward with defamation suit against upp senator and observer radio](#); The Daily Observer. February 16, 2018. [Tabor to appeal defamation ruling](#).

<sup>7</sup> The Daily Observer. March 16, 2018. [Asot Michael threatened with lawsuit over remarks](#); The Daily Observer. March 15, 2018. [UPP political hopeful demands apology from labour party MP](#).

<sup>8</sup> I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

<sup>9</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.

Radio in relation to a story that, according to the affected party, suggests fraudulent activities related to scholarship funds. The radio station reported on allegations of financial irregularities that would have been made public in a court testimony<sup>10</sup>.

13. The Office of the Special Rapporteur recalls that “the expression of statements, information and opinions regarding matters of public interest, the State and its institutions enjoy greater protection under the American Convention on Human Rights. This means that the State must refrain more rigorously from placing limitations on these forms of expression, and that State entities and officials, as well as those who aspire to hold government positions, must have a higher threshold of tolerance in the face of criticism because of the public nature of their duties. In a democratic society, given the importance of monitoring the conduct of public affairs through opinion, there is a narrower margin for any restriction of political debate or discourse on matters of public interest.”<sup>11</sup>

### **C. Legal reform**

14. According to the public information available, would be under study a draft amendment to several articles of 2013 Electronic Crimes law. The bill would seek to amend provisions on the interpretation of the definition of "child pornography"; on "sending offensive message through communication services; on "violation of privacy"; among other articles. According to the "explanatory memorandum" published, the bill seeks to amend some articles based on a decision of the High Court in which it was interpreted that some provisions of the aforementioned law were broad and left open the possibility to a restriction on freedom of expression<sup>12</sup>.

15. In the 2011 joint declaration on freedom of expression and the internet, the UN, OSCE, IACHR and ACHPR Special Rapporteurs mentioned that “[g]iving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.”<sup>13</sup>

### **D. Access to public information**

16. According to available information, various public institutions would have violated the law on access to public information, the 2004 Freedom Information Act. In this context, according to information published in the media, on January 10, representatives of the United Progressive Party (UPP) would have made at least ten requests for information to various state entities with the purpose that they provide information of public interest<sup>14</sup>.

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

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<sup>10</sup> Antigua Observer. October 24, 2018. [Legal action threatened over 'false' news report](#); St. Lucia Times. October 24, 2018. [Antigua: Legal action threatened over 'false' news report](#); Antigua News Room. October 24, 2018. [Merchant Threatens To Sue Over Scholarship Fraud Allegations](#).

<sup>11</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. Para. 36.

<sup>12</sup> Antigua and Barbuda. Ministry of Justice and Legal Affairs. [Electronic Crimes Amendment Bill 2018](#); Antigua and Barbuda Laws. [Electronic Crimes Amendment Bill 2018](#).

<sup>13</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

<sup>14</sup> Antigua Chronicle. January 17, 2018. [UPP employs Freedom of Information Act to secure 'answers' on Port Authority Scandal](#); The Daily Observer. January 18, 2018. [FOIA requests on 10 state officials](#).

## 2. ARGENTINA

18. During 2018, the Office of the Special Rapporteur followed up the situation of freedom of expression in Argentina, especially focusing on the situation of public and community media, ongoing merging processes regarding media and telecommunications companies and their impact on informative pluralism, as well as regarding attacks and assault against journalists. In relation to the use of force during protests, this Office highlights the judicial decisions through which it was possible to identify and punish officials investigated for police abuse during protests, as well as other decisions protecting the right to practice journalism and the non-disclosure of information sources. The Office recognizes the progress of the Access to Public Information and Data Protection Agency at the Federal Executive level on the implementation of the Access to Public Information Act and the protection of public interest information, but it promotes making progress in other State branches. In relation to the protection of freedom of expression in the internet, the Office of the Special Rapporteur notes with concern a series of court orders seeking to block internet sites and applications, based on the claims of allegedly affected sectors, and asks for the reconsideration of the treatment of the draft on intermediaries' responsibility at the National Congress.

### A. Progress

19. The Office of the Special Rapporteur received information related to a series of court decisions adopted by different courts on issues of freedom of expression, social protests, attacks against journalists, and the dissemination of public interest information on the internet. In this sense, according to the information published, the National Supreme Court of Justice, on December 26, 2017, decided on the repeal of a punishment against the Argentinian Gay Community (CHA) for alleged attacks committed by unidentified individuals against a person at a public concert in the framework of a campaign. The Judiciary informed that for the Supreme Court the organization's responsibility "for its organizing nature, might affect freedom of expression and the right to assembly." As reported by the Judiciary, "a rule imposing burdensome obligations in the events organized in open spaces for the free expression of ideas might have restricting consequences on those constitutional rights; especially when the people aiming at expressing themselves belong to excluded, vulnerable, and discriminated against groups."<sup>15</sup>

20. On March 2, the II Courtroom of the National Federal Criminal and Correctional Chamber "confirmed the prosecution and pre-trial detention" of a police officer who "intentionally directed his motorbike with the aim of rolling over a young man who was lying on the floor after having been shot at with rubber bullets." Likewise, the prosecution of an agent for "abuse of power" was confirmed because "[he] repeatedly sprayed dissuasive gas and also hit a person on the back with his truncheon who was passively standing on the sidewalk nearby Congress."<sup>16</sup> Both prosecutions refer to the use of police force during social protests in front of Congress on December 18, 2017.

21. According to the information available, on February 8, Judge Osvaldo Rappa absolved the 20 people who had been arrested by the Police during the 2017 protest for International Women's Day, known as 8M. The magistrate considered that there were no "conviction elements allowing to link" the people arrested to the crimes indicated by the Police and the Public Prosecutor's Office. Even though all detainees were released the day after the arrest, the Public Prosecutor's Office initiated a criminal case on the alleged crimes of undermining of the authority, disobedience, minor injuries, and aggravated damage.<sup>17</sup>

22. In the law enforcement of justice area, according to the information available, on March 8, the Fourth Crime Chamber of Córdoba sentenced Julio César Suárez, Former Chief of Córdoba Police, to two years and two months of conditional imprisonment for the crime of coercion in the framework of the journalistic coverage. During his program "Justicia Legítima" on Channel 10, the journalist had questioned a police operation carried out as a response to the citizens' protests for a young man's murder committed by two

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<sup>15</sup> República Argentina. Corte Suprema de Justicia de la Nación. Centro de Información Judicial. December 27, 2017. [La Corte dejó sin efecto la condena a la Comunidad Homosexual Argentina por los daños sufridos por una persona en un recital gratuito, organizado por dicha asociación en el marco de una campaña de interés general.](#)

<sup>16</sup> República Argentina. Corte Suprema de Justicia de la Nación. Centro de Información Judicial. March 2, 2018. [La Cámara Federal confirmó el procesamiento y prisión preventiva del policía Dante Barisone por lesiones graves.](#)

<sup>17</sup> CELS. February 14, 2018. [El Poder Judicial ratificó que las detenciones del 8M fueron al voleo;](#) Tiempo ar. February 13, 2018. [La Justicia sobreescribió a las 15 mujeres y 5 hombres detenidos el 8M de 2017.](#)

police officers in 2014.<sup>18</sup> One group of legislators of the House of Representatives submitted a draft resolution expressing their “satisfaction at the judicial actions punishing the crime of coercion committed by a former Provincial Police Chief, with the aim of preserving freedom of expression and the professional duties of Dante Leguizamón, Radio and TV Journalist from the National University of Córdoba.”<sup>19</sup>

23. On April 12, the Public Prosecution Service informed that “the Procurator Fiscal before the National Supreme Court of Justice, Víctor Abramovich, ruled—in the framework of a complaint filed by Cecilia Pando against Barcelona magazine—that a publication issued by the said graphical medium is protected by the right to freedom of expression and that it does not exceed the scope of an opinion on the public interest matter.” According to what was published, “the case was initiated due to a satirical back of a magazine showing a photo montage of a person tied up with ropes that had Pando’s face, making reference to what happened in 2010, when the women and relatives of the military soldiers arrested for alleged crimes against humanity were tied up to the bars of the Libertador Building—where there are located the headquarters of the General Staff of the Army and the Ministry of Defense.” “Procurator Fiscal Abramovich characterized the event that motivated the event as a public interest matter and considered that it was a protest carried out in the public space that expresses the questioning by a group of people to criminal proceedings for crimes against humanity committed during the last military coup.”<sup>20</sup>

24. On April 17, “the National Federal Criminal and Correctional Chamber confirmed the stay of Public Prosecutor Carlos Stornelli and Journalist Carlos Pagni in a case for violation of secrecy regarding ‘Río Turbio’ proceedings.” According to what was published, “both of them were reported for alleged leakage and dissemination of information linked to the detention and deprivation of privilege requests regarding Julio De Vido (among others) in the case.” Likewise, the judicial decision considered that “among the essential aspects of freedom of press, as a recognized practice right granted by the National Constitution and hierarchical international treaties, there are included the free access to information sources, the possibility of picking up news, disseminating them, and reasonably safeguarding the source’s privacy.”<sup>21</sup>

25. On September 4, “the Supreme Court ruled that in order to dismiss a worker carrying out guild claims in favor of his or her co-workers, the company shall prove that the dismissal is not carried out as a means of retaliation for union activism.” According to what was published, “supported by his co-workers, and before the National Ministry of Labor, the Directorate of Labor Inspection, and the trade union, the worker requested to hold elections to union representatives. In this context, he was suspended by the company due to alleged lack of punctuality, he questioned the punishment and he was later dismissed on the basis that his conduct was aggravating. The worker then filed a complaint of discriminatory dismissal for union reasons.” Previously, the action had been rejected by the Justice Court of Catamarca Province.<sup>22</sup>

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

26. According to the information published by different media, threats and harassment situations against several journalists for matters related to their professional duties were registered during 2018.<sup>23</sup> The Office

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<sup>18</sup> Carlos Paz VIVO. March 8, 2018. [Por amenazas, condenaron a prisión a un ex Jefe de la Policía de Córdoba](#); La Voz. March 8, 2018. [Condenan al jefe de policía Suárez por coacción al periodista Dante Leguizamón](#); FOPEA. March 8, 2018. [Condenan a jefe policial de Córdoba por amenazas a periodista](#).

<sup>19</sup> República Argentina. Cámara de Diputados. [1592-D-2018](#). April 3, 2018.

<sup>20</sup> República Argentina. Ministerio Público Fiscal. April 12, 2018. [Dictaminan que la sátira política se encuentra amparada por el derecho a la libertad de expresión](#).

<sup>21</sup> República Argentina. Corte Suprema de Justicia de la Nación. Centro de Información Judicial. April 17, 2018. [La Cámara Federal confirmó el sobreseimiento del fiscal Carlos Stornelli y del periodista Carlos Pagni en un caso por violación de secretos en la causa “Río Turbio”](#).

<sup>22</sup> República Argentina. Corte Suprema de Justicia de la Nación. Centro de Información Judicial. September 4, 2018. [La Corte Suprema resolvió que para despedir a un trabajador que hace reclamos gremiales en favor de sus compañeros la empresa debe demostrar que el despido no es una represalia por ese activismo sindical](#); Perfil. September 5, 2018. [La Corte Suprema le dio un guiño a los trabajadores](#).

<sup>23</sup> Clarín. March 12, 2018. [Otra vez, Guillermo Moreno agredió a Eduardo Feinmann y lo desafió a pelear](#); Ámbito. March 12, 2018. [Moreno se cruzó con un periodista y lo desafió a pelear](#); FOPEA. December 6, 2017. [Fopea se solidariza con el periodista Alberto Arce y pide que se garantice su seguridad](#); El Diario. December 7, 2017. [Ataque a piedrazos y amenazas en la casa del periodista Alberto Arce](#); La Voz. August 17, 2018. [Periodista que golpeó accidentalmente a Cristina Fernández denunció que está siendo amenazada](#); Clarín. August 16, 2018. [Una periodista golpeó por accidente a Cristina Kirchner y la amenazaron: “La estoy pasando mal”](#); FOPEA. July 5, 2018. [FOPEA repudia el ataque a un equipo periodístico en Rosario](#); Fundación Led. [Amenazan a periodista de Canal 5 de Rosario](#); FOPEA. September 19,

of the Special Rapporteur was concerned about the information indicating that public workers and political parties are allegedly involved in some of these attacks to the journalists' duties. On May 9, Journalist Nicolás Wiñazki, from TN Channel, was attacked and slurred by a group of political activists nearby the legislative building, after having carried out there a coverage on the public services' tariffs debate.<sup>24</sup> Regarding this situation, a group of legislators of the House of Representatives passed a draft resolution expressing their "rejection of the verbal and physical attacks, death threats, and attempted theft suffered by the journalist."<sup>25</sup>

27. Furthermore, on November 12, Journalist Norma Devecchi, from "El Territorio" newspaper of Misiones Province, filed a criminal complaint against Puerto Iguazú city's Mayor, Claudio Filippa, after he made discrediting comments and encouraged a group of political activists to inflict sexual violence on her. The assault committed by the mayor took place after she had published an article about an investigation conducted by AFIP (Federal Administration of Public Revenues) on the utilization of inauthentic bills by Puerto Iguazú's municipality.<sup>26</sup>

28. The Office of the Special Rapporteur received information indicating that on May 26, Photographer Roque Azcurraire was allegedly attacked in a violent manner and arbitrarily arrested at his home by the Coastguard, after he had complained to the police about the attack against one of his relatives in the framework of an operation at "Villa 21-24" neighborhood in Buenos Aires. The police officers of the federal forces allegedly arrested the photographer, from community medium "La garganta poderosa," after he had attempted to film the moment they entered their home and took his equipment, beat him up, and slurred him and then took him to the police station together with his brother-in-law Juan Pablo Mónaco. Both of them reportedly stayed in jail for two days due to an alleged "attempted theft."<sup>27</sup> After "La garganta poderosa" had publicly reported the events, Minister Patricia Bullrich supported the actions carried out by the federal security forces during a press conference of June 8. On June 11, a group of legislators of the House of Representatives passed a draft resolution requesting a report "regarding the accusations against popular organization 'La Poderosa'" from the minister. According to the document, the federal armed forces' group "reproduced the violent actions against the organization by means of the brutal arrest of Photographer Roque Azcurraire and his brother-in-law Pablo, at his home."<sup>28</sup>

29. Pursuant to the powers established in Article 41 of the American Convention on Human Rights, on August 14, the Office of the Special Rapporteur sent to the State of Argentina a letter requesting information on the reported episode. According to the information provided by the State, the problem started after that two individuals attacked a Coastguard soldier while they were traveling by bus. The said attack culminated in a clash among several soldiers, who had intervened to defend the attacked soldier, and some citizens at the neighborhood, who were trying to impede the alleged attackers' arrest. In the middle of that "conflict," the photographer, his sister, and his brother-in-law were arrested. According to the State, "there is no evidence on the alleged invasion of Mr. Roque Manuel Azcurraire's home or regarding the fact that he was the object of

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2018. [Fopea rechaza las amenazas sufridas por el periodista Federico Tolchinsky](#); FOPEA. October 11, 2018. [FOPEA condena atentado contra periodista riojano](#); Fundación Led. October 22, 2018. [Preocupación por afiches intimidatorios contra el periodista Luis Majul en la ciudad de Buenos Aires](#); Infobae. October 22, 2018. [Adepa condenó y calificó de "ataque intimidatorio" los afiches dirigidos al periodista Luis Majul](#); La Nación. October 22, 2018. [Adepa condenó y calificó de "ataque intimidatorio" los afiches dirigidos al periodista Luis Majul](#); El Independiente. October 10, 2018. [El locutor Enrique Nicolini denunció el incendio de su camioneta](#); La Nación. September 21, 2018. [Amenazan a un periodista por una investigación](#).

<sup>24</sup> La Nación. May 9, 2018. [Agredieron a Nicolás Wiñazki a la salida del Congreso](#); ADEPA. May 10, 2018. [Enérgica condena de Adepa a las agresiones y amenazas a Nicolás Wiñazki](#).

<sup>25</sup> República Argentina. Cámara de Diputados. [2767-D-2018](#). May 10, 2018.

<sup>26</sup> FOPEA. November 12, 2018. [Fopea ante las agresiones de un intendente a una periodista](#); Infobae. November 12, 2018. ["Siento vergüenza": el malestar de la periodista agredida por el intendente de Puerto Iguazú](#); Perfil. [El vergonzoso audio del intendente de Puerto Iguazú contra una periodista](#).

<sup>27</sup> The journalist's sister was also allegedly detained and released hours later. The Court ordered the dismissal of Azcurraire and Monaco having identified no individual responsibilities. See: Reporters Without Borders (RSF). May 30, 2018. [Police attack and arrest photographer in Buenos Aires](#); Página 12. May 27, 2018. [Detuvieron a un fotógrafo de La Garganta Poderosa y a su hermana](#); Tiempoar. May 28, 2017. [Fue liberado el fotógrafo detenido ilegalmente por la Prefectura](#); Resumen Latinoamericano. May 28, 2018. [Argentina/ Liberaron a Pablo y al fotógrafo Roque de La Garganta Poderosa, Villa 21: "NOS TORTURARON, OTRA VEZ"](#); La Poderosa. May 27, 2018. [Estamos detenidos ahora mismo por la Prefectura](#); La Poderosa. May 28, 2018. [Nos torturaron otra vez](#).

<sup>28</sup> República Argentina. Cámara de Diputados. [3607-D-2018](#). June 11, 2018.

an action carried out against him by the staff in charge of this Ministry of Security, in his character of graphical journalist exercising his duty.”<sup>29</sup>

30. Furthermore, according to a complaint filed by the Office of the Special Rapporteur, in the said letter, this Office requested information from the Argentinian State about a series of threat and harassment acts committed against communicators of community radio station FM ALAS from El Bolsón city, Río Negro Province, in the wake of their coverage on environmental and territorial conflicts.<sup>30</sup> These facts were allegedly reported to the Police Station No. 12 from El Bolsón. Regarding this, the State indicated that it had not received judicial requests or matters tending to implement protection measures in favor of the station’s communicators and that, if the complaint was filed in a police station of the city, the matter might become external to the competence of the Ministry of Security.<sup>31</sup>

31. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression 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 protest

32. According to the information gathered by the Office of the Special Rapporteur and the complaints filed by human rights organizations to the IACHR, during 2018, the Police allegedly carried out excessive use of force actions in the framework of social protests.<sup>32</sup> The complaints refer to the use of rubber bullets and tear gas which causes injuries and damage, in some serious cases, to several demonstrators and journalists covering the events. Journalists, camera people, photographers were allegedly attacked in spite of having been identified as press workers. Likewise, according to the complaints, the practice of detaining protesters and subjecting them to judicial proceedings continued.

33. During a hearing on the situation about the right to protest in Argentina, carried out on March 2, 2018 in Colombia, during the 167th Period of Sessions of the IACHR,<sup>33</sup> the participating civil organizations stated that during 2017, intimidating messages from government officials were intensified against demonstrators. Likewise, they expressed their concern for the violent actions carried out by security forces intervening in demonstrations and by some decisions made by the Judiciary, which are restrictive regarding the right to protest. They assured that the Police make a “reasonable use of violence” during social protests and that they have observed there is “cruelty” against journalists or people registering the facts. The organizations stated that they generally observe a “deterioration in the exercise of the right to protest,” and there is a “discursive argument of the government marked by the discrediting of popular demonstrations” and the “undermining of convening organizations.” They also reported the lack of “dialogue means” and requested the State to enable those instances to avoid conflicts during the protests.

34. In the framework of the powers established in Article 41 of the American Convention on Human Rights, the Office of the Special Rapporteur requested information to the State on the police action during the December demonstrations and on the existence of protocols guiding security forces’ actions during protests.

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<sup>29</sup> Letter from the Argentine State sent to the Office of the Special Rapporteur in response to a request for information. September 28, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>30</sup> Letter from Defensoría del Público de Servicios de Comunicación Audiovisual addressed to the Office of the Special Rapporteur for Freedom of Expression. June 22, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Defensoría del Público. August 10, 2018. [La Relatoría Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos solicitó información al Estado por las amenazas que sufrió la radio comunitaria FM ALAS, de El Bolsón, Río Negro.](#)

<sup>31</sup> Letter from the Argentine State sent to the Office of the Special Rapporteur in response to a request for information. September 28, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>32</sup> CELS. [Informe. Argentina: el derecho a la protesta en riesgo.](#) March 1, 2018; CELS. [Informe. Argentina: el derecho a la protesta en riesgo.](#) November 1, 2018.

<sup>33</sup> The hearing was convened ex officio by the IACHR. Taking part were delegates from the State of Argentina, Centro de Estudios Legales y Sociales (CELS), Central de Trabajadores de la Argentina-Autónoma (CTA - Autónoma), Confederación de Trabajadores de la Educación de la República Argentina (CTERA), Sindicato Unificado de Trabajadores de la Educación de Buenos Aires (SUTEBA), Sindicato de Prensa de Buenos Aires (SIPREBA), Sindicato Unificado de Trabajadores de la Educación Fuegoquina (SUTEF), and Colectivo Ni Una Menos. See: IACHR. 167 Period of Sessions. [Situación del derecho a la protesta en Argentina.](#) March 2, 2018.

Regarding this, the State indicated that the instrument “Minimum criteria for the development of action protocols of the police and federal security forces during public demonstrations” in force, approved by Resolution No. 210/2011.<sup>34</sup> Likewise, the Office of the Special Rapporteur requested information on the existence of training and awareness programs for security forces regarding the press’ role and the appropriate conduct during social protests. The State expressed that the Commission’s suggestion will be considered for the assembly of future training programs for federal forces.<sup>35</sup>

35. During the aforementioned public hearing, press unions expressed an especial concern for the attacks and arrests against journalists covering protests, and indicated that during 2017, at least 13 journalists were arbitrarily arrested while reporting the demonstrations.<sup>36</sup>

36. For its part, the State indicated that in Argentina “freedom of expression and the right to peaceful assembly are totally insured” and that there is “no measure on the part of the authorities aiming at discouraging the exercise of the right to protest.” However, the State’s representatives expressed that during some demonstrations “the reasonable limits are exceeded in the form of violent acts” and that “security officers shall act to protect society as a whole.” In this sense, they said that in the light of the actions of violent groups during the protests, Police officers shall re-establish order within proportionality and rationality boundaries. They added that if an officer’s behavior exceeded the limits, it is the duty of the justice system to investigate him or her.<sup>37</sup>

37. Regarding press workers’ security, the State’s delegation highlighted the approval of Resolution 479/16 of the Ministry of Security, which defined a general action protocol for the protection of the journalistic activity.<sup>38</sup>

38. The Special Rapporteur for Freedom of Expression, Edison Lanza, highlighted during a hearing that the State has the duty of facilitating and guaranteeing that protests are carried out, and in this sense, security forces shall identify flashpoints and take them out so that the protest can go on. Likewise, he expressed his concern for the use of rubber bullets during police operations and for the high number of journalists injured during the protests. In this sense, it expressed to the State that is necessary that security forces have protocols and sufficient training to identify which the press’ role is.<sup>39</sup>

39. According to the information received, other protest situations, related to complaints on political and economical issues, which led to arrests, took place on April 14,<sup>40</sup> in Jujuy; on May 22, in Buenos Aires;<sup>41</sup> on May 24, in Salta Province;<sup>42</sup> on August 21, in La Plata;<sup>43</sup> on October 14, in Chubut.<sup>44</sup>

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<sup>34</sup> Letter from the Argentine State sent to the Office of the Special Rapporteur in response to a request for information. September 28, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>35</sup> Letter from the Argentine State sent to the Office of the Special Rapporteur in response to a request for information. September 28, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>36</sup> IACHR. 167 Period of Sessions. [Situación del derecho a la protesta en Argentina](#). March 2, 2018.

<sup>37</sup> IACHR. 167 Period of Sessions. [Situación del derecho a la protesta en Argentina](#). March 2, 2018.

<sup>38</sup> IACHR. 167 Period of Sessions. [Situación del derecho a la protesta en Argentina](#). March 2, 2018.

<sup>39</sup> IACHR. 167 Period of Sessions. [Situación del derecho a la protesta en Argentina](#). March 2, 2018.

<sup>40</sup> On April 14, several leaders and members of social, professional and political organizations of the province of Jujuy were allegedly detained after participating in a mobilization against the government’s adjustment policies on April 4. Judge Jorge Zurueta accepted the request of the prosecution and charged the social leaders with the crime of assault against the authorities, aggravated because they had laid their hands on the agents, and ordered their arrest. Eight of the 11 accused were arrested on April 14 and released on the 17th, after giving an investigatory statement. Two more were arrested on April 18 and released later that day. See: Página 12. April 14, 2018. [Cacería de dirigentes sociales en Jujuy](#); La izquierda diario. April 18, 2018. [Grave: dos nuevas detenciones a dirigentes sociales en Jujuy](#); La izquierda diario. April 18, 2018. [Jujuy: liberaron a los dos dirigentes sociales detenidos esta mañana](#); CELS. April 16, 2018. [Detención de dirigentes sociales en Jujuy](#); El Tribuno. April 14, 2018. [Detuvieron en Jujuy a dirigentes sociales y políticos que participaron de una protesta](#).

<sup>41</sup> On May 22, Buenos Aires police allegedly repressed a protest and arrested workers and union leaders from the city’s subway. Transport service workers grouped in the Asociación Gremial de los Trabajadores de Subte y Premetro had been carrying out rotating strikes for weeks to demand better wages. On the 22nd the city mayor allegedly sent riot police to a station that was inactive to evict the union members. Sixteen workers were allegedly arrested and released a few hours later after being informed of the charges against them. The Secretary of Security of Buenos Aires reported in a statement that the detainees were accused of “resistance to authority and affecting public services.” Protest participants reported to the media that they suffered “brutal repression” with batons and rubber bullets. See: El País. May 22, 2018. [La policía irrumpe en los túneles del subterráneo de Buenos Aires para romper una huelga](#); La Voz. May 22, 2018. [Gremios y la CTA Autónoma repudian la “represión” en el subte y exigen liberar a los detenidos](#); Perfil. May 22, 2018. [Video |](#)

40. In September, Federal Courtroom III of Criminal Cassation allegedly revoked, upon request of the Prosecutor General, the stays of three press workers —Juan Pablo Mourenza, Ezequiel Medone, and Paola Barriga— who were covering a protest on September 1, 2017, and had been allegedly prosecuted for public intimidation and resisting the authorities, together with other 19 people. In that same year during December, the Court of Appeal for Federal Criminal and Correctional Cases revoked the prosecutions, but the Prosecutor General before the National Court of Appeal for Federal Criminal and Correctional Cases, Germán Moldes, filed for a cassation remedy. The Federal Courtroom of Criminal Cassation approved the repeal of the stays, saying that “the complete irresponsibility of the people accused does not unequivocally arise” on the incidents committed during that night. The Courtroom confirmed the stay of Carlos Ardila Guerra, the fourth journalist accused.<sup>45</sup>

41. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>46</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>47</sup>

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

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[Desalojo de metrodelegados que bloquearon las vías del subte](#); Diario Jornada. May 23, 2018. [Liberan a los 16 metrodelegados y el subte funcionará con normalidad](#); El Día. May 23, 2018. [Tras los incidentes y la liberación de 16 metrodelegados detenidos, habrá subtes](#).

<sup>42</sup> On May 24, security forces allegedly repressed a protest by indigenous communities of the province of Salta, who complained about the precarious situation they are undergoing ever since the flooding of the Pilcomayo River, early in the year, due to a lack of electricity and other utilities. The police had allegedly forced the demonstrators out with rubber bullets and tear gas, and detained two community leaders: chief Rogelio Segundo, a leader of Asociación LhakaHonhat, and his brother Mario Segundo. Both were released the following day. The Centro de Estudios Legales y Sociales (CELS) sent a letter to the IACHR denouncing the precarious situation of the indigenous communities and the criminalization of the protest. See: Nuevo Diario. May 26, 2018. [Tras la represión, llegó un grupo eléctrico a La Curvita](#); AnRed. May 26, 2017. [Salta: liberaron a los referentes wichi detenidos durante la represión policial a la comunidad de La Curvita](#); La Gaceta de Salta. May 24, 2017. [Video: la policía reprimió un corte de ruta de un pueblo originario](#); El Tribuno. May 12, 2018. [La comunidad de La Curvita corta la ruta 54, cansada de vivir en carpas, sin luz ni un puesto sanitario](#); CELS. May 24, 2018. [Represión y criminalización de comunidades indígenas en Salta](#); CELS. May, 2018. [Letter sent to the IACHR](#).

<sup>43</sup> During the protest, some protesters allegedly tried to tear down the fence surrounding the headquarters of the Government of Buenos Aires, and allegedly threw stones against the windows, while the police officers responded with tear gas and rubber bullets. Five people were arrested and two police cars were destroyed during the confrontation. See: Clarín. August 21, 2018. [Graves incidentes con trabajadores del Astillero Río Santiago: quisieron entrar por la fuerza a la Gobernación](#); El Cronista. August 21, 2018. [La Plata: La Policía reprimió una protesta de trabajadores de Astillero Río Santiago](#); Perfil. August 21, 2018. [Batalla campal en una manifestación de trabajadores del Astillero Río Santiago en La Plata](#).

<sup>44</sup> Ten women were arrested in Trelew after the demonstration, allegedly for having painted and damaged buildings, after the march ended. The police allegedly used rubber bullets. The detainees were released a few hours later. The organizing committee of the 33 ENM accused the Governor of the province and the Minister of Security of having sent Gendarmerie, Mounted Police and Infantry forces to repress the march. See: Twitter account of 33º Encuentro Nacional de Mujeres #Chubut 2018 (@ENM33Chubut). [October 14, 2018](#); TN. October 15, 2018. [Graves incidentes y diez detenciones en el Encuentro Nacional de Mujeres](#); Twitter account of Red Nacional de Medios Alternativos (@RNMA\_Arg). [October 14, 2018](#); La Voz. October 15, 2018. [Incidentes y detenidos en el final del Encuentro de Mujeres de Trelew](#).

<sup>45</sup> Página 12. September 12, 2018. [Casación revocó el sobreseimiento de tres periodistas](#); CELS. September 19, 2018. [Otro mensaje del poder judicial en contra de la protesta social](#); Tiempo. September 13, 2018. [Revocaron el sobreseimiento a periodistas detenidos en la marcha por Santiago Maldonado](#).

<sup>46</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>47</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.

exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>48</sup>

43. The Special Rapporteur recalls 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”<sup>49</sup>.

#### **D. Stigmatizing statements**

44. The Mayor of Tres Arroyos (Buenos Aires), Carlos Sánchez, made aggravating comments against “La Voz del Pueblo” newspaper and its director, Ramona Maciel, during the City Council’s inaugural address on April 3.<sup>50</sup> In October, General Roca’s Mayor (Río Negro Province) Martín Soria allegedly described the journalists as “pieces of shit” during an event of his political party and affirmed that several “criminals,” making reference to the journalists, would be unemployed next year, were he elected for governor.<sup>51</sup>

45. The Association of Argentinian Journalistic Entities (ADEPA) and the Argentinian Journalism Forum (FOPEA) rejected the affronts expressed by Former Argentinian President Cristina Fernández against Diego Cabot from “La Nación” newspaper, during her appearance before the justice in the wake of an investigation conducted by him which linked her to bribery collection.<sup>52</sup>

46. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”<sup>53</sup>

#### **E. Subsequent liability**

47. During 2018, the Office of the Special Rapporteur received information on the confirmation of the civil sentence for Gabriel Hernández, Andrea Paola Cospito, César Orué, Julián González, Carlos Rodolfo Varela, and the owner of radio Station FM 100.3 “Radio Fantasia,” María de las Mercedes López, due to damages against the province’s Governor, Gildo Insfrán.<sup>54</sup> Furthermore, this Office received information on a

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<sup>48</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>49</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>50</sup> ADEPA. April 4, 2018. [Adepa rechaza nuevos agravios del intendente de Tres Arroyos a La Voz del Pueblo](#); La Voz. April 4, 2018. [Sánchez volvió a atacar a este diario y lo tildó de “órgano difamador”](#).

<sup>51</sup> Fundación Led. October 23, 2018. [Agresión verbal y amenazas a periodistas en la provincia de Río Negro](#); Clarín. October 22, 2018. [Un intendente de Río Negro calificó de “mierdas” a los periodistas](#).

<sup>52</sup> Former President Cristina Fernández reportedly declared before Judge Claudio Bonadío that journalist Diego Cabot had “set up a small task force with two journalism students to analyze the alleged data and transfer them into a report,” allegedly alluding to the “task forces” in operation during the military dictatorship. Also, she stated that the journalist had “close relations with the ruling alliance”. La Nación. August 13, 2018. [Adepa y Fopea repudiaron el agravio de Cristina Kirchner a Diego Cabot](#); Twitter account of Adepa (@Adepaargentina). [August 13, 2018](#).

<sup>53</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>54</sup> On April 18, the Higher Court of Justice of Formosa confirmed the second instance judgment issued by the Civil and Commercial Court of Appeals and condemned journalists Gabriel Hernández, Andrea Paola Cospito, César Orué, Julián González, Carlos Rodolfo Varela and the owner of FM 100.3 *Radio Fantasia* station, María de las Mercedes López, to pay 1.2 million pesos in compensation to province governor Gildo Insfrán. The case began on January 21, 2013, when an anonymous listener called into *Radio Fantasia*’s ‘Mano a Mano’ show and linked the Formosa governor with the death of his son, 10 years before. The official sued the show’s hosts, the host of another show on that station, the station’s owner, the editor of *La Opinión Ciudadana* newspaper and the editor of *La Corneta Noticias* newspaper, the latter for reproducing the listener’s statements. On June 23, 2016, the Civil and Commercial Court of Formosa confirmed the first instance conviction by the Civil and Commercial Court No. 1 in that province. In this new confirmatory instance the Higher Court held that “the defendants seek the protection of freedom of expression, but under no circumstance shall it protect harmful expressions disguised as news, which, strictly speaking, must consist of an objective and true account of an event whose knowledge matters in such a way as to make it public in a timely manner, because of its social relevance.” The Court rejected an amicus curiae brief filed by deputies

complaint filed against Journalist Santiago Cúneo for allegedly making anti-Semitic and hate speech statements.<sup>55</sup> Likewise, this Office received information on the complaint filed in Poland against “Página 12” newspaper and Journalist Federico Pavlovsky filed by the Polish League against Defamation, due to an article published on the Holocaust in Poland.<sup>56</sup>

48. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a 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>57</sup>

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

49. In September 2018, after a year had passed since the Access to Public Information Act No. 27,275 became in force, the government’s authorities highlighted that during the first 12 implementation months, more than 3,000 information requests were received. They also informed on the creation of open data websites, among which there are 23 national, 11 provincial, and 16 municipal websites, which contain 631 data groups (officials’ salaries, affidavits, budget, government advertising).<sup>58</sup> Moreover, according to the information available, more than 204 claims were received by the Access to Public Information Agency and 120 of them were about lack of response on the part the required subjects.<sup>59</sup>

50. The Access to Public Information Agency, body in charge of insuring the implementation and compliance regarding the Access to Public Information Act, carried out the institutional framework to comply with its significant powers in 2018. In this way, on November 16 of that year, through Administrative Decision 1002/17,<sup>60</sup> the creation of the National Directorate of Access to Public Information, the National Directorate of Personal Data Protection, and the Computer and Innovation Directorate was approved, which are entities constituting the first level of the body’s organizational structure.<sup>61</sup>

51. Likewise, on December 5, 2017, the Resolution 1E/2017 was passed,<sup>62</sup> which created the second level organizational structure of the Agency’s operation, which include the Directorate of Public Information Policies and the Directorate of Privacy Protection. On July 4, 2018, by means of Administrative Decision

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from the Cambiemos bloc, alleging, among other things, that the fact that the acting attorney, the national deputy Martín Hernández, is the brother of journalist Gabriel Hernández, “sheds a mantle of suspicion of partiality over the brief”. The convicted announced they would appeal the sentence before the National Supreme Court of Justice. See: Noticias Formosa. April 18, 2018. [Fallo del STJ: “Es una sentencia a favor de GildoInsrán” dijo Gabriel Hernández](#); Agencia Legislativa. No date. [Formosa: Confirman condena a periodistas y demanda millonaria iniciada por GildoInsrán](#); IACHR. [Annual Report 2017](#) Office of the Special Rapporteur for Freedom of Expression. Paras. 47 - 48; Judgment of the Higher Court of Formosa available at the Archives of the Special Rapporteur (mail from deputy Karina Banfi); FOPEA. April 17, 2018. [Fopea rechaza un fallo del superior Tribunal de Justicia de Formosa](#).

<sup>55</sup>República Argentina. Ministerio Público Fiscal. May 22, 2018. [La Fiscalía Federal N°4 pidió que se investigue si Santiago Cúneo incurrió en actos discriminatorios](#); República Argentina. May 19, 2018. [El INADI condena discurso de odio](#).

<sup>56</sup>República Argentina. INADI. [El INADI ante el caso Federico Pavlovsky](#). March 5, 2018; Página 12. March 5, 2018. [Repudio mundial por la agresión a Página/12](#); Biblioteca Nacional. March 5, 2018. [La Biblioteca Nacional se solidariza con el diario Página 12 y el periodista Federico Pavlovsky](#); Infobae. June 1, 2018. [Finocchiaro respaldó la libertad de expresión frente a la Alianza por el Holocausto](#); Página 12. March 4, 2018. [Apoyos y condenas](#); La Nación. March 3, 2018. [Página 12, el primer medio denunciado en Polonia por la ley del Holocausto](#).

<sup>57</sup>I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

<sup>58</sup> República Argentina. Agencia de Acceso a la Información Pública. September 25, 2018. [Con la sanción de la nueva ley, en un año se tramitaron más de 3 mil solicitudes de acceso a la información pública](#); Télam. September 27, 2018. [La Argentina mostró sus progresos en el manejo de datos abiertos](#).

<sup>59</sup>República Argentina. Agencia de Acceso a la Información Pública. No date. [Estadísticas de Solicitudes de Acceso a la Información y Reclamos](#).

<sup>60</sup> República Argentina. Boletín Oficial de la República Argentina. [Decisión Administrativa 1002/2017](#). November 15, 2018.

<sup>61</sup> Informe de la Agencia de Acceso a la Información Pública. September, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>62</sup>República Argentina. Agencia de Acceso a la Información Pública. [Resolución 1-E/2017](#). December 5, 2017.

1274/2018,<sup>63</sup> the Administrative-Technical Directorate was incorporated and on July 18, through Resolution 46/2018,<sup>64</sup> the Office of the Agency's Legal Matters Coordination was created.

52. According to the information available, the Access to Public Information Agency of the Executive Branch issued a series of resolutions requesting each time the delivery of information to different public institutions, in view of complaints made by individuals. The institutions that would not have complied with the obligation to provide required information after being notified by the Agency, at the time of the closing of this report, are the Ministry of Security, the General Secretariat of Presidency, the Government Secretariat of Health, and the Argentine Air Force. The Office of the Special Rapporteur takes cognizance that, according to the official website of the government, "reporting entities which have delivered information after having been ordered to do so and mentioned in the list will be removed from this site."<sup>65</sup>

53. The Office of the Special Rapporteur received information about the fact that Poder Ciudadano Foundation carried out a request for information to the General Secretariat of the Presidency of the Nation in October, through which it requested "the visits registries to the Presidential Residence of Olivos from 2016 onwards." According to what was published, "the Access to Public Information Agency ordered the Presidential Military Staff to deliver Poder Ciudadano the registry of visits made to the Presidential Residence of Olivos, within the next ten days."<sup>66</sup> This Office emphasizes that the Inter-American standards and conclusions of the Office of the Special Rapporteur for Freedom of Expression are introduced in the resolution of the Agency.<sup>67</sup>

54. Furthermore, according to the Civil Association for Equality and Justice's information, the Access to Public Information Agency ordered "Nación Servicios SA" to deliver a copy of the metro cards "SUBE" that had been used in 2017. The resolution, assuring data protection, demanded that the database be delivered specifying the cards' use regarding date, time, station, and barrier.<sup>68</sup>

55. On the access to information related to national security interests, the CELS informed the Office of the Special Rapporteur that the Federal Intelligence Agency has rejected the granting of information to civil society organizations that are members of the Citizens' Initiative on Intelligence System Monitoring (*Iniciativa Ciudadana para el Control del Sistema de Inteligencia*) (ICCSI) regarding 1) agreements of exchange of intelligence information with other countries; 2) the regime of reserved funds administration pursuant to Act 27,126; 3) the regulation of processes of secrecy and disqualification statement, and 4) control mechanisms implemented by the agency on telephonic interception or capture. Likewise, it indicated that some people and organizations did not have access to the information requested from the Ministry of Foreign Affairs related to protocols applied to the monitoring of background and criteria, by virtue of which it decided to refuse, grant, and/or revoke the accreditations requested by people of civil society organizations from different country to participate in OMC's Ministerial Conference, in December 2017, Buenos Aires.

56. In this concrete case, the Access to Public Information Agency decided to reject the claim imposed by CELS. According to the body's resolution, the Ministry of Foreign Affairs and Worship "acted pursuant to Act No. 27,275, every time it sought information that it might possess, referred to other bodies when necessary, and could get a more satisfying response to comply with the right to access to public information, and that AFI informed that OMC Summit participants' accreditation did not apply in its case."<sup>69</sup> CELS indicated that "by means of formalities, it is established that no bodies of the Executive shall take on the responsibility of having assessed the participants' background, having drafted a list and decided on their non-accreditation."

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<sup>63</sup> República Argentina. Agencia de Acceso a la Información Pública. [Decisión Administrativa 1274/2018](#). July 4, 2018.

<sup>64</sup> República Argentina. Agencia de Acceso a la Información Pública. [Resolución 46/2018](#). July 18, 2018.

<sup>65</sup> Argentine Republic. Access to Public Information Agency. Available at <https://www.argentina.gob.ar/que-organismos-no-cumplen-con-la-ley-de-acceso-la-informacion-publica>

<sup>66</sup> Poder Ciudadano. December 10, 2018. [The Government shall disclose visits and arrivals registries to Presidential Residence of Olivos](#).

<sup>67</sup> Agencia de Acceso a la Información Pública. [Resolución AAIP N° 160 E/2018](#). December 7, 2018.

<sup>68</sup> Civil Association for Equality and Justice. November 14, 2018. [Obligation to deliver information on the use of "SUBE" card in City of Buenos Aires' metro](#).

<sup>69</sup> República Argentina. Agencia de Acceso a la Información Pública. [RESOL-2018-20-APN-AAIP](#). April 9, 2018.

57. Pursuant to what was indicated by the organization, even though the new Access to Public Information Act 27,275 covers the three branches of government, “the Executive interprets” that intelligence activities “and the activity of bodies within the national intelligence system in general, are not linked to the obligations established by the Access to Public Information Act” but by the specific regulations of the Intelligence Act, thus not recognizing constitutional and conventional protection of the right to access information.<sup>70</sup>

58. Furthermore, in view of a complaint against the Federal Administration of Public Revenues (AFIP) for its non-compliance with the supply of information on a series of important fiscal charges from different years, the Access to Public Information Agency decided, by means of a public interest assessment test, that “AFIP has not provided reasons justifying the protection of private interest over public interest, while the reporting entities might deny the submission of information pursuant to the exceptions, whenever the damage caused to the protected interest is greater than the public interest in obtaining information” and that “the lack of grounds makes the submission of required information compulsory.”<sup>71</sup>

59. On the other hand, the Office of the Special Rapporteur was informed about the fact that on December 19, Poder Ciudadano Foundation filed for a writ of amparo, seeking the appointment by the National Congress of a director of the access to public information body of that State holding company, “by means of an open, public, and transparent procedure.”<sup>72</sup>

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

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

61. In 2017, in its Annual Report, the Office of the Special Rapporteur highlighted the preliminary approval of a bill on intermediaries’ responsibility on the internet.<sup>73</sup> In April 2018, this Office and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the United Nations jointly sent a letter to the Argentinian State in which both rapporteurs agreed with the bill and sent a series of considerations and recommendations.<sup>74</sup>

62. This Office “highlighted the importance of the self-regulation of intermediaries so as to maintain independence and the optimal functioning of its platforms and services.” However, it indicated that “in order to function in an effective manner, the intermediaries shall commit themselves to respecting and promoting freedom of expression and to acting in a transparent manner.” In this sense, “it is of paramount importance that the intermediaries provide clear information on the kind of content that might be removed from the platform according to its service terms or community guidelines, as well as the way in which the removal might take place, and if there is a motion of appeal available to the user who considers that his or her content has been incorrectly removed.”<sup>75</sup>

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<sup>70</sup> CELS, information sent in May 2018 to the Office of the Special Rapporteur within the context of the online consultation on Access to Public Information and the national security exception. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; República Argentina. Agencia de Acceso a la Información Pública. [Resolución 2018-20-APN-AAIP](#). April 9, 2018.

<sup>71</sup> República Argentina. Agencia de Acceso a la Información Pública. [Resol-2018-16-APN-AAIP](#). March 12, 2018.

<sup>72</sup> Poder Ciudadano. Writ of amparo. December 19, 2018. Available at: File of the Office of the Special Rapporteur for Freedom of Expression.

<sup>73</sup> 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. Para. 81.

<sup>74</sup> United Nations. Office of the High Commissioner for Human Rights. Available at: <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-ARG-1-2018.pdf>

<sup>75</sup> United Nations. Office of the High Commissioner for Human Rights. Available at: <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-ARG-1-2018.pdf>

63. Both rapporteurs highlighted the establishment of particular rules on “the legal revision of the removal of content decisions,” “safeguards against monitoring or proactive supervision,” “self-regulation and freedom of expression.” Finally, they encourage the Government to adopt the bill.<sup>76</sup>

64. According to the complaints received by the Office of the Special Rapporteur, there are judicial and administrative decisions ordering to block websites and applications in Argentina. In this way, for instance, the Seventh Criminal Court on Misdemeanors and Offences of First Instance of Buenos Aires city allegedly ordered to block Easy Taxi website, which provides transportation services. The judge allegedly ordered Enacom to request Internet Service Providers (ISP) to block the access to the said page.<sup>77</sup> In the same way, the Sixteenth Criminal Court of First Instance on Misdemeanors and Offences of Buenos Aires allegedly ordered to block Uber’s webpage and mobile application throughout the Argentinian territory, and then the Court of Appeal did requested so as well.<sup>78</sup> The Provincial Justice of Córdoba disposed the “pre-emptive blockage” of the webpage, the digital platforms, and the application Quickvorcio, after proceedings were initiated by the Bar Association of Córdoba. The application aims at connecting lawyers and clients interested in obtaining information or getting a divorce.<sup>79</sup> Mar del Plata’s Municipality allegedly order to block the free application “Cuándo Pasa”, which is an alternative to the Municipality’s official application to know the location and schedule of the buses.<sup>80</sup>

65. According to the information sent to the Office of the Special Rapporteur, a bill against “acts of hate, discrimination, and violence committed on social media and internet” is currently under legislative handling at the legislature of Tucumán Province. According to the bill sent to this Office, the eventual regulations apply to “companies providing services that work through social media communications of telematic character,” as well as “to the ones functioning through internet platforms of similar technologies, in which users are allowed to share content created by them, to publicly disseminate them,” and “that reach more than five thousand (5,000) users registered in Tucumán Province.”<sup>81</sup>

66. According to the bill, “the clear object of this Act consists in regulating actions or omission of the managers of the service providers described in Article 1[...], regarding the measures to be adopted for the immediate treatment of the content, information, expressions, messages or any other kind of communication through any social network, that might constitute an act of hate, discrimination, violence, or an attack to people’s reputation and honor, as it is established in “the community regulations of each of these social media, which the users shall respect so as to create their profile.”

67. Article 3 of the bill regulates on the “reception of claims and reports of illegal content,” and states that the service providers indicated in Article 1 “shall have an effective, fast, simple reporting proceeding for the person affected receiving the claims and reports of illegal content abovementioned in this Act, that it shall be simple, accessible, easy, and fast to receive all the wrongfulness reports that any user or person assaulted by any profile of the social network might submit, regarding the claims or contents described in this Act, which represent patently illegal content, and constitute a patent and serious wrongfulness.”

68. The bill’s Article 4 establishes the process of claims reception and a series of steps that the “social media title holders” shall follow, which include the immediate registry of the claim, examination of the content, and the removal or blockage or disabling of content “within twenty-four (24) hours from the report’s

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<sup>76</sup> United Nations. Office of the High Commissioner for Human Rights. Available at: <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-ARG-1-2018.pdf>

<sup>77</sup>Enacom. No date. [Bloqueo de sitios web](#).

<sup>78</sup> La Nación. May 29, 2018. [La Justicia porteña pidió a las compañías de telefonía celular que bloqueen Uber](#); Clarín. February 13, 2018. [Uber apeló el bloqueo de la Justicia porteña, pero la aplicación sigue funcionando](#); Ultima Hora. February 10, 2018. [Argentina: Justicia ordenó bloquear Uber en todo el país](#).

<sup>79</sup> Perfil. May 20, 2018. [Córdoba: Quickvorcio es la primera app que la Justicia ordena bloquear](#); La Voz. May 12, 2018. [Los divorcios online con bloqueo preventivo](#).

<sup>80</sup> Canal Diez. March 16, 2018. [Telediario / MyBus, la aplicación bloqueada por el Municipio](#); Zona54. March 18, 2018. [La Municipalidad bloqueó la app gratuita “Cuándo pasa”](#); QUÉ. March, 12 2018. [Creador de MyBus lanzó “¿Cuándo pasa?”: el gobierno “la bloqueó”](#).

<sup>81</sup> Legislatura de Tucuman. [Proyecto de Ley Contra actos de odio, discriminación y violencia que se comenten a través de las redes sociales e internet. Expte. 341-PL-18](#). 23 de octubre de 2018.

submission.” Likewise, it establishes the provisions to identify the profile and that the eliminated content “shall be secured in favor of the victim’s supporting evidence.”

69. The bill determines a series of offenses, fines, and punishments in the case of non-compliance. It states that “the lack of due diligence in the blocking of the patently illegal contents regarding hate, discrimination messages and any other kind of violence, such as attacks against the people’s reputation, honor, privacy, and intimacy, like damages to honor, within twenty-four (24) hours of being reported by the victim, will generate a pecuniary fine.”

70. Finally, according to the bill, the Application Authority is the Provincial State Secretariat on Human Rights.

71. The Office of the Special Rapporteur has stated that “procedures for de-indexing or removing content cannot be used as a preventive mechanism to protect the right to honor or reputation. Individuals have other remedies available to them to seek redress for the harm caused in the case of alleged dissemination of false, offensive, or inaccurate information by digital media, such as the right of correction and reply, and civil actions for damages. These remedies are less harmful to the right to freedom of expression and require the plaintiff to bear the burden of proving the falsity or inaccuracy of the information being disseminated”.<sup>82</sup>

72. The Office of the Special Rapporteur highlights that all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, the Office of the Special Rapporteur indicated that any legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect the free flow of information and legitimate websites and services.<sup>83</sup>

#### **H. Diversity and pluralism/Concentration of means of communication/Community broadcasting**

73. On June 29, the Commerce Secretariat, before the National Commission on Competence Defense’s pronouncement, approved the fusion operation between the cable and internet company, Cablevisión SA (Grupo Clarín’s property), and one of the main telephone and mobile phone companies, Telecom Argentina (Fintech). In this sense, the resolutions transferred Cablevisión’s broadcasting services and radio electrical spectrum frequencies for mobile services to Telecom.<sup>84</sup> The merge operation was allegedly approved on December 21, 2017, by the National Communication Entity (Enacom), by means of Resolution 5644-E/2017. The decision to merge both companies was announced in June of that same year, after the government had passed, in December 2016, a decree authorizing telecommunications companies to provide several services in a converging manner, which is known as “quadruple play.”<sup>85</sup>

74. Enacom’s Directorate informed that the fusion was authorized together with “a series of restrictions and obligations aiming at insuring the service’s competence and quality, and protecting co-ops and small companies of the sector.”<sup>86</sup> In this sense, it was established that in the cities where Telecom has significant market positioning, it shall offer the same commercial conditions as it does in the Metropolitan Area of Buenos Aires, where there is more competition. It also established that the company shall give back the radio electrical spectrum exceeding the maximum level allowed of 140 MHz. Due to the fusion, Telecom has 220

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<sup>82</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. 139.

<sup>83</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [Joint Declaration](#).

<sup>84</sup> Perfil. June 30, 2018. [Aprobaron la fusión de Telecom-Cablevisión y le imponen condiciones](#); Página 12. June 29, 2018. [Aprobaron la fusión de Cablevisión y Telecom](#); Clarín. June 29, 2018. [Con exigencias, se aprobó la fusión entre Telecom y Cablevisión](#).

<sup>85</sup> IACHR. [Annual Report 2017. Report of the Office of The Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 210/17. December 31, 2017. Para. 67; Ente Nacional de Comunicaciones (Enacom). December 21, 2017. [Enacom aprobó la fusión de Telecom de Argentina S.A. y Cablevisión S.A.](#); Ente Nacional de Comunicaciones (Enacom). [Resolución 5644-E/2017](#). December 21, 2017; Télam. December 22, 2017. [¿Qué significa la fusión Cablevisión-Telecom?](#); Ente Nacional de Comunicaciones (Enacom). [Resolución 5644-E/2017](#). December 21, 2017; La Nación. December 21, 2017. [Enacom aprobó la fusión entre Cablevisión y Telecom](#).

<sup>86</sup>Ente Nacional de Comunicaciones (Enacom). December 21, 2017. [Enacom aprobó la fusión de Telecom de Argentina S.A. y Cablevisión S.A.](#)

MHz, so it will give 80 MHz back.<sup>87</sup> Furthermore, Telecom is not allowed to pack services for six months or one year, depending on the region. This aims at impeding giving preference to the company, since it is the first quadruple play operator. Moreover, Telecom shall open its network so than any current or future ISP can provide a retail broadband service trough ADSL.<sup>88</sup>

75. Telefónica challenged the approval of the fusion between Cablevisión and Telecom before the Commerce Secretariat, reporting a “discriminatory treatment” toward the rest of the operators, risks to the sector’s investments, and the high level of concentration that concentration causes. According to the company, the resolution of June 29 which authorized the fusion “will have quite serious consequences on the future of telecommunications in Argentina.” Since it did not receive a response by the state body, in August, Telefónica reiterated, before the Commerce Secretariat, its administrative remedy against the resolution that approved the fusion. The company announced that, in the case of the absence of a response, it would resort to the Civil and Commercial Chamber, as it is foreseen in the Competence Defense Act.<sup>89</sup> According to the information available, Telefónica filed a lawsuit on October 24 before a civil court.<sup>90</sup>

76. Based on the powers granted by Article 41 of the American Convention on Human Rights, the Office of the Special Rapporteur requested information from the State on the merge operation of both companies and on eventual analyses on the impact the said operation might cause on the competence and plurality of communication and telecommunications services, and the safeguards applied to avoid an excessive market concentration. The State replied to the request on September 28. In the missive, the Government stated that “regarding the alleged concentration process mentioned, the former does not exist and that all the measures adopted by the Argentinian Government aim at promoting competition and increasing the number of operators of converging communication services.” About the merge operation between Cablevisión and Telecom, it added that “it was carried out within the current regulatory framework, and with the duly intervention of different competent state bodies.” It highlighted that “the National Communication Entity approved the mentioned process by means of Resolution No. 5644-E/2017, of its Directorate, *ad referendum* of the decision that the National Commission on Competence Defense (CNDC), settling divestment conditions and establishing asymmetrical measures to guarantee competition in those zones in which the merged company might have a dominant position in the market.”

77. Likewise, the State indicated that from its creation, Enacom has granted 1,255 licenses for Information and Communications Technology Services (TIC). Moreover, the body approved 114 permits, 560 licenses, and 255 authorizations for broadcast media. Among them, it especially highlighted the concession of 21 FM radio stations for indigenous peoples, 56 authorizations and licenses for non-profit organizations, and 6 radio stations for National Universities.<sup>91</sup>

78. Furthermore, in June, two community channels were granted definite qualification to broadcast digital TV. The channels are “Barricada TV” from the Autonomous City of Buenos Aires, and “PAREStv” from Luján. Both of them became awardees of open digital TV licenses through public tenders, which indicated them winners in November 2015, in the framework of the Audiovisual Communication Services Act.<sup>92</sup>

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<sup>87</sup> Ente Nacional de Comunicaciones (Enacom). December 21, 2017. [Enacom aprobó la fusión de Telecom de Argentina S.A. y Cablevisión S.A.](#)

<sup>88</sup> Perfil. June 30, 2018. [Aprobaron la fusión de Telecom-Cablevisión y le imponen condiciones](#); Página 12. June 29, 2018. [Aprobaron la fusión de Cablevisión y Telecom](#); Clarín. June 29, 2018. [Con exigencias, se aprobó la fusión entre Telecom y Cablevisión](#).

<sup>89</sup> La Nación. July 25, 2018. [Telefónica impugnó la fusión entre Cablevisión y Telecom](#); Perfil. July 23, 2018. [Telefónica impugnó la fusión Cablevisión - Telecom por generar “inequidades en el sector”](#); Ámbito. August 7, 2018. [Telefónica reiteró denuncia contra fusión Telecom-Cablevisión](#).

<sup>90</sup> El Tiempo. November 6, 2018. [Telefónica va a la Justicia contra la fusión Cablevisión-Telecom](#); Página 12. November 6, 2018. [Telefónica sube la apuesta](#).

<sup>91</sup> Letter from the Argentine State sent to the Office of the Special Rapporteur in response to a request for information. September 28, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>92</sup> Infonews. June 19, 2018. [Victoria para los medios autogestivos: Barricada TV derrotó a las interferencias de Canal 13](#); Resumen latinoamericano. June 19, 2018. [Argentina. Barricada y Pares TV logran habilitación definitiva y llegarán al cable](#); Barricada TV. January 25, 2018. [Canales comunitarios a un paso de la habilitación definitiva para operar en televisión digital](#); Observa COM. February 5, 2018. [Dos TV comunitarias digitales cerca de su habilitación definitiva en Argentina](#).

79. According to the public information by Enacom, in 2018, seven new social organizations were allegedly included to the support program of the Promoting Competitive Fund of Audiovisual Communication (Fomeca), created by Audiovisual Communication Services Act, with the aim of strengthening non-profit communication actors.<sup>93</sup>

80. However, the Argentinian Fund of Community Radio Stations (FARCO) informed that several projects financed by Fomeca that were allocated in 2017 have not been executed yet and the funds were not received, as well as that some of them were allocated in 2015 and 2016. Apart from the low budgetary execution, they reported a cutback of more than 50% for the funds allocated to the sector, which might seriously limit the access of community media and indigenous peoples to the resources foreseen by the law.<sup>94</sup>

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

#### ***Situation of the Ombudsman on Audiovisual Communication Services***

82. On September 26, the Bicameral Commission on Promotion and Monitoring of Audiovisual Communication, Telecommunications and Digitalization Technologies appointed Emilio Jesús Alonso as Temporary Head of the Ombudsman on Audiovisual Communication Services, a protection body foreseen in Act No. 26,522 on Audiovisual Communication Services. The position had been vacant from November 2016. The appointment allegedly caused concern on the part of the opposition’s legislators and several civil society organizations, since an open and transparent appointment procedure was not carried out, and the new worker lacked background in the area.<sup>95</sup> The Centre for Legal and Social Studies (CELS), together with 20 organizations, sent a letter to the Bicameral Commission on Promotion and Monitoring of Audiovisual Communication requesting information on the appointment’s reasons and requesting to rescind it until a broad, transparent, and participative procedure is carried out for the selection and appointment of the Ombudsman’s head.<sup>96</sup>

83. According to the information received by the Office of the Special Rapporteur, the Bicameral Commission replied to the organizations through a missive dated October 26, in which it indicated that the appointment of Alonso would not be suspended, since it had been carried out pursuant to the Commission’s Rules of Procedure. Likewise, it informed that the Commission was in the middle of the appointment of the new member of the Ombudsman, under strict compliance with the Audiovisual Communication Services Act.<sup>97</sup>

84. The IACHR highlighted the Ombudsman’s work on promotion cases regarding the right to equality and non-discrimination in the programming of audiovisual services. For instance, the IACHR highlighted that in December 2014, the Ombudsman recommended that a radio station adopted a code of ethics or a style

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<sup>93</sup> Twitter account of Ente Nacional de Comunicaciones (@ENACOMArgentina). [August 22, 2018](#); Ente Nacional de Comunicaciones. [Fomeca: montos aprobados y pagados por línea de concurso](#). August 31, 2018.

<sup>94</sup> Foro Argentino de Radios Comunitarias (FARCO). Informe. No date. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>95</sup> Parlamentario. September 28, 2018. [La designación provisoria del Defensor del Público desató polémica en el Congreso](#); Página 12. September 30, 2018. [Una elegante intervención](#).

<sup>96</sup> Letter from Centro de Estudios Legales y Sociales addressed to the Comisión Bicameral de la Promoción y Seguimiento de la Comunicación Audiovisual, las Tecnologías de las Telecomunicaciones y la Digitalización. No date. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>97</sup> Letter from the Comisión Bicameral de la Promoción y Seguimiento de la Comunicación Audiovisual, las Tecnologías de las Telecomunicaciones y la Digitalización, addressed to Centro de Estudios Legales y Sociales. October 26, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

guide including guidelines on the non-discrimination principle, showing the progress achieved by the national legislation. It also ordered that the Legal Department carry out, draft, and then distribute guidelines on responsible journalistic treatment toward sexual diversity and in audiovisual communication services.<sup>98</sup>

### **I. Government advertising**

85. According to the information available, journalistic organizations have shown their concern for the removal and reduction of job positions in Argentinian media. The Argentinian Journalism Forum (FOPEA) expressed its concern for the “constant loss of job sources in the public and private sectors of the media” and requested the directors of public and private media, as well as the unions, “to reach agreements so as to keep jobs.”<sup>99</sup> For its part, the Press Association of Santa Fe (AP.SF), regarding the National Radio Station *Santa Fe*, refers to an “adjustment and persecution of workers.”<sup>100</sup>

86. In a letter disseminated on February 26, President Mauricio Macri addressed the criticism received by his administration for having significantly reduced government advertising to the media, which affected some of them and caused them to close or significantly reduce their staff. The government acknowledged that “several media have recently closed, some of them were centennial, such as ‘El Gráfico’ or ‘Buenos Aires Herald,’ which led to the subsequent loss of jobs and cultural richness.” In this sense, it indicated that “the challenge is important for the State and all the ones interested in the existence of an independent and plural media system, which insures the complete exercise of freedom of expression,” and stated that the government “is open to hear suggestions on its potential contributions (...) to go through this technological transition and this epochal change.”

87. Furthermore, it expressed that when the government took power in December 2015, the advertising pattern of the National State was “too bulky” and had been “arbitrarily distributed in a non-transparent manner,” with a distribution “oriented too much on Buenos Aires’ newspapers” and on “few addressees,” so the government decided to “progressively reduce the government advertising’s sum,” which by 2018 decreased more than half compared to 2015. “The second commitment was to establish rules and to plan government advertising allowing objective criteria when planning campaigns, including provincial media, and leaving the smallest margin possible for the public authorities’ arbitrariness,” it added. It also added that “the dissemination of data on the distribution of government advertising has been compulsory twice a year” since 2017.<sup>101</sup>

### **J. Other relevant situations**

88. According to the information received by the Office of the Special Rapporteur, the state agency of Télam news allegedly dismissed 354 workers in June, which is 40% of the staff approximately. Since then, the medium’s employees have been declared in conflict, carrying out protests and strikes asking for the recuperation of jobs.<sup>102</sup> According to what was informed by the Journalists’ Union of Buenos Aires (Sipreba) to this Office, several dismissals of journalists and communicators were based on “political and ideological persecution” on the part of the medium’s authorities. According to the information available, the decision was allegedly questioned by other unions from different parts of the country.<sup>103</sup>

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<sup>98</sup> IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). O OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 28.

<sup>99</sup> FOPEA. January 4, 2018. [Fopea expresa su preocupación por la constante pérdida de fuentes de trabajo en el ámbito público y privado en medios de comunicación](#).

<sup>100</sup> APSF. February 15, 2018. [Estado de alerta, movilización y asamblea en La Opinión](#); APSF. January 2, 2018. [Despidos y ajuste: Movilización en Radio Nacional](#).

<sup>101</sup> República Argentina. Presidencia de la Nación. February 26, 2018. [Carta de Jefatura #10 - Libertad de expresión y Medios Públicos](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Argentina](#). April 13-15, 2018.

<sup>102</sup> El País. July 5, 2018. [Argentina protesta por el despido de 354 trabajadores de la agencia estatal de noticias](#); Infobae. July 11, 2018. [En el Congreso, Hernán Lombardi respondió preguntas por los despidos en Télam](#); Minuto Uno. July 13, 2018. [La Justicia dictaminó revocar los despidos masivos en la agencia Télam](#).

<sup>103</sup> Letter from the Press Union of the City of Buenos Aires (Sipreba) (*Sindicato de Prensa de la Ciudad de Buenos Aires*) addressed to the Office of the Special Rapporteur. June, 2018. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

89. Pursuant to the information received, on July 13, Labor Judge Ricardo Tatarsky approved a precautionary measure imposed by press unions and ordered the reinstatement of five employees who submitted judicial proceedings. The decision allegedly considered that in view of the foreseen personal restructuring, the company should have previously initiated a Crisis-Preventive Proceeding (PPCE) before the Ministry of Labor and in view of that, it should have allegedly ordered the restitution until the eventual administration instance is solved.<sup>104</sup> Télam Agency allegedly filed for a revocation remedy against the precautionary decision, which was rejected, and another motion of appeal, which was dismissed by the Fifth Courtroom of the National Labor Court of Appeal.<sup>105</sup> Likewise, pursuant to the precautionary measures adopted by Labor Justice, the agency allegedly reinstated 117 dismissed employees, according to what was informed by the State in September.<sup>106</sup> Later on, in October, Labor Judge Tatarsky approved new temporary precautionary measures in the framework of judicial proceedings initiated by more workers, who determined the provisional readmission of 138 employees of the state agency.<sup>107</sup> On November 2, the domestic union commission of the Journalists' Union of Buenos Aires formally reassumed negotiations with Télam Agency's Directorate.<sup>108</sup>

90. The Office of the Special Rapporteur sent a letter to the State, based on the powers established in Article 41 of the American Convention on Human Rights, requesting information on Télam workers' situation and the reasons motivating the dismissals. In its response of September 28, the State indicated that when the current government took power, the agency functioned based on political and partial criteria, and it was facing an "awful" economic situation and had an "oversized" staff. That is why the new government suggested re-assembling it in an administrative and organizational manner, implementing an austerity policy regarding expenditure and investment on infrastructure and equipment. However, the State indicated that since the 88% of the agency's total budget was aimed at paying wages, it was necessary to dramatically reduce the staff and dismiss 354 out of the 870 employees so as to balance its economic situation. According to what it said, the criterion to determine the dismissals was professional performance, compromise, and presenteeism, and indicated that factors, such as party or union affiliation, were not considered.

91. Furthermore, the State expressed its disagreement regarding the use of the agency's buildings by unions and dismissed employees, and particularly regarding a group of people who are not members of the company and even spend the night there. It added that the company's managers and employees have been threatened and intimidated, in some cases in a violent manner, and that they have filed complaints to the police regarding this. Finally, the State claimed that its missive guarantees journalists' independence and professional practices based on the principles of truthfulness, impartiality, objectivity, and plurality were implemented.<sup>109</sup>

92. The Office of the Special Rapporteur received a complaint of June 8 by the Secretary General of the Press Union of the City of Buenos Aires (Sipreba), Fernando Dondero, in which he describes a reduction of the production of their own content in public media. According to the missive, "TV Pública" completely removed the production of content during weekends and then removed hours from informative programs; Radio Nacional reduced local contents of almost all of this headquarters outside Buenos Aires, and Télam Agency removed contents with the elimination of products for its agency subscribers. Likewise, the report indicated

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<sup>104</sup> Perfil. July 13, 2018. [La justicia ordenó reincorporar a 5 trabajadores despedidos de Télam](#); Minuto Uno. July 13, 2018. [La Justicia dictaminó revocar los despidos masivos en la agencia Télam](#).

<sup>105</sup> Tiempo Argentino. August 22, 2018. [La Justicia laboral falló contra los despidos masivos en Télam](#); Página 12. August 23, 2018. [Nuevo fallo contra los despidos](#); La Capital. August 8, 2018. [Télam ofreció retomar a 40 de los 357 despedidos, pero la idea fue rechazada](#).

<sup>106</sup> Letter from the Argentine State sent to the Office of the Special Rapporteur in response to a request for information. September 28, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>107</sup>EFE. October 19, 2018. [Un juez argentino dicta la readmisión cautelar de 138 trabajadores de Télam](#); Página 12. October 18, 2018. [Otra cautelar a favor de los trabajadores de Télam](#); Sipreba. October 19, 2018. [La justicia reincorpora a los trabajadores de Télam y anula el plan de despidos de Lombardi y Pousá](#).

<sup>108</sup>Página 12. October 19, 2018. [Terminó la toma en Télam y el lunes levantan el paro](#); Sipreba. October 20, 2018. [Télam: Trabajadorxs suspenden el paro tras las reincorporaciones ordenadas por la justicia pero el conflicto continúa](#); Sipreba. November 4, 2018. [Télam: se retomó el diálogo con el Directorio](#).

<sup>109</sup> Letter from the Argentine State sent to the Office of the Special Rapporteur in response to a request for information. September 28, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

that in those three media “there are regular disciplining acts at its newsrooms, in many cases, on discriminatory and persecutory dismissals, in union and ideological terms.”<sup>110</sup>

93. The Books’ Fair’s organizers in Buenos Aires decided to suspend the presentation of “Será venganza” documentary by Andrés Paternostro, a few hours before its exhibition, on May 3, after having received communications by human rights bodies and having considered the protests carried out by political and social organizations that “demonstrate an atmosphere regarding the presented act that enables the permit’s cancellation.” Among other aspects, the documentary questions “the selfish use of historical memory” and the rejection to grant home imprisonment to the military soldiers convicted of human rights violations. The presentation’s suspension led to reactions in social media, since there are those who consider that it was an act of censorship, and those who believe that the presentation might have been a eulogy to State terrorism. The Association of Argentinian Journalistic Entities (ADEPA) issued a communication expressing its concern for the organizers’ decision.<sup>111</sup>

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<sup>110</sup> Letter from Sindicato de Prensa de la Ciudad de Buenos Aires (Sipreba) addressed to the Special Rapporteur. June, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>111</sup> ADEPA. May 4, 2018. [Preocupación de Adepa ante la suspensión de un acto en la Feria del Libro](#); La Nación. May 3, 2018. [Otra polémica en la Feria del Libro: cancelaron la proyección de un film que pide la prisión domiciliaria de militares detenidos](#); Infobae. May 4, 2018. [“Será venganza”: esta es la película prohibida en la Feria del Libro](#).

### 3. BAHAMAS

#### A. Progress

94. On April 18, *The Nassau Guardian* reported that the Supreme Court of the Bahamas dismissed a defamation lawsuit filed in 2013 by the former Superintendents of Prisons, and former Ambassador to the United Nations, Dr. Elliston Rahming, against this media. Rahming, would have sued the media alleging that he was defamed by a story published regarding his appointment as ambassador to the United States. The judge would have determined that the plaintiff did not present evidence about the defamatory nature of the publication, nor did he prove the damage and that, in addition, he was eventually appointed to the United Nations and then as permanent representative of the Organization of American States<sup>112</sup>.

95. In 2018, according to the information available, some provisions of the law on access to public information enacted in 2017 became fully effective<sup>113</sup>. In this context, the Office of the Special Rapporteur received information that on April 23 a workshop was held on the law in which high-level public authorities participated. According to the information, the law would come into force "in stages" and would be budgeted starting in 2019<sup>114</sup>. On March 1, the whistleblower protection provisions came into effect<sup>115</sup>. In this regard, in September, Attorney General Carl Bethel confirmed that one complainant is being benefited<sup>116</sup>.

#### B. Stigmatizing statements

96. According to available information, Attorney General Carl Bethel would have expressed an intimidating speech against activists and human rights defenders who would have published an edition of an educational brochure on the rights of immigrants. In this sense, the Attorney General would have questioned the legitimacy of the group and would have mentioned that the pamphlet contains information "highly offensive" and "deliberately misleading" about the legal framework of immigrants' rights, as well as "false representations" and erroneous analysis of immigration laws. In particular, he alleged that the brochure contained false images of alleged arbitrary arrests of immigrants by the authorities<sup>117</sup>.

97. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."<sup>118</sup>

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<sup>112</sup> The Nassau Guardian. April 18, 2018. [Rahming loses defamation suit against Guardian](#).

<sup>113</sup> The Bahamas. Office of the Attorney General and Ministry of Legal Affairs. [Freedom of Information Act, 2017](#). March 1, 2017. According to public government information, parts I, V (sections 30, 32, 33, 34, 36, 37 and 38), and VIII (sections 57, 59 and 60) came into force on March 1, 2018. Available at: [http://laws.bahamas.gov.bs/cms/au/legislation/acts-by-year.html?view=acts\\_by\\_year](http://laws.bahamas.gov.bs/cms/au/legislation/acts-by-year.html?view=acts_by_year)

<sup>114</sup> Bahama Press. April 24, 2018. [PM says Freedom of Information is coming but still cannot tell residents when](#); The Nassau Guardian. April 24, 2018. [FOIA training to cost around \\$1 million](#); Tribune 242. April 23, 2018. [Full Steam Ahead For Foi Act](#); The Bahamas Weekly. April 23, 2018. [Remarks by Prime Minister Minnis at opening of FOIA Workshop](#).

<sup>115</sup> The Nassau Guardian. March 8, 2018. [Whistle blower protection provision of FOIA enacted](#); The Nassau Guardian. April 25, 2018. [Learning about the Freedom of Information Act](#); Tribune 242. March 14, 2018. [Minister Seeks 'Sober' Debate About Marital Rape Laws](#).

<sup>116</sup> The Nassau Guardian. September 26, 2018. [AG confirms Ash payments](#); Tribune 242. September 26, 2018. [Just Old Debts: Bethel Insists Money To Contractor Ash 'All Above Board'](#).

<sup>117</sup> The Nassau Guardian. March 6, 2018. [Smith accuses AG of bully tactics](#); Bahama Press. March 6, 2018. [FNM trying to muzzle freedom of expression over immigration abuses Rights group reporting AG to international bodies over 'undemocratic' and 'intimidating' statements](#); Tribune 242. March 6, 2018. [Smith Hits Back At 'Cowardly' Bethel](#); The Bahamas Weekly. March 5, 2018. [QC publicly condemns AG Bethel](#).

<sup>118</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.

#### **4. BARBADOS**

##### **A. Freedom of expression in electoral contexts**

98. In 2018, general elections to occupy seats in the House of Assembly took place. In this elections the Barbados Labor Party obtained all the seats and Mia Mottley was elected as Prime Minister. The Office of the Special Rapporteur has been informed that, based on the electoral campaign, the elected government has formulated proposals that seek to promote a law on access to public information and other legal reforms to improve accountability, protection of corruption whistleblowers, and government transparency policies.

##### **B. Progress**

99. On July 31, as part of a public consultation process that promotes participation, the government published a public survey as part of the "Phase Two" of the survey on a government economic restructuring program. In this sense, according to public information "[t]he survey gathers the views of all Barbadians on the need for, and effectiveness of the major state-owned entities, agencies and programmes in the public service."<sup>119</sup>

##### **C. Legal Reforms**

100. According to the public information, the Integrity in Public Life Act would be under study. According to the document, "[t]his Bill would establish a regime, including an integrity commission, to promote the integrity of persons in public life and strengthen measures for the prevention, detection, investigation and prosecution of acts of corruption."<sup>120</sup>

101. Through 2018, the government carried out a consultation process on the provisions of a draft bill on data protection, the 2018 Draft Data Protection Bill. The bill aims to regulate "collection, keeping, processing, use and dissemination of personal data"; "protect the privacy of individuals in relation to their personal data" and "provide for related matters." It also establishes provisions that would be expressly applied to journalism. In this regard, for example, article 32 mentions: "(1) [p]ersonal data which are processed only for the purposes of journalism or for artistic or literary purposes are exempt from any provision to which this subsection relates where: (a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material; (b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest; and (c) the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the purpose of journalism or artistic or literary purposes."<sup>121</sup>

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<sup>119</sup> Barbados. Government Information Service. July 31, 2018. [We Need Your Feedback; Take This Online Survey!](#)

<sup>120</sup> Barbados. [Integrity in Public Life Act, 2018](#). June 6, 2018.

<sup>121</sup> Barbados. Government Information Service. [Draft Data Protection Bill 2018](#). June 20, 2018.

## 5. BELIZE

### A. Attacks, Threats, and Intimidation of Journalists and the Media

102. According to the information available, in January, the correspondent of *Prensa Libre* of Guatemala, Rigoberto Escobar, would have been assaulted by agents of the armed force of Belize in a border area that would be in dispute between Belize and Guatemala. The event would have occurred at the time when the journalist was taking photographs and videos for a documentary about the territory. According to what the journalist said, he would have been interrogated by the agents and intimidated into leaving the place and he also would have been arrested in an aggressive manner when he was heading to the Guatemalan customs office<sup>122</sup>.

103. The Office of the Special Rapporteur recalls that art. 13 of the American Convention broadly recognizes the right to freedom of expression "regardless of frontiers". Likewise, in the Joint Declaration on the regulation of the Media, on the Restrictions on Journalists, and on Investigating Corruption, the UN, OSCE, and IACHR special rapporteurs, pointed out that "[a]ccreditation 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 non discriminatory criteria published in advance."<sup>123</sup>

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

### B. Restriction on Media Coverage

105. According to a publication of the media *Amandala*, on August 16, in the framework of the arrival of the President of the Republic of China (Taiwan), HE Tsai Ing-wen, journalists of this media would have been prevented by security agents to enter at Philip Goldson International Airport to cover the arrival ceremony of the president. In this sense, the media blamed the Director of the Government Press Office, Dorian Pakeman. According to the publication, during the event a journalist from the media contacted Pakeman so that he would request those responsible to give access to the journalists; the official would have replied that he could not manage that access because he was not present at the site and that airport security was in charge. Also, according to the publication, those responsible for airport security would have mentioned that the Government Press Office sent the list of authorized journalists<sup>124</sup>. According to the publication of another media, Belize' Government Press Office reported in a press release that the statements made by the newspaper *Amandala* were false<sup>125</sup>.

106. The Office of the Special Rapporteur reiterates the joint statement indicated, and recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."<sup>126</sup>

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<sup>122</sup> Prensa Libre. January 17, 2018. [Periodista guatemalteco es agredido en zona de adyacencia entre Belice y Guatemala](#); *Amandala*. January 24, 2018. ["Spineless" Sedi on Guatamalan Kaibiles walking into Belize territory as if they owned it](#); News 5. January 19, 2018. [Showdown at the Border in Guat Journalist's Own Words](#).

<sup>123</sup> Office of the Special Rapporteur for Freedom of Expression. December 18, 2003. [Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption](#).

<sup>124</sup> *Amandala*. August 18, 2018. [Dorian Pakerman Bars Amandala from covering Taiwan President's arrival](#).

<sup>125</sup> Breaking Belize News. August 20, 2018. [Government Press Office responds to Amandala's claim it was banned from press event](#); *Amandala*. August 18, 2018. [Dorian Pakerman Bars Amandala from covering Taiwan President's arrival](#).

<sup>126</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.

## 6. BOLIVIA

107. The Office of the Special Rapporteur received information on excessive use of force within the framework of social protests in 2018, which resulted in the death of at least three demonstrators, among whom there was a journalism student. Bolivian organizations and media reported that government officials had kept on labeling certain journalists and media as “opposition,” which discredits them in view of public opinion and puts them in risk of assault. The lack of clear criteria in the allocation of government advertising and the lack of acts claiming the power of carrying out free campaigns allegedly constitute economic pressures to the media and caused an inhibiting effect in the government’s critic according to journalists. The penal trial threat and the criminal law changes proposal on slander and defamation alerted the journalistic union.

### A. Attacks, Threats, and Intimidation of Journalists and the Media

108. During the hearing on the situation of the right to freedom of expression and of the press in South America, held in February at the 167 Period of Sessions of the Inter-American Commission on Human Rights (IACHR), the National Association of the Press of Bolivia [*Asociación Nacional de la Prensa*] (ANP) reported that the government regularly labels journalists and independent media as opposition, inciting like-minded people to beat, strip of equipment, and assault reporters.<sup>127</sup>

109. Likewise, on May 10, Journalist's Day in Bolivia, the country's main press associations issued a statement expressing their "concern" on the conditions in which journalism is exercised in the country. The organizations pointed to self-censorship in some media due to economic pressures, threats, and intimidations suffered by journalists and the risks to which they are exposed when covering demonstrations, due to the police's behavior<sup>128</sup>.

110. According to the information provided to the IACHR, between 2010 and 2017, the ANP reported a total of 136 physical aggressions against journalists and the media, in addition to another 155 cases of verbal aggressions and threats<sup>129</sup>.

111. According to the information received by the Office of the Special Rapporteur, these situations of violence persisted during 2018. For example, cameraman Freddy Ticona and journalist Helen San Román, of *Abya Yala Televisión*, would have been assaulted and stripped of their work equipment by coca growers from the Yungas area, in the department of La Paz<sup>130</sup>. Journalists Reyna Bernal and Nely Pinto, of *Bolivia TV*, would have been physically assaulted and insulted, allegedly by people close to the mayor of Cochabamba, José María Leyes<sup>131</sup>. Journalist María Luz Sacari and her cameraman Adrián Toro, of *Red de Televisión PAT - Oruro*, reportedly received a death threatened after being attacked by family members of a defendant allegedly accused of being the intellectual co-author of the murder of two soldiers. Likewise, journalists Juan Mejía of the newspaper *La Razón*, Emilio Castillo, of the newspaper *El Deber*, and the communicator Irene Torres, would have been victims of shoving and verbal abuse by these relatives<sup>132</sup>. Journalist Ben Bartenstein, correspondent for Latin America of the news agency *Bloomberg*, was beaten by a member of the security

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<sup>127</sup> IACHR. 167 Period of Sessions. [Hearing "Situation of the right to freedom of expression and freedom of the press in South America"](#). February 28, 2018.

<sup>128</sup> RPP/EFE. May 10, 2018. [Periodistas de Bolivia denuncian amenazas a la libertad de prensa](#).

<sup>129</sup> IACHR. 167 Period of Sessions. [Hearing "Situation of the right to freedom of expression and freedom of the press in South America"](#). February 28, 2018.

<sup>130</sup> Urgentebo. March 22, 2018. [Dan 4 días de baja a camarógrafo de Abya Yala agredido por coccaleros](#); *Abya Yala TV*. March 20, 2018. [Cocaleros afines a Franklin Gutiérrez agreden físicamente al camarógrafo y periodista de Abya Yala Televisión](#); Agencia de Noticias Fides. March 21, 2018. [Monitoreo de ANP reporta agresión a periodista y reporteros gráficos](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Bolivia](#). April 13-15.

<sup>131</sup> Asociación de Periodistas de La Paz. April 22, 2018. [Violencia y robo a mujeres periodistas](#). Available at: <https://www.facebook.com/aplapaz/>; *La Voz de Tarija*. April 20, 2018. [Ministra López repudia actitud 'misógina' de seguidores de Leyes que agredieron a equipo de prensa de Bolivia Tv](#); Agencia Boliviana de Información. April 20, 2018. [Medios Alternativos de Bolivia lamentan 'actitud belicosa' contra equipo de prensa de Bolivia Tv](#); ANP. April 25, 2018. [ANP condena la agresión a periodistas del canal estatal](#).

<sup>132</sup> VISOR. March 27, 2018. [Amenazan de muerte a periodistas por cubrir caso de asesinato de dos militares](#); *La Razón*. March 26, 2018. [Disponen la detención preventiva para mujer vinculada con el asesinato de militares en Oruro](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Bolivia](#). April 13-15.

corps of President Evo Morales when he tried to approach him to ask a question at the Summit of the Americas held in Peru<sup>133</sup>.

112. Journalists Yolanda Salazar, of EFE, Nancy Vacaflor, of *Agencia de Noticias Fides*, and María Carballo, of *Página Siete*, would have been assaulted by security staff and bystanders at the inauguration event of the new presidential building, called *Casa Grande del Pueblo*. The EFE journalist reported that she also suffered groping while she took pictures of the event. Also, some reporters would have been prevented from entering the act where President Evo Morales delivered a speech. The Minister of Communication, Gisela López, reported that an investigation into the claims of the journalists was ordered<sup>134</sup>. Later, Minister Lopez would have been summoned to the Legislative Assembly by Democratic Unity Rep., Gonzalo Barrientos, to explain the alleged attacks and obstructions suffered by the press during this and other official acts<sup>135</sup>.

113. Journalists from the town of San Matías reported having suffered physical aggressions and threats from inhabitants seeking to prevent coverage of violent episodes that occurred after the death of a citizen by police forces<sup>136</sup>.

114. Gonzalo Rivera, the director of the program "*Encontrados*", of *Radio Líder*, in the city of El Alto, reported that he and his team of journalists would be victims of frequent death threats and physical aggressions due to the dissemination of complaints on acts of corruption that would compromise government officials<sup>137</sup>.

115. A representative of the Judicial Council of Bolivia [Consejo de la Magistratura de Bolivia] threatened to file a lawsuit against the private television station Gigavisión after it informed about delays in customer service at the Judicial Council's Departmental Representation of Santa Cruz<sup>138</sup>.

116. The presenter of the television network PAT, Jimena Antelo, reported that representatives of the president of the Bolivian Football Federation [Federación Boliviana de Fútbol] (FBF), César Salinas, would have threatened to file a lawsuit against the station due to the criticisms that viewers expressed in their program. Salinas would have denied the threat<sup>139</sup>.

117. The Anticorruption Judge, Claudia Castro, allegedly detained María Ulo, journalist of the televisión ATB network, and her cameraman, Marcelo Calle, and the judge would have tried to force the journalist to erase the images that she had captured with her cellphone. The journalist wanted to inform on the situation of an ex-employee who would be detained after reporting on an embezzlement at the bank where she worked<sup>140</sup>.

118. During a court hearing, prosecutor Susana Boyán would have insinuated that she could request the arrest of some journalists because they reported "half-truths" about the alleged rape of a baby in a children's home<sup>141</sup>.

119. De acuerdo con la información disponible, un grupo de periodistas denunció la existencia de un audio que se habría filtrado en el cual un alto funcionario de la Policía habría manifestado que esta institución

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<sup>133</sup> El Deber. April 13, 2018. [Perú: Seguridad de Evo golpea a periodista en la Cumbre de las Américas](#); Correo. April 13, 2018. [Guardaespaldas de Evo Morales golpea a periodista extranjero en Cumbre de las Américas](#); The Bolivian Foreign Ministry stated that the reporter had put the president's security at risk. "#ComunicadoOficial | La Embajada de Bolivia en Lima - Perú Informa". Twitter account of the Ministry of Foreign Affairs of Bolivia (@MRE\_Bolivia). [April 13, 2018](#).

<sup>134</sup> Página Siete. August 12, 2018. [Periodistas sufren acoso sexual y violencia en la Casa del Pueblo](#); Eju. August 14, 2018. [Gobierno anuncia investigación sobre agresiones a periodistas en el Nuevo Palacio](#); Página Siete. August 15, 2018. [López anuncia investigación por acoso a periodistas en el Palacio](#).

<sup>135</sup> El Diario. August 30, 2018. [Piden interpelar a Gisela López por excesos contra la prensa](#).

<sup>136</sup> ANP. June 19, 2018. [San Matías: Periodistas bajo censura y amenaza](#).

<sup>137</sup> ANP. July 5, 2018. [Director del programa radial "Encontrados": "Nos sentimos indefensos"](#).

<sup>138</sup> El Día. July 9, 2018. [Magistrado amenaza a Gigavisión por una nota](#); ANP. July 7, 2018. [Un funcionario judicial amenazó a Tv "Gigavisión"](#).

<sup>139</sup> El Deber. July 22, 2018. [Jimena Antelo dijo que recibió amenazas de parte del presidente de la FBF](#); Página Siete. July 23, 2018. [Antelo denuncia amenaza y la FBF desmiente la versión](#).

<sup>140</sup> Asociación de Periodistas de La Paz (APLP). October 29, 2018. [Contra la intimidación a la periodista María Ulo](#). ANP. October 26, 2018. [Periodista denuncia a una jueza por retenerla e intimidarla](#).

<sup>141</sup> Correo del Sur. September 25, 2018. [Caso Alexander: ANP rechaza advertencia de fiscal contra periodistas](#); El Día. [Fiscal Boyán advierte con detención de periodistas](#).

realiza actividades de seguimiento a periodistas a través de las redes sociales con la finalidad de monitorear el contenido de las informaciones emitidas. Frente a esta denuncia, el Relator Especial Edison Lanza manifestó de manera pública su preocupación ante dicha situación y que el Gobierno debía dar explicaciones<sup>142</sup>. En este contexto, el Estado de Bolivia negó de manera pública cualquier persecución o seguimiento a periodistas y apuntó a que el audio en cuestión se trataría de un “montaje”<sup>143</sup>; asimismo, remitió información a la Relatoría Especial<sup>144</sup>.

120. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression 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.”

## B. Social Protest

121. A journalism student at the Public University of El Alto [*Universidad Pública de El Alto*] (Upea), Jonathan Quispe Vila, died on May 24 during police repression of a student protest claiming more budget. The government’s initial version of the story attributed the death of the university student to the impact of a glass marble shot by the demonstrators themselves. However, the protesters and the university claimed that the bullet that wounded the student was shot by the police<sup>145</sup>. Later, on May 28, the authorities of the educational center broadcasted footage with images of the student’s death that would show that the police were responsible for the death and announced that they would initiate a lawsuit against the police institution<sup>146</sup>. Three days later, the government modified its version and publicly informed that an official investigation identified the second lieutenant of the Police, Cristián Casanova Condori, as the author of the death. According to an investigation conducted by the Institute of Forensic Investigations [*Instituto de Investigaciones Forenses*], the shot came from a shotgun, informed the Ministry of Government [*Ministerio de Gobierno*]. According to the authorities, the shooting was not authorized, and the police were ordered not to use firearms or rubber bullets during the operation. They assured in turn that the shot was of “absolute personal responsibility” of the police officer because the marble that was used to cause the student’s death “is not part of the police equipment”.<sup>147</sup> Casanova Condori was tried and sent to pretrial detention. The victim’s family lawyer, Paola Barriga, questioned that the Departmental Prosecutor’s Office declared the investigations into the episode reserved and reported that the Police had tried to hide information related to the type of weapons and ammunition used by the agents during the operation<sup>148</sup>. On the other hand, Casanova Condori contradicted the official version and assured before the judge that he used a service weapon and that it did not carry nor shot a marble<sup>149</sup>. On October 24, the judge denied the request for release presented by the defendant’s attorney<sup>150</sup>.

122. The Office of the Special Rapporteur received information on some episodes in which the police had exceeded the use of force when intervening in demonstrations. Particularly serious was the confrontation that occurred at the end of August with coca plantation workers protesting against government measures,

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<sup>142</sup> Los Tiempos. 29 de noviembre de 2018. [Relator de la CIDH: “El gobierno de Bolivia debe explicar si vigila a periodistas”](#); El Deber. 29 de noviembre de 2018. [Relator de la CIDH pide al Gobierno explicar si espía a periodistas en redes](#).

<sup>143</sup> Correo del Sur. 29 de noviembre de 2018. [El Gobierno ve “montaje” en audio de seguimiento](#); El Deber. 4 de diciembre de 2018. [Enviarán informe a CIDH para descartar ‘espionaje’ de la Policía a periodistas](#).

<sup>144</sup> Letter from the Mission of Bolivia to the OAS sent in January 2019 to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>145</sup> Erbol. May 24, 2018. [Fallece estudiante de UPEA herido en manifestación](#).

<sup>146</sup> Radio Fides. May 28, 2018. [La UPEA presenta vídeo donde se observa la muerte de Jonathan Quispe](#); Página Siete/You Tube. May 28, 2018. [UPEA explica represión donde murió Jonathan Quispe Vila](#).

<sup>147</sup> Ministerio de Gobierno. May 31, 2018. [Investigación oficial esclarece autor y circunstancias de muerte de estudiante de UPEA](#); Página Siete. May 31, 2018. [Gobierno cambia de versión y atribuye la muerte de universitario a un subteniente de la Policía](#).

<sup>148</sup> La Prensa. June 6, 2018. [Denuncian que la Policía obstaculiza la investigación en el caso Jonathan Quispe](#); El Diario. June 26, 2018. [Denuncian ilegal reserva en investigación de caso Jonathan](#).

<sup>149</sup> La Razón. June 6, 2018. [Subteniente acusado de la muerte de Quispe ratifica que no disparó una canica](#); El Deber. June 5, 2018. [Subteniente Casanova afirma que no disparó canica contra Jonathan](#).

<sup>150</sup> La Voz de Tarija. October 24, 2018. [Niegan libertad al policía acusado por la muerte del universitario Jonathan Quispe](#).

which led to the death of two demonstrators and a police officer. The workers, who protested for several days in the municipality of La Asunta, in Yungas, accused the security forces of shooting from a distance against the group of demonstrators. According to the commander of the Bolivian Police, Faustino Mendoza, the deceased workers were part of an "irregular armed group" that ambushed the forces of eradication of illegal coca plantations. The coca leaders denied that version and assured that the farmers were holding a vigil at the site. A day before, a police officer had died in an ambush presumably perpetrated by the cocaleros. A judge would have ordered the preventive detention of the main leader of the Departmental Association of Coca Producers [Asociación Departamental de Productores de Coca] (Adepcoca), Franklin Gutiérrez, accused of being intellectually responsible for the ambush. He would also have been accused, along with four other cocaleros, of the crime of sedition, under the argument that in the area in conflict operates a group of criminals who use "weapons of war" to ambush the security forces<sup>151</sup>.

123. The Office of the Special Rapporteur was also informed that a group of cancer patients from the Hospital de Clínicas who were protesting in the vicinity of the Casa del Pueblo demanding a meeting with the President to present a set of demands, would have been repressed by agents of the Police Tactical Unit [Unidad Táctica de la Policía] (UTOP). The protesters would have been pushed and beaten by the agents, who did not contemplate the critical health status of many of them. Also, the camerapersons, journalists, and photographers covering the protest would have been pushed by the police agents<sup>152</sup>.

124. In the context of protests demanding a larger budget, students from the Public University of El Alto (UPEA) would have vandalized the building of the state TV channel Bolivia Tv<sup>153</sup>.

125. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"<sup>154</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>155</sup>

126. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."<sup>156</sup>

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<sup>151</sup> Infobae. August 31, 2018. ["¡Evo asesino!": el desesperado grito de los familiares de los dos cocacoleros muertos por la represión en Bolivia](#); Infobae. September 3, 2018. [Masiva marcha opositora de cocaleros en Bolivia: "Evo, nos están matando y es tu culpa"](#); ABC. September 3, 2018. [Cocaleros piden renuncia de Morales en Bolivia](#); Notimérica. August 30, 2018. [Mueren dos campesinos en Bolivia en protestas contra la reducción de cocaleras](#).

<sup>152</sup> La Prensa. October 15, 2018. [Policía reprime protesta de enfermos con cáncer cerca a la Casa Grande del Pueblo](#); RC Bolivia. October 16, 2018. [Enfermos con cáncer nuevamente fueron reprimidos en puertas de la Casa Grande del Pueblo](#); El Deber. October 10, 2018. [Policía reprime a enfermos con cáncer en La Paz](#).

<sup>153</sup> El Deber. June 26, 2018. [Universitarios de la UPEA atacan edificio de Bolivia TV](#); ANP. June 26, 2018. [ANP rechaza ataque contra Bolivia Tv](#).

<sup>154</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>155</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>156</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](#).

### C. Stigmatizing statements

127. Stigmatizing statements and disqualifications by government officials against press and media workers continued to be frequent in Bolivia. For example, during a press conference broadcasted on March 5 by a government network, and also broadcasted by eight radio stations, the governor of Chuquisaca, Esteban Urquizu, accused the radio stations Global, Antena 2000, La Plata, and the newspaper Correo del Sur of disinforming and minimizing the news about the opening of the Chuquisaqueño Institute of Oncology [Instituto Chuquisaqueño de Oncología] (ICO) in Sucre<sup>157</sup>. In the same sense, the newspaper Correo del Sur would have been accused of affecting the institutional image of the Chuquisaca Governorate due to its publications<sup>158</sup> and would have been labelled as the "official newspaper of the right" by the governor<sup>159</sup>.

128. On July 9, the Vice Presidency of the Republic would have published, in a paid space in the newspaper La Razón, an article in which it would highlight the alleged links of the newspaper Página Siete to the dictatorship and accused the media of lying in their publications<sup>160</sup>.

129. President Evo Morales said during a public ceremony on August 20, in the municipality of Macharetí, department of Chuquisaca, that some media outlets are of service to the lies of opposition parties and accused them of not thinking "of the homeland" but in the "of the money"<sup>161</sup>. The mayor of Santa Cruz de la Sierra, Percy Fernandez Anez, reportedly verbally assaulted journalists when, during a conference on August 28, he was asked questions about alleged corruption attributed to municipal officials<sup>162</sup>. Similarly, the Minister of the Presidency, Alfredo Rada, described reporters who consulted him as part of the opposition, during a press conference on October 11 about the alleged use of public funds in the campaign of President Evo Morales<sup>163</sup>. The Minister of Internal Security, Carlos Romero, had accused journalists Andrés Gómez and Gonzalo Rivera, and analyst Iván Arias, of encouraging violence in the Yungas region, where several demonstrations of coca plantation workers took place, which resulted in the death of two farmers and a police officer<sup>164</sup>.

130. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."<sup>165</sup>

### D. Subsequent liabilities

131. The National Association of Journalists of Bolivia [Asociación Nacional de Periodistas de Bolivia] (ANP) and the Association of Journalists of La Paz [Asociación de Periodistas de La Paz] (APLP) declared a "sectoral national emergency" in rejection of some articles of the new Criminal System Code, enacted in December 2017, since they consider that they could be used against journalists in reprisal for their work. The

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<sup>157</sup> El Día. March 7, 2018. [Acusa a medios de desinformar](#); Correo del Sur. March 6, 2018. [El Gobernador se estrella otra vez contra los medios](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellin, Colombia. [Bolivia](#). April 13-15.

<sup>158</sup> ANP. July 25, 2018. [Gobernación oficialista cuestiona el trabajo de diario Correo del Sur](#).

<sup>159</sup> ANP. November 14, 2018. [Gobernador califica de derechista a diario "Correo del Sur"](#); ANP. July 25, 2018. [Gobernación oficialista cuestiona el trabajo de diario Correo del Sur](#).

<sup>160</sup> Página Siete. July 24, 2018. [El Presidente de Página Siete responde a García Linera](#); ANP. July 24, 2018. [Publicación de la Vicepresidencia es rechazada por presidente de diario](#); Página Siete. July 29, 2018. [Sobre la respuesta de la Vicepresidencia](#).

<sup>161</sup> ANP. August 22, 2018. [Morales acusa a medios de difundir mentiras](#).

<sup>162</sup> ANP. August 29, 2018. [Alcalde agrade nuevamente a periodistas](#).

<sup>163</sup> ANP. October 12, 2018. [Tres preguntas de periodistas incomodan a un ministro](#).

<sup>164</sup> Opinión. September 6, 2018. [Romero acusa a periodistas de instigar a la violencia](#); ANP. September 6, 2018. [Ministro acusa a dos periodistas y un analista de alentar violencia](#).

<sup>165</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.

press associations questioned the "ambiguity" of the articles and expressed concern about the "risk" that they will be used for political purposes<sup>166</sup>.

132. Article 309 (insult) sets an economic penalty for anyone who "offends another in his dignity or dishonors or discredits them". Article 310 (slander) imposes a fine on a person who "attributes to another the commission of a criminal offense in a false and insidious manner". Article 311 (defamation) sanctions who "publicly, tendentiously and repetitively, reveals or discloses an act, quality, or conduct that affects the reputation of an individual person or a group". In the three offenses it is established that the fine will be aggravated if it is committed "through the media or a mass dissemination outlet", and establishes that the same sanction will apply to the person who reproduces through the media the insult, slander, or defamation inferred by others. On the other hand, article 246 (misuse of data from third parties in informational media) regulates the penalty for the use of personal data or confidential information from others "in order to affect the image and dignity of the victim."<sup>167</sup>

133. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information." Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression<sup>168</sup>.

#### **E. Confidentiality of sources**

134. Through 2018, some episodes were reported in which journalists were required to reveal their sources of information. The case that attracted the most attention was the request of the Attorney General's Office to the ATB network to reveal the name of the person who delivered to the media an audio in which a judge would admit to the sentencing of an innocent doctor in a case of an alleged rape of a baby, who died in 2014 with signs of violence, and which generated a great public commotion. The audio had been broadcasted on the television network on September 17. The Attorney General's Office reportedly gave the media a 24-hour deadline to respond to the request under the threat of "functional, administrative, and criminal liability in case of non-compliance". The media refused to reveal its source and recalled the validity of the Printing Law [Ley de Imprenta], which guarantees the right of journalists to keep this information confidential<sup>169</sup>.

135. A judge from the city of Cochabamba asked the director of the Opinión newspaper, Leslie Lafuente, to reveal the identity of the source that warned about observations to the process of purchasing a tomograph for a hospital<sup>170</sup>.

136. A journalist from the newspaper Página Siete would have been harassed and intimidated by prisoners, lawyers, and police to reveal the source of information published on March 25 about alleged illegal practices in the San Pedro prison<sup>171</sup>.

137. The Office of the Special Rapporteur recalls that Principle 8 of the Declaration of Principles establishes that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." Likewise recalls that in Article 13.3 of the American

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<sup>166</sup> La Razón. January 8, 2018. [Periodistas se suman a objeciones al Código Penal](#); Asociación de Periodistas de La Paz. January 7, 2018. [Periodistas rechazan artículo del nuevo Código del Sistema Penal](#); Knight Center for Journalism in the Americas. January 10, 2018. [Bolivian journalists declare an 'emergency' regarding parts of new Penal Code that criminalize defamation](#); Notimérica. December 18, 2017. [Aprobada la Ley del Código del Sistema Penal en Bolivia](#); Asamblea Legislativa Plurinacional. [Código del Sistema Penal](#). December 14, 2017.

<sup>167</sup> Estado Plurinacional de Bolivia. [Código del Sistema Penal](#). December 14, 2017.

<sup>168</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>169</sup> ATB Digital. September 20, 2018. [La Fiscalía pide a la Red ATB revelar la fuente de origen del audio que involucra a la juez Pacajes](#); Los Tiempos. September 20, 2018. [Caso Alexander: Fiscalía pide a medio de comunicación revelar fuente del audio](#); Opinión. September 21, 2018. [Fiscal pide la fuente y ATB responde que no la dará](#).

<sup>170</sup> ANP. September 21, 2018. [ANP exige respeto a la Ley de Imprenta](#).

<sup>171</sup> Página Siete. April 23, 2018. [Página Siete exige a Ministro garantías para sus periodistas](#); Página Siete. April 25, 2018. [La APLP respalda a Página Siete ante amedrentamiento](#); Asociación de Periodistas de La Paz (APLP). April 24, 2018. [Hostigamiento a periodista de Página Siete](#).

Convention it is established that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "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. Legal reforms**

138. President Evo Morales would have proposed creating a "law against lying," which sanctions "the liar," be it the media or a public authority, similar to the anti-corruption rule that was previously approved. Morales raised the idea during a public event in the Chuquisaca region<sup>172</sup>, which generated adverse reactions from press organizations who considered the proposal to be dangerous for freedom of expression<sup>173</sup>.

#### **G. Censorship of journalistic material / Prior censorship / Direct and indirect censorship**

139. During the hearing on the situation of the right to freedom of expression and of the press in South America, held in February in the framework of the 167 Period of Sessions of the Inter-American Commission on Human Rights (IACHR), the National Association of the Press of Bolivia [Asociación Nacional de la Prensa de Bolivia] (ANP) expressed concern over the application of the Law against Racism and all forms of Racial Discrimination, approved in 2010, since it has "promoted self-censorship" among journalists and the media, who fear being subject to sanctions<sup>174</sup>.

140. On the other hand, some actions by government officials could have provoked or induced censorship of journalists and the media. For example, the private channel Atesur would have been suspended from the local cable service administered by the Telecommunications Cooperative Sucre Ltda. [Cooperativa de Telecomunicaciones Sucre Ltda.] (Cotes) for nine days, shortly before an interview with union leaders of the cooperative who were preparing to make complaints against the administrators of Cotes<sup>175</sup>. The governor of the department of La Paz, Felix Patzi, would have suspended on October 9 the program directed by the journalist Amalia Pando, which was broadcasted by the Radio Líder radio station owned by the governor. The decision would have been made after the program interviewed the opposition candidate for the Presidency, former president Carlos Mesa, an action that would have been questioned by the government in the understanding that he would be taking a political party's side<sup>176</sup>.

141. The Mayor's Office of Yacuiba (Tarija) would have temporarily closed the independent newspaper El Gran Chaco for allegedly contravening environmental standards by causing contamination with the spill of the ink it uses. The measure was taken on July 19, after the media published critical information about the municipal administration. According to the director of the newspaper, Jorge Molina, it's a "persecution" against the newspaper. In a press conference, the officials in charge of revenues justified the measure under the argument that the newspaper did not comply with the presentation of documents required by the municipal authority. Two days later the newspaper would have returned to circulation. The Councilor of Tarija para Todos (TPT), Mario Cavero, reportedly requested a report from the authorities of the Municipal Government of Yacuiba about the measure, which he considered an abuse to freedom of the press. It would be

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<sup>172</sup> EFE. August 22, 2018. [Morales propone una ley contra la mentira que sancione a autoridades y medios](#); La Razón. August 24, 2018. [Morales insiste con ley contra la mentira y dice que oponerse a ella es ser 'mentiroso confeso'](#); El Deber. August 22, 2018. [Evo propone una Ley contra la mentira para autoridades y medios](#).

<sup>173</sup> ANP. August 23, 2018. [ANP rechaza ley de la mentira](#); Inter American Press Association (IAPA). August 24, 2019. [IAPA condemns announcement by Evo Morales in favor of anti-lie law in Bolivia](#); Los Tiempos. September 4, 2018. [Ley contra la mentira: expertos señalan que es innecesaria y Evo insiste en su incorporación](#).

<sup>174</sup> IACHR/YouTube. 167 Period of Sessions. [Hearing "Situation of the right to freedom of expression and freedom of the press in South America"](#). February 28, 2018; ANP. February 28, 2018. [ANP alerta asfixia financiera y amenazas a las libertades de prensa y de expresión](#).

<sup>175</sup> ANP. June 22, 2018. [Sucre: Tv "Atesur" vuelve a emitir por cable después de 9 días de silencio](#).

<sup>176</sup> ANP. October 10, 2018. [Gobernador suspende programa de radio](#).

the second action imposed against the newspaper, since on July 9 it would have been suspended momentarily for the alleged lack of an operating license<sup>177</sup>.

142. 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 establishes 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. Internet and freedom of expression**

143. The Office of the Special Rapporteur has received information on incidents of cyber-attacks against the media. On February 20, the Twitter account of *Abya Yala Televisión* would have been hacked<sup>178</sup>. In April, the website of the Association of Journalists of La Paz suffered a cyber-attack that left it out of service. According to the union, hacks to their site have been frequent<sup>179</sup>.

#### **I. Government advertising**

144. During the hearing on the situation of the right to freedom of expression and of the press in South America, held in February in the framework of the 167 Period of Sessions of the Inter-American Commission on Human Rights (IACHR), the National Association of the Press of Bolivia [Asociación Nacional de la Prensa de Bolivia] (ANP) described a situation of "risk to the freedoms of the press and expression," due to, among other things, "censorship manipulated by government advertising" and "financial asphyxia to the media." The organization reported that part of the "political asphyxia" happens through "the deprivation of government advertising to all media reluctant to submit to their communication policies, to the extent that there were media outlets that had to dismiss several investigative and analytical journalists in order to not lose their government advertising allocation."

145. They also noted that since 2010, the government has enacted 12 laws and decrees which mandate the media to "become spokespersons for the promotion of government policies without any compensation", by ordering radios, channels, magazines, and news portals to disseminate free government campaigns, which generates "enormous costs to the weakened finances" of the media<sup>180</sup>.

146. On September 1, a new law would have been enacted, the Law on Political Organizations [Ley de Organizaciones Políticas], which would impose on private media the obligation to publish electoral notices free of charge<sup>181</sup>.

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

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<sup>177</sup> Página Siete. July 22, 2018. [La ANP rechaza cierre de El Gran Chaco y pide reapertura](#); La Prensa. July 21, 2018. [Alcaldía del MAS cierra un periódico](#); Correo del Sur. July 21, 2018. [Yacuiña: Cierran diario y denuncian represalias](#); ANP. July 26, 2018. [Periódico de Yacuiña vuelve a circular](#).

<sup>178</sup> FM Bolivia. No date. [Abya Yala denuncia ataque cibernético contra la libertad de prensa en Bolivia](#); Asociación de Periodistas de La Paz (APLP)/Facebook. March 2, 2018. Available at: <https://www.facebook.com/aplapaz/>

<sup>179</sup> Cabildeo. December 4, 2017. [Página web de la APLP sufre intentos de hackeo](#); Asociación de Periodistas de La Paz. April 13, 2018. *La Asociación de Periodistas de La Paz denuncia el hackeo de su página web*. Available at: <https://www.facebook.com/aplapaz/>

<sup>180</sup> IACHR/YouTube. 167 Period of Sessions. [Hearing "Situation of the right to freedom of expression and freedom of the press in South America"](#). February 28, 2018; ANP. February 28, 2018. [ANP alerta asfisia financiera y amenazas a las libertades de prensa y de expresión](#).

<sup>181</sup> Inter American Press Association (IAPA). September 28, 2018. [IAPA criticizes Bolivian government's new imposition on media](#); Infobae. September 4, 2018. [Evo Morales promulgó la polémica "Ley de Organizaciones Políticas" que habilita la realización de elecciones primarias](#).

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.”

#### **J. Other relevant situations**

148. Journalist Yadira Peláez would continue to be the victim of judicial harassment and a discredit campaign after she reported for sexual harassment the director of Canal 7, the public broadcaster of the Bolivia TV group (BTV), which reports to the Ministry of Communication, in December 2016. After the journalist made her case public, the official Carlos Flores, who was suspended from office, filed a lawsuit against her for "defamation" and "slander." On the other hand, the journalist was criticized by the communication minister and former manager of Canal 7, Gisela López, for "political harassment" and "political violence" against women. A third accusation against her was presented by the current head of Canal 7, Fabiola Rollano Peña, who accuses her of "public corruption"<sup>182</sup>. In 2017 another Canal 7 journalist, Claudia Pardo, filed a complaint against the same official for sexual harassment, and this reporter was accused of "harassment and political violence" against women by the Ministry of Communication. Local press and international organizations, such as Reporters Without Borders, have expressed concern about this situation<sup>183</sup>.

149. Trade unionists affiliated to the government would be promoting the payment of a tax destined to a "private" fund with the aim of creating life insurance for journalists. However, according to the National Press Association, who expressed concern before the IACHR at the hearing on the situation of the right to freedom of expression in South America, since the initiative represents a "new financial blow" for the media it "will determine the closure of small and medium-sized news companies"<sup>184</sup>.

150. The National Association of the Press of Bolivia (ANP) questioned that judges will carry out an abbreviated process for minor injuries and will release the accused for attempted murder against journalist Adolfo Yavari, from Villa Montes, Tarija. In September of 2017, Isaac Nogales Rocha burst in, together with a woman, into the journalist's home and attacked him, cutting his thumb with a knife. The prosecutor and the judge "should have considered the intention to attempt against Yavari's life," says the ANP statement on the ruling issued on March 8. The attack was attributed to a reprisal for Yavari's news reports on FM 95.5 radio on alleged irregularities at the Agency for Drinking Water and Sewerage Services [Entidad Prestadora de Servicios de Agua Potable y Alcantarillado Sanitario] (EPSA), of which Nogales was an official<sup>185</sup>.

151. Journalists from national media and correspondents from foreign agencies would have suffered numerous restrictions during the coverage of the 11th South American Games that took place in the city of Cochabamba. According to the complaint of journalists and press organizations, journalists and official photographers of the organization would have enjoyed unrestricted access, while video images were granted exclusively to the state television channel Bolivia TV<sup>186</sup>.

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<sup>182</sup> Reporters Without Borders (RSF). February 2, 2018. [Bolivian journalist hounded after accusing boss of sexual harassment](#); Asociación de Periodistas de La Paz (APLP). January 3, 2018. [Periodista que denunció acoso sexual en riesgo de ser detenida](#).

<sup>183</sup> Reporters Without Borders (RSF). February 2, 2018. [Bolivian journalist hounded after accusing boss of sexual harassment](#); Asociación de Periodista de La Paz. January 3, 2018. [Periodista que denunció acoso sexual en riesgo de ser detenida](#).

<sup>184</sup> IACHR/YouTube. 167 Period of Sessions. [Hearing "Situation of the right to freedom of expression and freedom of the press in South America"](#). February 28, 2018; IFEX. January 30, 2018. [Temen cierre de medios por imposiciones del gobierno](#).

<sup>185</sup> ANP. March 13, 2018. [La ANP denuncia injusticia: Imputado por intento de homicidio de periodista Yavari sale libre](#); ANP. February 25, 2018. [Periodista teme que su agresor sea liberado y pide garantías](#); FM Bolivia. No date. [Imputado por intento de homicidio de periodista Yavari fue liberado](#).

<sup>186</sup> ANP. No date. [Restringen trabajo de la prensa en XI Juegos Suramericanos](#).

## 7. BRAZIL

152. The IACHR conducted an on-site visit to Brazil from November 5 to 12, 2018, which included the participation of the Office of the Special Rapporteur for Freedom of Expression, at the invitation of the Brazilian State. In the context of Brazil's elections, the Office of the Special Rapporteur observed a marked confrontation between partisans that has created an atmosphere of hostility and constant attacks on journalists and media and various social demonstrations such as the women's march that took place in São Paulo. The Office of the Special Rapporteur also noted that there was a deliberate spread of disinformation during the elections, and that the judiciary took some troubling steps with regard to restrictions on the content of election-related interviews. Finally, the Office of the Special Rapporteur observed with concern the murder of four journalists for reasons allegedly linked to their work.

### A. Progress

153. This year the Office of the Special Rapporteur was informed that the journalists threatened because of their work were officially included in the program for the protection of human rights defenders of the Ministry of Human Rights of Brazil (MDH) as a specifically protected group. Previously, the journalist had to demonstrate that his or her professional activity was related to human rights.<sup>187</sup>

154. On September 3, through Decree No. 300, the MDH announced a change in the program's focus, and renamed it the "Protection Program for Human Rights Defenders, Journalists, and Environmentalists."<sup>188</sup> It was also reported during the on-site visit that the budget for this program was increased this year.<sup>189</sup> On this point, the Office of the Special Rapporteur reminds the State that this mechanism should address the needs of journalists and be widely disseminated among media workers so that it is able to offer effective guarantees to those who are at risk because of their journalistic activity.

155. On October 31, the plenary of the Federal Supreme Court (STF) ruled unanimously to suspend the judicial and administrative measures that had allowed State agents to enter public and private universities in different Brazilian states during a series of peaceful self-proclaimed "anti-fascist" protests on the night of October 26, 2018, which had been "banned" by the electoral courts. In at least nine Brazilian states, universities were the target of actions by the police and electoral prosecutors to remove posters and other means of expression, on the grounds that they were unlawful election propaganda.<sup>190</sup> In its decision, the STF held, among other considerations, that "Universities are places of personal and political freedom and liberation. Their name denotes plurality and respect for differences, disagreements in building consensus, legitimate only when they derive from free expression. Discrepancies are characteristic of individual freedoms. People differ, they do not become enemies. People criticize. They do not become disagreeable because of it. Democracy is not unanimity. Consensus is not imposition."

### B. Murders

156. In 2018, this Office documented the murder of four journalists in Brazil for reasons allegedly related to their journalistic work. In 2017 there had been no reported cases. The IACHR and its Special Rapporteur are concerned about this increase in the number of journalists killed in the country, as well as the information received during the *on-site* visit to suggest that high rates of impunity for crimes against journalists and media workers would persist in Brazil.

157. According to an investigation by the Committee to Protect Journalists (CPJ), despite the 17 cases of murdered journalists in the last ten years, not a single perpetrator was convicted between September 1, 2008

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<sup>187</sup> Knight Center for Journalism in the Americas. September 12, 2018. [Threatened Brazilian media professionals officially included in protection mechanism of the Ministry of Human Rights](#); Ministério dos Direitos Humanos. September 3, 2018. [MDH inclui comunicadores e ambientalistas no programa de proteção aos defensores dos direitos humanos](#).

<sup>188</sup> Knight Center for Journalism in the Americas. September 12, 2018. [Threatened Brazilian media professionals officially included in protection mechanism of the Ministry of Human Rights](#); Ministério dos Direitos Humanos. [Portaria No. 300](#), September 3, 2018; Ministério dos Direitos Humanos. September 3, 2018. [MDH inclui comunicadores e ambientalistas no programa de proteção aos defensores dos direitos humanos](#).

<sup>189</sup> Ministério dos Direitos Humanos. September 3, 2018. [MDH inclui comunicadores e ambientalistas no programa de proteção aos defensores dos direitos humanos](#).

<sup>190</sup> G1. October 26, 2018. [TRE-RJ diz que tirou cartazes de universidade pública porque 'não é permitida a propaganda eleitoral'; alunos protestam](#); Folha de São Paulo. October 26, 2018. [Universidades de todo o país são alvo de ações policiais e da Justiça Eleitoral](#); Revista Exame. October 26, 2018. [Justiça eleitoral faz apreensões em 17 universidades em todo o Brasil](#).

and August 31, 2018. The Inter-American Commission is extremely concerned by the information received about the alleged slowness of justice authorities and the lack of transparency on the part of the civil police responsible for investigating these cases.<sup>191</sup>

158. The Office of the Special Rapporteur received information about the murder of Ueliton Brizon on January 16,<sup>192</sup> and of Jefferson Pureza, of *Beira Rio FM*, on January 17.<sup>193</sup> According to reports, both journalists had received threats prior to their murders. In addition, the radio station where Pureza worked had a fire in November 2017, under circumstances that remain unclear.<sup>194</sup> The Office also received information about the murders of Jairo Souza, of *Pérola FM*, in the municipality of Bragança, State of Pará, on June 21,<sup>195</sup> and of Marlon de Carvalho Araújo, in the town of Chapada, a rural area outside the city of Riachão do Jacuípe, Bahia, Araújo, on August 16.<sup>196</sup>

159. The Office of the Special Rapporteur has stated on repeated occasions that the murder of journalists is the most extreme form of censorship and that States have the positive obligation to identify and punish the perpetrators of such crimes. In the opinion of this Office, it is essential for the State to investigate the murder of journalists completely, effectively, and impartially and to establish the motives and judicially determine their possible relationship to journalistic activity and freedom of expression. Authorities should not rule out the practice of journalism as a motive for murder and/or assault 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 on the development of proceedings at the indictment or trial stages. The failure to completely exhaust the logical lines of investigation affects, above all, the ability to identify the masterminds.

160. Additionally, Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression 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 protest

161. During the *on-site* visit, the IACHR received dozens of complaints about certain restrictions on critical speech in the context of social protests and in the defense of human rights. In this regard, the IACHR has observed that this situation has worsened in recent years, especially since 2013, with a troubling increase in the number of restrictions on the exercise of human rights in the context of the various protests and social demonstrations taking place throughout the country. In the city of São Paulo, the IACHR received information on various cases of violence, illegal and excessive use of force, indiscriminate use of less lethal weapons against demonstrators and photojournalists, as well as indiscriminate arrests by the police during public demonstrations. Similarly, civil society organizations condemned the increased presence of the military police to disperse demonstrations in various states around the country, which has an intimidating effect on those who wish to demonstrate.

162. Additionally, it has been reported the existence of restrictive laws and the use of legal actions, such as the prohibitory injunction [*interdito proibitório*], to curtail the holding of demonstrations. According to reports, criminal or administrative investigations into these violations are infrequent and result in impunity. The IACHR has also observed the differentiated impact of these laws and practices on the most excluded groups in Brazilian society. For instance, the IACHR was informed that groups of individuals claiming land

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<sup>191</sup> Committee to Protect Journalists (CPJ). No date. [Getting Away with Murder](#).

<sup>192</sup> IACHR. Special Rapporteurship for Freedom of Expression. January 26, 2018. [Office of the Special Rapporteur Condemns Murder of Two Journalists in Brazil and Urges the State to Investigate Connection to Journalistic Activity](#).

<sup>193</sup> IACHR. Special Rapporteurship for Freedom of Expression. January 26, 2018. [Office of the Special Rapporteur Condemns Murder of Two Journalists in Brazil and Urges the State to Investigate Connection to Journalistic Activity](#).

<sup>194</sup> IACHR. Special Rapporteurship for Freedom of Expression. January 26, 2018. [Office of the Special Rapporteur Condemns Murder of Two Journalists in Brazil and Urges the State to Investigate Connection to Journalistic Activity](#).

<sup>195</sup> IACHR. Special Rapporteurship for Freedom of Expression. June 29, 2018. [The Office of the Special Rapporteur condemns the killing of journalist in Brazil](#).

<sup>196</sup> IACHR. Special Rapporteurship for Freedom of Expression. August 28, 2018. [The Office of the Special Rapporteur condemns the murder of a Journalist in Brazil and urges the authorities to Investigate Connection to Journalistic Activity](#).

rights in Brazil, including peasants, indigenous peoples, *quilombolas*, and other traditional communities, have been subject to arrest and criminal proceedings designed to punish and intimidate them for demanding agrarian reform in the country. During the *on-site* visit, the IACHR was informed that this criminalization has targeted the land access and pro-housing social movements.

163. The Commission also received troubling information with respect to criminalization and physical and psychological attacks on adolescent students in the context of protests and social movements in Brazil. This was documented during the protests against a set of education reform policies advocated by the State of São Paulo in 2015. According to the information received, despite the easing of repression, a climate of persecution and violence against members of the secondary school student movement still persists, undermining their participation in educational policy issues. The psychological wellbeing of many of these students has reportedly been affected by the psychological aftereffects of the repression against them.

164. Finally, the IACHR was informed of a number of criminal cases and complaints for offenses such as criminal contempt and defamation against journalists, human rights activists, and protestors. Civil society organizations reported the excessive use by police institutions of contempt laws against such persons, in order to criminalize speech that is legitimate within the framework of a democratic society. Similarly, the IACHR has received information about court judgments that inhibit the furtherance of artistic expression, based on a concept of public morality incompatible with a democratic society.

#### **D. Freedom of expression in electoral contexts**

##### ***Legal Framework***

165. It is noted that Brazilian law severely limits the conditions for the implementation, duration, and means of disseminating election advertising, and establishes several general prohibitions on its content and on the involvement of the media in electoral races. All these aspects of electoral propaganda are tightly controlled by the legislature and the electoral body.

##### ***Restrictions on the content of election propaganda***

166. According to the Final Report of the OAS Electoral Observation Mission (EOM) to Brasil, given the breadth and vagueness of their terms, some of the restrictions about the content of election propaganda may be incompatible with international obligations on freedom of expression and access to information and best practices in this area, and should be therefore reviewed. The EOM stressed that it is troubling that a number of these provisions prohibit or criminalize criticism or affront to state institutions and authorities, including the President of the Republic and the national armed forces (insult laws).<sup>197</sup> The Office of the Special Rapporteur notes that these provisions, which are manifestly contrary to the right to freedom of expression and democratic principles,<sup>198</sup> are vestiges of the authoritarianism of the past and have no place in today's Brazil.

167. This report indicated that, such is the case of provisions established in the 1965 Electoral Code, which prohibit electoral propaganda using "advertising media designed to artificially create in public opinion *mental, emotional, and impassioned states*";<sup>199</sup> "that *provoke animosity* between or against the Armed Forces,"<sup>200</sup> "to instigate collective disobedience against the law of public order,"<sup>201</sup> "which *slanders, defames, or insults any person, or which affects bodies or entities exercising public authority*,"<sup>202</sup> and that which "disrespect national symbols."<sup>203</sup>

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<sup>197</sup> OAS. Electoral Observation Mission. [Final report](#). No date.

<sup>198</sup> IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights. Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

<sup>199</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Lei No. 4.737](#). July 15, 1965. Art. 242; y Tribunal Superior Eleitoral do Brasil (TSE). [Resolução No. 23.551](#). December 18, 2017. Art. 6.

<sup>200</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Resolução No. 23.551](#). December 18, 2017. Art. 17, III.

<sup>201</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Resolução No. 23.551](#). December 18, 2017. Art. 17, V.

<sup>202</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Resolução No. 23.551](#). December 18, 2017. Art. 17, X.

<sup>203</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Resolução No. 23.551](#). December 18, 2017. Art. 17, XI.

168. Failure to comply with these conditions and prohibitions carries various penalties, ranging from the withdrawal of advertising, to fines and imprisonment<sup>204</sup>. For example, the EOM noted that “It is a crime, punishable by imprisonment of 6 months to 2 years and payment of a fine of 10 to 40 days’ wages, to slander someone for the purpose of electoral propaganda, falsely accusing them of committing crimes.”<sup>205</sup> It also provides that “The defaming of any person in electoral propaganda or for propaganda purposes, by accusing him of an act offensive to his reputation,” is punishable by imprisonment,<sup>206</sup> as is “insulting someone, by means of electoral propaganda or for purposes of electoral propaganda, offending their dignity or decorum.”<sup>207</sup> The penalties for these offenses shall be increased by one third when the speech is directed against the President of the Republic or against a public official because of his or her official duties.<sup>208</sup>

169. The OEM stressed that, while spontaneous speech expressed by the voter over the Internet is not considered “electoral propaganda,” it is also subject to restrictions<sup>209</sup>. In this regard, indicated that according to the law, “the free expression of the thought of the identified or identifiable voter on the Internet is only subject to limitations when it is *offensive to the honor of others*.”<sup>210</sup> This prohibition applies to messages made *before the start date for election propaganda* (August 16) “without prejudice to messages of support or criticism of a political party or candidate in the democratic political debate.” In this case, the law provides that “without prejudice to the civil and criminal penalties applicable to the perpetrator, the Electoral Courts may order, at the victim’s request, the withdrawal of posts containing *offenses or attacks on candidates* on Internet sites, including social networks.”

170. The Office of the Special Rapporteur observes that, as they are formulated, these provisions do not adequately identify punishable conduct and grant broad discretion to justice authorities, which undermines legal certainty and enables the discriminatory application of the law. This inevitably leads to self-censorship and hinders the expression of political differences and criticism so necessary in the election process.

171. As the Office of the Special Rapporteur has stated on repeated occasions, the existence of free and transparent elections depends on the voters’ ability to exercise their right to express and disseminate political opinions and information, as well as to receive all the diverse and sufficient information they need to exercise their right to vote. To this end, candidates must be guaranteed their right to communicate their platforms and their views to the electorate, and journalists and the media must have the freedom to inform the public about an election campaign and key events, and disseminate political ideas and opinions.

### ***Media coverage***

172. According to the Final Report of the OAS Electoral Observation Mission to Brasil, according to the law, after August 6, radio and television programming is subject to several restrictions in order to ensure equitable media access for candidates and parties, subject to the imposition of fines and other penalties.<sup>211</sup> One of the main prohibitions is that of “giving privileged treatment to a candidate, party, or political alliance,” known as the ‘isonomic treatment’ rule.”<sup>212</sup>

173. The OEM noted that during the electoral process several political actors filed appeals with the election authorities to prevent the dissemination of content that they considered to be privileged treatment of a candidate or political faction or to demand coverage by a media outlet. In this regard, noted that in adjudicating these appeals, the Superior Electoral Tribunal (TSE) carefully balanced the candidates’ right to

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<sup>204</sup> OAS. Electoral Observation Mission. [Final report](#). No date.

<sup>205</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Lei No. 4.737](#). July 15, 1965. Art. 324, caput.

<sup>206</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Lei No. 4.737](#). July 15, 1965. Art. 325, caput.

<sup>207</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Lei No. 4.737](#). July 15, 1965. Art. 326, caput.

<sup>208</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Lei No. 4.737](#). July 15, 1965. Art. 326, caput.

<sup>209</sup> OAS. Electoral Observation Mission. [Final report](#). No date.

<sup>210</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Resolução No. 23.551](#). December 18, 2017. Art. 22.

<sup>211</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Lei das Eleições – Lei nº 9.504](#). September 30, 1997. Art. 45, incisos I-VI; OAS. Electoral Observation Mission. [Final report](#). No date.

<sup>212</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Lei das Eleições – Lei nº 9.504](#). September 30, 1997. Art. 45, incisos III; OAS. Electoral Observation Mission. [Final report](#). No date.

freedom of expression and access to the media, giving effect to international principles and standards in this area, such as the prohibition against prior censorship and the principle of legality<sup>213</sup>.

174. For example, according to the information received by the EOM and the Office of the Special Rapporteur, the political alliance for Fernando Haddad's presidential candidacy (PT) "*O Povo Feliz de Novo*" asked the TSE to suspend the broadcast of the scheduled television interview of candidate Jair Bolsonaro. On October 4, 2018, the TSE, in a decision by Justice Horbach,<sup>214</sup> denied this request, finding that "no provision of Brazilian electoral law [...] authorizes prior control of journalistic content, as requested by the petitioner" and that, on the contrary, the legal system prohibits prior censorship. It stated that judicial review takes place *a posteriori*. The Office of the Special Rapporteur notes that this decision is consistent with Article 13 of the American Convention, which expressly prohibits prior censorship.

175. On September 11, 2018, the TSE similarly denied an appeal filed by Presidential candidate Henrique Meirelles and his coalition "*Esa es la Solución*" against the *Globo* media organization.<sup>215</sup> The appellant also asked to be interviewed on the programs *Jornal Nacional* (TV Globo) and *Central de las Elecciones* (Globo News). The newscasts interviewed only the top five candidates in the polls. The TSE held that "all candidates are not guaranteed identical space in the media, but rather the treatment proportional to the participation of each in the political arena." It found that despite the fact that "the Legislative Branch has regulated the right of candidates to participate in radio and television debates, it did not do so with respect to participation in journalistic interviews, so that freedom of the press prevails in this scenario." The Office of the Special Rapporteur notes that this decision is consistent with the principle of legality, which requires that restrictions on the right to freedom of expression must be provided for by law.

176. The STF (Federal Supreme Court) treated the request by various media outlets to guarantee their right to interview former President Lula da Silva differently. This appeal resulted in a series of contradictory decisions by different STF Justices. Justice Ricardo Lewandowski granted the appeal on September 28, 2018, based on the protection of the right to freedom of expression,<sup>216</sup> and on the night of that same day Justice Luiz Fux ordered a stay of Justice Lewandowski's decision, being of the opinion that the instant case would present "the risk that the release of an interview with Luiz Inácio Lula da Silva, whose registration of candidacy was rejected, would cause disinformation on the eve of the vote, considering the proximity of the first round of the presidential elections."<sup>217</sup> Later, on October 1, Justice Lewandowski reaffirmed the decision he handed down on September 28, and ordered compliance with this decision by authorizing the interview to take place. In his October 1 decision, the Justice indicated, *inter alia*, that Justice Luiz Fux's decision "contained very serious defects."<sup>218</sup> Thereafter, Justice Toffoli, Chief Justice of the STF, ruled to uphold Justice Fux's decision until the subsequent deliberation of the plenary.<sup>219</sup>

177. The Office of the Special Rapporteur notes that experts agree on the seriousness of Justice Fux's decision (joined by Justice Toffoli), which constitutes a form of prior censorship inadmissible in a democratic society. In this case, not only the media outlet was affected, but the right of the electorate to receive information of public interest in the electoral context was violated. It is noted that the plenary did not render a decision before the October 7 elections.<sup>220</sup>

178. In view of the foregoing, the Office of the Special Rapporteur recommends that judicial authorities apply constitutional or international guarantees protecting freedom of expression and ensure that the media are free to report on electoral matters without prior censorship and other unlawful restrictions.

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<sup>213</sup> OAS. Electoral Observation Mission. [Final report](#). No date.

<sup>214</sup> Tribunal Superior Eleitoral do Brasil (TSE). Representação no. 0601600-71.2018.6.00.0000. Classe 11541 Brasília. Distrito Federal. October 4, 2018.

<sup>215</sup> Tribunal Superior Eleitoral do Brasil (TSE). REPRESENTAÇÃO Nº 0601024-78.2018.6.00.0000 – CLASSE 12061 – BRASÍLIA – DISTRITO FEDERAL. September 11, 2018.

<sup>216</sup> Supremo Tribunal Federal (STF). [Reclamação 32.035 Paraná](#). Judgment of September 28, 2018.

<sup>217</sup> Supremo Tribunal Federal (STF). [Suspensão de Liminar 1.178 Paraná](#). Judgment of September 28, 2018.

<sup>218</sup> Supremo Tribunal Federal (STF). [Reclamação 32.035 Paraná](#). Judgment of October 1, 2018. Page 3.

<sup>219</sup> Supremo Tribunal Federal (STF). [Suspensão de Liminar 1.178](#). Judgment of October 1, 2018. Page 2.

<sup>220</sup> El País. October 4, 2018. [Censura a entrevista de Lula mostra parcialidade do STF no processo eleitoral, apontam juristas](#).

### ***Attacks, threats, and intimidation against journalists and the media***

179. In the context of the 2018 general elections in Brazil, there were dozens of documented cases of assaults, persecution, harassment, and threats against journalists and media workers, against a backdrop of sharp political polarization. The Brazilian Association of Investigative Journalists [*Associação Brasileira de Jornalismo Investigativo*] (ABRAJI) recorded 141 cases of threats and violence against journalists covering the elections between January and October.<sup>221</sup> According to the available information, almost half of these assaults occurred at demonstrations.

180. In January, for instance, it was reported that in Curitiba, a reporter from *The Intercept Brazil* website was assaulted and thrown out of a camp opposite the Federal Court of Paraná by demonstrators who reportedly supported the conviction of former President Lula.<sup>222</sup>

181. On March 26, a journalist from *O Globo* was reportedly assaulted by individuals from the security detail of former President Lula's motorcade in southern Brazil. Lula's advisor stated that the former president repudiates any act of violence and that he was going to find out what had happened.<sup>223</sup> In addition, on March 27, two buses that would have accompanied former president Lula's motorcade through southern Brazil were allegedly attacked with firearms. Although the shots pierced the metal exterior of the bus, no injuries were reported. According to reports, one of the buses was carrying 26 journalists, in addition to politicians and advisors.<sup>224</sup> With respect to the incident, Brazilian Association of Investigative Journalists (ABRAJI) stated that, "intolerance to different political positions cannot override the free movement of people and ideas. Subjecting public actors and media professionals to the risk of death is a serious crime against democracy."<sup>225</sup>

182. In addition, between April 5 and 7, various journalists were reportedly assaulted or threatened while covering the arrest of former President Luiz Inácio Lula da Silva.<sup>226</sup> As a result of the political polarization said to exist in the country, media that are perceived as "right-wing" have been the target of many of these attacks.

183. The Union of Professional Journalists of the Federal District [Sindicato dos Jornalistas Profissionais do Distrito Federal] repudiated the April 5 attacks on journalists in Brasília, saying that "the opinions of the media should not be confused with freedom of professional practice."<sup>227</sup> For its part, the Union of Professional Journalists of the State of São Paulo [Sindicato dos Jornalistas Profissionais no Estado de São Paulo] stated on April 10 that, "this regrettable situation is also the result of the policy of the large media companies, which support the coup, and which have taken a hostile editorial stance against popular organizations."<sup>228</sup> Previously, on April 5 and 6, other Brazilian journalism associations such as the Brazilian Association of Radio and Television Broadcasters [*Associação Brasileira de Emissoras de Rádio e Televisão*] (ABERT), the Brazilian Association of Magazine Publishers [*Associação Nacional de Editores de Revistas*] (ANER), the National Association of Newspapers [*Associação Nacional dos Jornais*] (ANJ), the Brazilian Association of Investigative Journalists (ABRAJI), the Brazilian Radio and Television Association [*Associação Brasileira de Rádio e*

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<sup>221</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 25, 2018. [Brasil: Jornalistas enfrentam intimidação durante campanha eleitoral](#).

<sup>222</sup> Portal Imprensa. January 25, 2018. [Jornalista do Intercept Brasil é agredido por manifestantes anti-Lula em Curitiba](#); R7. January 24, 2018. [Repórter sofre agressão em protesto anti-Lula em Curitiba. Assista](#).

<sup>223</sup> O Povo. March 26, 2018. [Segurança da caravana do ex-presidente Lula agride repórter de "O Globo"](#); Associação Nacional de Jornais (ANJ). March 26, 2018. [ANJ condena agressão de segurança de Lula a repórter de O Globo](#); Exame. March 26, 2018. [Entidades de imprensa pedem punição de agressor de repórter](#).

<sup>224</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). March 28, 2018. [Para Abraji, atentado contra caravana de Lula é gravíssimo](#); UOL. March 27, 2018. [Ônibus de caravana são atacados a tiros. "Querem matar Lula", diz Gleisi](#).

<sup>225</sup> Original text in Portuguese: "A intolerância a posições políticas divergentes não pode se sobrepor à livre circulação de pessoas e ideias. Submeter agentes públicos e profissionais de comunicação a risco de morte é um grave crime contra a democracia." Available at: Associação Brasileira de Jornalismo Investigativo (Abraji). March 28, 2018. [Para Abraji, atentado contra caravana de Lula é gravíssimo](#).

<sup>226</sup> Knight Center for Journalism in the Americas. April 10, 2018. [At least 19 Brazilian journalists and media professionals assaulted during coverage of former President Lula's arrest](#).

<sup>227</sup> Sindicato dos Jornalistas Profissionais do DF (SJPDF). April 6, 2018. [Nota de repúdio à agressão sofrida por jornalistas durante ato na CUT, em Brasília](#).

<sup>228</sup> Original text in Portuguese: "Essa situação lamentável é resultado também da política das grandes empresas de comunicação, que apoiam o golpe, e que adotam uma linha editorial de hostilidade contra as organizações populares." Available at: Sindicato dos Jornalistas Profissionais no Estado de São Paulo. April 10, 2018. [Repúdio às agressões contra a imprensa em São Bernardo do Campo](#).

Televisão], and the National Federation of Journalists [*Federação Nacional dos Jornalistas*] (FENAJ) condemned the reported attacks against journalists.<sup>229</sup>

184. With regard to the facts *per se*, it was reported that on April 5 in Brasilia, at least 30 demonstrators rushed the vehicle belonging to *Correio Braziliense* and broke one of its windows.<sup>230</sup> the Brazilian Association of Investigative Journalists (ABRAJI) stated that, in addition to the attacks, demonstrators also shouted at and harassed the press and the newspaper.<sup>231</sup> A team from *SBT* and a *Reuters* photographer were also reportedly threatened in the same place.<sup>232</sup> The media professionals were at the site to cover the protest called by the Unified Workers' Central [*Central Única dos Trabalhadores*] (CUT) – Federal District.<sup>233</sup>

185. In São Paulo, at the same time, most of the cases of attacks on journalists and press professionals by demonstrators were reported to have occurred in the vicinity of the ABC Metalworkers' Union [*Sindicato dos Metalúrgicos do ABC*]*—*the place where former president Lula went after his arrest was ordered.<sup>234</sup> On April 6, an *Agência Estadão Conteúdo* photographer and a journalist from *BAND*, were assaulted while covering the demonstrations. According to reports, the journalists were hit by eggs thrown by demonstrators.<sup>235</sup> The same day, a team from *UOL* was reportedly assaulted in the same place. According to the available information, a woman struck the team's microphone while the journalists were interviewing protesters there.<sup>236</sup>

186. It was also reported that on April 6, inside the ABC Metalworkers' Union building in São Paulo, press professionals had to leave the room on the first floor, and move to the third floor, after they were intimidated by demonstrators who tried to enter the designated press area. Demonstrators also reportedly broke a window of the *Bandnews* vehicle.<sup>237</sup> Several cases of assaults on journalists were also reported on April 7 in São Paulo. On the morning of April 7, a *CBN* radio reporter was reportedly harassed at the headquarters of the ABC Metalworkers' Union in São Paulo. According to the available information, demonstrators threw bottles of water at him, and at that time he was reportedly protected by a federal congressman and his bodyguards.<sup>238</sup>

187. On the afternoon of April 7, also at the ABC Metalworkers' Union headquarters, a female *Bandnews* TV reporter was reportedly struck by a protestor during a live broadcast.<sup>239</sup> In addition, a team from *Red*

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<sup>229</sup> Estadão. April 6, 2018. [Entidades de comunicação repudiam agressões a jornalistas](#); *Correio Braziliense*. April 6, 2018. [Associações repudiam agressões a jornalistas do Correio e de outro veículos](#); Associação Brasileira de Jornalismo Investigativo (Abraji). April 5, 2018. [Jornalistas são agredidos e hostilizados em Brasília e São Bernardo do Campo](#); *Correio Braziliense*. April 7, 2018. [Jornalista é agredido dentro do Sindicato dos Metalúrgicos do ABC](#); Associação Nacional dos Editores de Revistas. No date. [Nota de repúdio](#); Agência Brasil. April 6, 2018. [Entidades rechaçam violência contra jornalistas em protestos a favor de Lula](#); Sindicato dos Jornalistas Profissionais do DF (SJPDF). April 6, 2018. [Nota de repúdio à agressão sofrida por jornalistas durante ato na CUT, em Brasília](#); Associação Brasileira de Rádio e Televisão (Abratel). No date. [Nota de repúdio](#); Inter American Press Association (IAPA). April 6, 2018. [SIP repudia agressões contra jornalistas brasileiros](#).

<sup>230</sup> *Correio Braziliense*. April 6, 2018. [Associações repudiam agressões a jornalistas do Correio e de outro veículos](#); Agência Brasil. April 6, 2018. [Entidades rechaçam violência contra jornalistas em protestos a favor de Lula](#).

<sup>231</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). April 5, 2018. [Jornalistas são agredidos e hostilizados em Brasília e São Bernardo do Campo](#).

<sup>232</sup> *UOL*. April 6, 2018. [Entidades de classe repudiam agressões a jornalistas após decreto de prisão de Lula](#); Último Segundo. April 6, 2018. [Jornalistas são ameaçados e agredidos durante protestos contra prisão de Lula](#); Associação Brasileira de Jornalismo Investigativo (Abraji). April 6, 2018. [Abraji repudia agressões a jornalistas, após decreto da prisão de Lula](#).

<sup>233</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). April 5, 2018. [Jornalistas são agredidos e hostilizados em Brasília e São Bernardo do Campo](#).

<sup>234</sup> Knight Center for Journalism in the Americas. April 10, 2018. [At least 19 Brazilian journalists and media professionals assaulted during coverage of former President Lula's arrest](#).

<sup>235</sup> Estadão. April 6, 2018. [Entidades de comunicação repudiam agressões a jornalistas](#); *UOL*. April 6, 2018. [Entidades de classe repudiam agressões a jornalistas após decreto de prisão de Lula](#); Associação Brasileira de Jornalismo Investigativo (Abraji). April 5, 2018. [Jornalistas são agredidos e hostilizados em Brasília e São Bernardo do Campo](#); Agência Brasil. April 6, 2018. [Entidades rechaçam violência contra jornalistas em protestos a favor de Lula](#).

<sup>236</sup> *UOL*. April 6, 2018. [Entidades de classe repudiam agressões a jornalistas após decreto de prisão de Lula](#).

<sup>237</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). April 7, 2018. [Militantes agredem jornalistas durante protesto em SBC no sábado](#).

<sup>238</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). April 7, 2018. [Militantes agredem jornalistas durante protesto em SBC no sábado](#).

<sup>239</sup> Teleguiado. April 7, 2018. [Repórter da Band é agredida ao vivo por apoiador de Lula](#); Associação Brasileira de Jornalismo Investigativo (Abraji). April 7, 2018. [Militantes agredem jornalistas durante protesto em SBC no sábado](#).

TV! was reportedly attacked with glasses and cans of beer. The team allegedly had to retreat from the area after being surrounded by protestors. A reporter from *Bandnews FM* was reportedly assaulted with a blow to the stomach by a woman who tried to take her cell phone from her. Similarly, a reporter from *Joven Pan* was reportedly intimidated by protestors and prevented from continuing with a live broadcast. A journalist from *Bandeirantes*, was reportedly surrounded by protestors who verbally attacked her while she was doing a live broadcast, and she had to leave the area.<sup>240</sup> At the Congonhas Airport in São Paulo, a reporter was reportedly harassed by demonstrators and had to leave the premises.<sup>241</sup>

188. That same day, in a speech made at the ABC Metalworkers' Union headquarters, in which he announced that he would comply with the arrest warrant against him, former president Lula reportedly stated, among other things, that "the press and the Public Ministry hastened Marisa's [his wife] death." Similarly, "He was firm in calling Sergio Moro, the Public Ministry, and the putschist media to account for the judicial media persecution he has been suffering in a case lacking evidence and marked by irregularities."<sup>242</sup>

189. According to the available information, in the city of João Pessoa, Paraíba, reporter Oscar Neto of *Bandnews FM Manaíra* was reportedly assaulted by four demonstrators while using his cell phone to record the protest of a group of Lula supporters outside *TV Cabo Branco*, a *Globo* affiliate, on April 6. The reporter said that the assailants threw his equipment on the ground. According to the available information, the demonstrators also threw rocks at the windows and glass doors of the station's building, broke a door, and wrote slogans in defense of the former president on the walls.<sup>243</sup> In addition, in the city of Curitiba, journalists were also reportedly harassed outside the Federal Police headquarters. According to reports, the *SBT* and *Globo* teams were the most seriously affected.<sup>244</sup> A female reporter from *BNC Amazonas* was also reportedly attacked.<sup>245</sup>

190. Acts of violence against demonstrators were also reported in connection with the arrest of former President Luiz Inácio Lula da Silva. According to the available information, the Landless Rural Workers' Movement [*Movimiento de los Trabajadores Rurales Sin Tierra*] (MST) is said to have blocked a number of roads throughout the country in protest against the former president's arrest.<sup>246</sup> As part of these protests, an unidentified man fired a shot at demonstrators on April 6 in Paraíba, reportedly hitting a woman in the leg.<sup>247</sup>

191. In addition, on April 7, it was reported that nine people were injured in the disturbances surrounding former President Lula's entry into the Federal Police headquarters in Curitiba. According to public information, the events reportedly took place when the helicopter in which the former president was traveling landed at the Federal Police headquarters and two firecrackers were set off in the middle of a crowd of demonstrators opposed to his arrest. According to reports, federal agents inside the headquarters reacted

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<sup>240</sup> "Acabo de sofrer uma agressão na frente do Sindicato dos Metalúrgicos. Estava ao vivo e fui cercada por militantes ao som de 'fascista,' 'elite branca' e 'mídia golpista.' Procurei arrego num estacionamento daqui de frente. Difícil trabalhar com medo." Twitter account of @eubrunabarboza. [April 7, 2018](#); Associação Brasileira de Jornalismo Investigativo (Abraji). April 7, 2018. [Militantes agredem jornalistas durante protesto em SBC no sábado](#).

<sup>241</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). April 7, 2018. [Militantes agredem jornalistas durante protesto em SBC no sábado](#); Estadão. April 7, 2018. [Seis jornalistas são agredidos em São Bernardo na cobertura da prisão de Lula, diz Abraji](#).

<sup>242</sup> Original text in Portuguese: "[f]oi firme ao chamar Sérgio Moro, o Ministério Público e a mídia golpista à responsabilidade pelo processo de perseguição jurídico midiática que vem sofrendo num processo sem provas e marcado por irregularidades." Available at: Instituto Lula. April 7, 2018. [Lula no ABC: "Sairei dessa maior, mais forte, mais verdadeiro e inocente](#).

<sup>243</sup> UOL. April 6, 2018. [Protesto em João Pessoa \(PB\) tem repórter ferido e depredação a prédio de emissora](#); Polêmica Paraíba. April 6, 2018. [VEJA VÍDEO: Jornalista paraibano é agredido durante manifestação em JP](#); G1. April 6, 2018. [Grupos protestam contra prisão do ex-presidente Lula, na Paraíba](#).

<sup>244</sup> Correio Braziliense. April 7, 2018. [Seis jornalistas foram agredidos em São Bernardo durante prisão de Lula](#); Knight Center for Journalism in the Americas. April 10, 2018. [At least 19 Brazilian journalists and media professionals assaulted during coverage of former President Lula's arrest](#).

<sup>245</sup> BNC Amazonas. April 8, 2018. [Repórter do BNC agredida na prisão de Lula em Curitiba; VEJA RELATO](#).

<sup>246</sup> UOL. April 6, 2018. [MST bloqueia estradas pelo Brasil em protesto contra a prisão de Lula](#); Agência Brasil. April 6, 2018. [MST bloqueia rodovias em protesto contra prisão de Lula; mulher é baleada na PB](#).

<sup>247</sup> Pragmatismo Político. April 6, 2018. [Homem fura bloqueio e atira em manifestante pró-Lula na Paraíba](#); Rede Brasil Atual. April 6, 2018. [Militante do MST é baleada durante bloqueio de rodovia na Paraíba](#); UOL. April 6, 2018. [Manifestante do MST é baleada em protesto na Paraíba contra prisão de Lula](#).

by teargassing the crowd, dispersing it.<sup>248</sup> There were also reports that the military police had allegedly used rubber bullets against demonstrators who supported the former president. In addition, it was reported that journalists and demonstrators opposed to the former president had been forced to leave the area peacefully.<sup>249</sup>

192. Furthermore, according to public information, after former President Lula's arrival, the military police began to comply with a precautionary measure granted by the courts on April 7, in order to block the transit of unauthorized persons and vehicles, as well as the setting up of camps and structures, near the Federal Police headquarters. The prohibitory injunction [*interdito proibitório*] had reportedly been requested by the Office of the Mayor of Curitiba.<sup>250</sup> In addition, on April 28, the national leadership of the Workers' Party [*Partido dos Trabalhadores*] (PT) reported that the camp set up in Curitiba in support of former President Lula had been the target of a shooting incident in the early morning hours. According to the available information, two people were injured, one of them seriously.<sup>251</sup>

193. On September 6, a photojournalist from *Tribunal de Minas* was assaulted while covering the campaign of then presidential candidate Jair Bolsonaro. The photojournalist was photographing the candidate as he was walking, when Bolsonaro was stabbed with a knife. According to reports, at this point a security officer stood in front of his camera, and reportedly told him that he was not allowed to photograph the scene. He also allegedly grabbed the reporter violently by the shirt, taking him to another part of the street and threatening him.<sup>252</sup> On September 15, in the city of Boa Vista, Roraima, presidential candidate Ciro Gomes reportedly insulted and punched a journalist who asked him during a press conference about his statements regarding Brazilians who had attacked immigrants at the border. According to the available information, Ciro Gomes accused the journalist of speaking on behalf of a senator who was his political opponent in that state, and insulted and punched him.<sup>253</sup>

194. During the general elections of 2018, a Facebook group called "Women United against Bolsonaro" [*Mulheres Unidas Contra Bolsonaro*] was created. The group, which was reportedly created in August, included some 3 million users. In addition, the hashtag "#EleNãõ" was reportedly being used on social media by the women who were mobilizing against then presidential candidate Jair Bolsonaro. According to the available information, from the time of its creation, the group had been hacked and taken down several times, allegedly by men who identified themselves as Bolsonaro supporters. Women from the group would have been verbally attacked and would have been threatened online<sup>254</sup>. More recently, on September 24, one of the group's administrators was reportedly assaulted by two unidentified men when she arrived at her home in Rio de Janeiro. In addition to striking her in the eye and on the head, they reportedly stole her cell phone.<sup>255</sup> The administrator, who stated that she had already been the target of online threats and harassment, is reportedly affiliated with the political party PSOL and served as the campaign coordinator for a candidate for state representative from that party.<sup>256</sup>

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<sup>248</sup> EFE. April 7, 2018. [Nueve heridos en los disturbios durante el ingreso en prisión de Lula en Curitiba](#); RPP Noticias. April 8, 2018. [Al menos nueve heridos en enfrentamiento durante ingreso de Lula a prisión en Curitiba](#); ABC. April 8, 2018. [Disturbios y heridos en Brasil](#).

<sup>249</sup> ABC. April 8, 2018. [Disturbios y heridos en Brasil](#); RPP Noticias. April 8, 2018. [Al menos nueve heridos en enfrentamiento durante ingreso de Lula a prisión en Curitiba](#); EFE. April 7, 2018. [Nueve heridos en los disturbios durante el ingreso en prisión de Lula en Curitiba](#).

<sup>250</sup> G1. April 8, 2018. [Manifestantes ficam feridos em confusão na chegada do ex-presidente Lula à PF em Curitiba](#); Paraná Portal. April 8, 2018. [Justiça proíbe permanência de manifestantes nas proximidades da PF em Curitiba](#).

<sup>251</sup> UOL. April 28, 2018. [Ataque a tiros em acampamento pró-Lula em Curitiba deixa dois feridos: polícia investiga](#); EFE. April 28, 2018. [Ataque a tiros a campamento pro-Lula deixa feridos y eleva la tensión en Curitiba](#).

<sup>252</sup> Tribuna de Minas. September 6, 2018. [Fotógrafo da Tribuna é agredido no atentado a Bolsonaro](#); Associação Brasileira de Jornalismo Investigativo (Abraji). September 10, 2018. [Fotógrafo é agredido ao cobrir atentado a Bolsonaro em Luiz de Fora](#).

<sup>253</sup> Clarín. September 17, 2018. [Ciro Gomes, exaltado en Brasil: por una pregunta, el candidato agredió con insultos y un puñetazo a un periodista](#); G1. September 17, 2018. [Ciro Gomes xinga e empurra jornalista em visita a Roraima](#).

<sup>254</sup> OAS. Electoral Observation Mission. [Preliminary EOM Report](#). No Date.

<sup>255</sup> Terra. September 25, 2018. [Organizadora de grupo contra Bolsonaro é agredida no Rio](#); Carta Capital. September 25, 2018. [Organizadora de grupo de mulheres contra Bolsonaro é agredida no Rio](#); Huffpost. September 25, 2018. [Administradora do grupo 'Mulheres Contra Bolsonaro' é agredida no Rio de Janeiro](#).

<sup>256</sup> Terra. September 25, 2018. [Organizadora de grupo contra Bolsonaro é agredida no Rio](#); Estadão. September 25, 2018. [Organizadora de grupo contra Bolsonaro relata agressão no Rio](#).

195. On October 18, the Association of Judges for Democracy [*Associação Juízes para a Democracia*] (AJD), published an article with respect to the “several requests for injunctions filed against judges by the Internal Affairs Officer of the National Council of Justice, for alleged political and partisan statements.” According to this organization, “In a scenario of intense political instability and democratic fragility, the attempt by the Internal Affairs Office to censor the freedom of thought and expression of Brazilian judges is a breach of the founding principles of democracy and, under the veiled mantle of the ban on political activity, it attacks freedom of thought and expression.”<sup>257</sup> It was also reported that the National Council of Justice will investigate statements made by Judge Kenarik Boujikian of the São Paulo Court of Justice criticizing the Chief Justice of the Federal Supreme Court during an event held by the newspaper *Folha de São Paulo* in reference to the 30-year anniversary of the Brazilian Constitution. According to the available information, during this event, the judge said that “For a Federal Supreme Court Justice to call a historically recognized coup d’état a ‘movement’ is to trample over Brazilian history, and in some way, to disrespect our victims.” She also added that, “The Judiciary is dysfunctional in relation to the democratic system.”<sup>258</sup>

196. On the night of October 26, 2018, students from various universities in Brazil held peaceful “anti-fascist” protests, which were banned by the electoral courts. In at least nine Brazilian states, universities were the target of actions by the police and electoral prosecutors to remove posters and other means of expression, on the grounds that they were unlawful election propaganda.<sup>259</sup>

197. On October 26, the Attorney General of the Republic requested an injunction to suspend this ban imposed by the electoral courts by means of an action alleging the violation of a fundamental constitutional right [*Arguição de Descumprimento de Preceito Fundamental*] (ADPF). On October 31, the plenary of the Federal Supreme Court (STF) ruled unanimously to suspend the judicial and administrative measures that had allowed State agents to enter public and private universities in different Brazilian states. In its decision, the STF held, among other considerations, that “Universities are places of personal and political freedom and liberation. Their name denotes plurality and respect for differences, disagreements in building consensus, legitimate only when they derive from free expression. Discrepancies are characteristic of individual freedoms. People differ, they do not become enemies. People criticize. They do not become disagreeable because of it. Democracy is not unanimity. Consensus is not imposition.”

198. In the days leading up to the October 28 election, journalist Patricia Campos Mello, author of the October 18 *Folha de São Paulo* article that revealed the use of Whatsapp for disinformation purposes, was harassed through various messages on social media,<sup>260</sup> her cell phone was broken into by hackers, she received telephone threats, and she was the target of “fake news.”<sup>261</sup> Similarly, the executive director of *Datafolha*, Mauro Paulino, reportedly received threats via social media and at his home.<sup>262</sup> Because of this, representatives of the newspaper *Folha de São Paulo* asked the Federal Police, through the Superior Electoral Tribunal (TSE), to investigate the threats received by Campos Mello and Paulino.<sup>263</sup> On October 25, Brazil’s Minister of Public Security, Raul Jungmann, reportedly ordered the Federal Police investigate those threats.<sup>264</sup>

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<sup>257</sup> Associação Juízes para a Democracia (AJD). October 18, 2018. [Nota pública da Associação Juízes para a Democracia em defesa intransigente da liberdade de expressão de juízes e juízas.](#)

<sup>258</sup> Consultor Jurídico (Conjur). October 17, 2018. [CNI pede que desembargadora Kenarik Boujikian explique críticas a Toffoli.](#)

<sup>259</sup> G1. October 26, 2018. [TRE-RJ diz que tirou cartazes de universidade pública porque ‘não é permitida a propaganda eleitoral’; alunos protestam](#); *Folha de São Paulo*. October 26, 2018. [Universidades de todo o país são alvo de ações policiais e da Justiça Eleitoral](#); *Revista Exame*. October 26, 2018. [Justiça eleitoral faz apreensões em 17 universidades em todo o Brasil.](#)

<sup>260</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). October 18, 2018. [Repórter da Folha é alvo de assédio direcionado e ameaças nas redes sociais após publicação de reportagem](#); Portal dos Jornalistas. October 19, 2018. [Fenaj e SJSP repudiam agressões e ameaças à repórter Patricia Campos Mello](#); *O Globo*. October 24, 2018. [Repórter da 'Folha' e diretor do Datafolha são alvos de ameaças.](#)

<sup>261</sup> *O Globo*. October 24, 2018. [Repórter da 'Folha' e diretor do Datafolha são alvos de ameaças.](#)

<sup>262</sup> *O Globo*. October 24, 2018. [Repórter da 'Folha' e diretor do Datafolha são alvos de ameaças](#); *Estadão*. October 25, 2018. [Jungmann manda PF investigar ameaças a jornalista e a diretor do Datafolha.](#)

<sup>263</sup> *Terra*. October 25, 2018. [PF investigará ameaças a jornalista e diretor do Datafolha](#); *Agência Brasil*. October 24, 2018. [Jornal aciona TSE e pede que PF investigue ameaças a profissionais.](#)

<sup>264</sup> *Folha de São Paulo*. October 25, 2018. [Jungmann manda PF investigar ameaças a profissionais da Folha](#); *Terra*. October 25, 2018. [PF investigará ameaças a jornalista e diretor do Datafolha](#);

199. According to the available information, that harassment was not spontaneous, but was provoked by statements made by then presidential candidate Jair Bolsonaro at a public event on October 21, when he called on his followers to “participate actively in the elections (...) ‘without lies,’ without ‘fake news,’ without *Folha de São Paulo*.” He further stated that “*Folha de São Paulo* is the biggest fake news outlet in Brazil. You are not going to receive any more advertising from the government (...), sellout company, my condolences.”<sup>265</sup>

200. During the *on-site* visit to Brazil, civil society organizations also conveyed to the IACHR their concern about speech that emerged during the election campaign concerning the suppression of “activism” and state funds intended for civil society.<sup>266</sup>

### ***Disinformation in the context of the elections in Brazil***

201. One of the issues that has generated a great deal of discussion in Brazil this year is the impact of misinformation on the general elections held there in October 2018.<sup>267</sup> At present, under the current legal framework, a person who spreads false information may be prosecuted in accordance with federal laws, although these laws do not refer to the Internet. These laws include the Electoral Code of 1960, which penalizes the disclosure of false [*inverídica*] information, the Criminal Code of 1940, which establishes the crimes of insult, slander, and defamation, and the National Security Act of 1980, which provides penalties only for those who spread rumors that cause panic in society.<sup>268</sup>

202. Thus, in order to pass measures even this year, the National Congress established on May 23, a “Joint Parliamentary Front to Address Fake News” [*Frente Parlamentar Mista de Enfrentamento às Fake News*]. The Front is composed of 219 representatives and 12 senators.<sup>269</sup> According to the Front’s coordinator, Representative Márcio Marinho, its purview will include the study of bills on the subject, as well as discussions with experts.<sup>270</sup>

203. According to the available information, at least 20 bills on “fake news” are currently pending in the Brazilian Congress.<sup>271</sup> According to research done by the NGO *Agência Pública*, 19 legislative bills were introduced by the House of Representatives and one by the Senate.<sup>272</sup> The NGO asserts that the penalties provided in these bills “range from fines starting at R\$ 1,500 to eight years of imprisonment for any person who spreads fake news.”<sup>273</sup> Similarly, their scope of application ranges from “penalizing the creation of rumors on social networks to penalizing false news in the press.”<sup>274</sup> Experts and journalists have expressed their concerns about the legislative initiatives and have pointed out that, in debating this issue, legislators must be careful not to create an opening for censorship and abuse.<sup>275</sup>

204. For its part, the Superior Electoral Tribunal (TSE) established an Advisory Board on elections and the Internet on December 7, 2017.<sup>276</sup> The Board was established to undertake research and studies on electoral rules and the influence of the Internet on elections, paying particular attention to the risk posed by the

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<sup>265</sup> *Folha de São Paulo*. October 21, 2018. [Folha é a maior fake news do Brasil, diz Bolsonaro a manifestantes](#).

<sup>266</sup> *Folha de São Paulo*. October 9, 2018. [Bolsonaro diz que pretende acabar com 'ativismo ambiental xiita' se for presidente](#); Vice. October 11, 2018. [Acabar com o ativismo é também cercar a liberdade da direita](#).

<sup>267</sup> OAS. Electoral Observation Mission. [Preliminary EOM Report](#). No Date.

<sup>268</sup> *Agência Pública*. May 11, 2018. [20 projetos de lei no Congresso pretendem criminalizar fake news](#).

<sup>269</sup> Câmara dos Deputados do Brasil. May 23, 2018. [Frente Parlamentar de Enfrentamento às Fake News será lançada hoje à tarde](#); Câmara dos Deputados do Brasil. May 23, 2018. [Frente parlamentar mista lançada nesta quarta visa o enfrentamento às 'fake news'](#).

<sup>270</sup> Câmara dos Deputados do Brasil. May 23, 2018. [Frente parlamentar mista lançada nesta quarta visa o enfrentamento às 'fake news'](#).

<sup>271</sup> Câmara dos Deputados do Brasil. August 14, 2018. [Fake News](#).

<sup>272</sup> *Agência Pública*. May 11, 2018. [20 projetos de lei no Congresso pretendem criminalizar fake news](#).

<sup>273</sup> *Agência Pública*. May 11, 2018. [20 projetos de lei no Congresso pretendem criminalizar fake news](#).

<sup>274</sup> *Agência Pública*. May 11, 2018. [20 projetos de lei no Congresso pretendem criminalizar fake news](#).

<sup>275</sup> Knight Center for Journalism in the Americas. June 13, 2018. [Judiciary and Congress confront 'fake news' in Brazil, but critics fear negative effects for freedom of expression](#); *Agência Brasil*. June 19, 2018. [Deputados e especialistas divergem sobre regulacao de fake news](#); DW. January 19, 2018. [O desafio das 'fake news' nas eleições de 2018](#); *Agência Pública*. May 11, 2018. [20 projetos de lei no Congresso pretendem criminalizar fake news](#).

<sup>276</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Portaria No. 949, de 7 de dezembro de 2017 – Institui o Conselho Consultivo Sobre Internet e Eleições](#).

dissemination of “fake news” and the use of Internet bots in the spreading of false information, as well as to provide opinions on matters submitted to it by the Chief Justice of the TSE and to propose actions and goals designed to improve the rules.<sup>277</sup> The Board is composed of 11 members, who are representatives of the electoral courts, the Brazilian army, civil society, and the federal government.<sup>278</sup>

205. In June 2018, the then Chief Justice of the TSE, Justice Luiz Fux, stated that the electoral court could potentially nullify the election results if the outcome was produced by the mass dissemination of “fake news.” Chief Justice Fux noted that Article 222 of the Electoral Code establishes that, “The election may also be nullified when it is vitiated by falsity, fraud, coercion, the use of means referred to in art. 237 (interference by economic forces and the misuse or abuse of power), the use of propaganda, or the obtaining of votes prohibited by law.”<sup>279</sup> However, he pointed out that this requires a “deep knowledge of what was done.”<sup>280</sup>

206. The TSE has also signed agreements with different actors to prevent the spread of “fake news.” On June 5, 2018, 10 of the 35 political parties active in Brazil signed an agreement with this Tribunal to help maintain an electoral environment unaffected by the dissemination of fake news.<sup>281</sup> These political parties pledged to “maintain an environment of informational rigor, so as to rebuke any practice or record concerning the use of false content in the next election, acting as cooperating agents against the dissemination of fake news in the 2018 elections.”<sup>282</sup> Similarly, on June 19, 2018, the TSE signed an agreement [*Termo de Compromisso*] with representatives of the Brazilian Association of Political Consultants [*Clube Associativo dos Profissionais de Marketing Político*] (CAMP).<sup>283</sup>

207. Later, on June 28, 2018, the TSE signed memorandums of understanding with Google and Facebook, as well as with entities representing the communications sector – the Brazilian Association of Radio and Television Broadcasters (ABERT), the National Association of Newspapers (ANJ), the Brazilian Association of Magazine Publishers (ANER). According to reports, the signatories of these agreements “undertook the commitment with the TSE to prevent and combat disinformation generated by third parties, in addition to supporting the Court in digital education projects and initiatives to promote quality journalism.”<sup>284</sup>

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<sup>277</sup> Reuters. December 11, 2017. [TSE cria grupo para monitorar “fake news”](#); Tribunal Superior Eleitoral do Brasil (TSE). January 10, 2018. [Alterada composição do Conselho Consultivo sobre Internet e Eleições](#); Tribunal Superior Eleitoral do Brasil (TSE). [Portaria No. 949, de 7 de dezembro de 2017](#).

<sup>278</sup> Tribunal Superior Eleitoral do Brasil (TSE). [Portaria No. 949, de 7 de dezembro de 2017 – Institui o Conselho Consultivo Sobre Internet e Eleições](#).

<sup>279</sup> R7. June 21, 2018. [Eleição pode ser anulada caso seja influenciada por fake news, diz Fux](#); G1/Jornal Nacional. June 21, 2018. [‘Notícias falsas podem até anular o resultado de uma eleição’, diz Fux](#).

<sup>280</sup> G1/Jornal Nacional. June 21, 2018. [‘Notícias falsas podem até anular o resultado de uma eleição’, diz Fux](#); R7. June 21, 2018. [Eleição pode ser anulada caso seja influenciada por fake news, diz Fux](#).

<sup>281</sup> As was informed, the following political parties signed the agreement: Democratas (DEM), Partido Comunista do Brasil (PCdoB), Partido da Social Democracia Brasileira (PSDB), Partido Democrático Trabalhista (PDT), Partido Republicano Brasileiro (PRB), Partido Social Cristão (PSC), Partido Social Democrático (PSD), Partido Social Liberal (PSL), Partido Socialismo e Liberdade (PSOL) and Rede Sustentabilidade (REDE). Estadão. June 7, 2018. [TSE dá 48 horas para Facebook remover ‘fake news’ contra Marina Silva](#); Tribunal Superior Eleitoral do Brasil (TSE). June 5, 2018. [Eleições 2018: TSE e partidos firmam acordo de não proliferação de notícias falsas](#); Tribunal Superior Eleitoral do Brasil (TSE). [Termo de Compromisso. Firma acordo de colaboração com os Partidos Políticos para a manutenção de um ambiente eleitoral imune de disseminação de notícias falsas \(fake News\) nas Eleições de 2018](#). June 5, 2018.

<sup>282</sup> Original text in Portuguese: “[m]anter o ambiente de higidez informacional, de sorte a reprovar qualquer prática ou expediente referente à utilização de conteúdo falso no próximo pleito, atuando como agentes colaboradores contra a disseminação de fake news nas Eleições 2018”. Available at: Tribunal Superior Eleitoral do Brasil (TSE). [Termo de Compromisso. Firma acordo de colaboração com os Partidos Políticos para a manutenção de um ambiente eleitoral imune de disseminação de notícias falsas \(fake News\) nas Eleições de 2018](#). June 5, 2018.

<sup>283</sup> Tribunal Superior Eleitoral do Brasil (TSE). June 19, 2018. [Especialistas em marketing político vão colaborar no esforço contra disseminação de notícias falsas](#); Tribunal Superior Eleitoral do Brasil (TSE). [Firma acordo de colaboração com o Clube Associativo dos Profissionais de Marketing Político para a manutenção de um ambiente eleitoral imune de disseminação de notícias falsas \(fake news\) nas Eleições 2018](#). June 19, 2018.

<sup>284</sup> Tribunal Superior Eleitoral do Brasil (TSE). June 28, 2018. [TSE firma novas parcerias com entidades e empresas para combater notícias falsas](#); G1. June 28, 2018. [TSE faz pacto de combate a ‘fake news’ com mídias sociais e associações de empresas de comunicação](#); Tribunal Superior Eleitoral do Brasil (TSE). [Memorando de entendimento firmado por empresas de mídias sociais perante a Justiça Eleitoral e o Conselho de Política Institucional sobre o combate à desinformação gerada por terceiros](#). June 28, 2018; Tribunal Superior Eleitoral do Brasil (TSE). [Termo de parceria firmado entre a Justiça Eleitoral e a Associação Brasileira de Emissoras de Rádio e Televisão - ABERT, Associação Nacional de Jornais \(ANJ\) e a Associação Nacional de Editores de Revista \(ANER\) para a manutenção de um ambiente eleitoral imune à disseminação de notícias falsas \(fake news\) nas Eleições 2018](#). June 28, 2018.

208. In June 2018, the TSE rendered its first decision on the issue of “fake news.” According to the available information, the case involved presidential candidate Marina Silva. In its decision, the TSE ordered Facebook to remove content considered false in relation to Ms. Silva within 48 hours.<sup>285</sup> It also ordered Facebook to report, within 10 days, on the origin of the registration of the page responsible for the publications, the records of access to one of the posts, and the personal data of the creator and administrators of the Facebook profile.<sup>286</sup> This precautionary decision [*liminar*], was the first to invoke resolution 23.551, adopted in December 2017 to address the issue of false news.<sup>287</sup>

209. On October 25, the plenary of the TSE ordered the removal of a video of then presidential candidate Jair Bolsonaro in which he criticized the ballot boxes, considering that it was an “attack on the credibility of the electoral process.”<sup>288</sup> Similarly, a report from the Brazilian Association of Investigative Journalists (ABRAJI) revealed that politicians tried to conceal information more than 500 times during the election campaign, asking the judiciary to remove content for defamation, violation of electoral laws, and copyright and trademark infringements during the election process.<sup>289</sup> In addition, according to data provided by ABRAJI, while the Regional Electoral Tribunals grant on average 50% of content removal requests, the TSE only grants 16% of such requests, which suggests, in the latter case, an exceptional application of the law. According to information provided by the TSE, there were 40 lawsuits during the election process related to the issue of “fake news” between June 6 and October 19, 31 of which were adjudicated.<sup>290</sup>

210. In June 2018, the “Comprova” Project was launched. It began operating in August 2018, in order to “discover and investigate misleading, fabricated, and deliberately false information”<sup>291</sup> during the 2018 general elections.<sup>292</sup> This project, which originated with *First Draft*,<sup>293</sup> is coordinated by ABRAJI, and includes 24 media outlets. According to reports, the media organizations that are part of the project are: *AFP, Band TV, Radio Bandeirantes, Futura, Band News, Correio, Correio do Povo, Estado de S. Paulo, Exame, Folha de S. Paulo, GaúchaZH, Gazeta Online, Gazeta do Povo, Jornal do Commercio, Metro Brasil, Nexo Jornal, Nova Escola, NSC Comunicação, O Povo, Poder360, Revista Piauí, SBT, UOL, and Veja*.<sup>294</sup>

211. The original project is an initiative of the Harvard Kennedy School, in the United States, which trains journalists to resist the dissemination of false news in the digital environment and conducts research on the subject. In Brazil, the “Comprova” Project is also supported by the Institute for the Development of Journalism [*Instituto para o Desenvolvimento do Jornalismo*] (PROJOR), and is reportedly funded by the Google News Initiative and by the Facebook Journalism Project. According to reports, it locates “fake news” through the NewsWhipe, Google Trends, Crowdtangles, and Tweetdeck platforms, and also conducts its own monitoring through websites and social networks using keywords related to each candidate or specific topic.<sup>295</sup> Similarly,

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<sup>285</sup> Valor. August 7, 2018. [Prestes a deixar comando do TSE. Fux celebra avanços contra fake news: Tribunal Superior Eleitoral do Brasil \(TSE\). Representação No. 060054670.2018.6.00.0000 – Classe 115441 – Brasília – Distrito Federal.](#) June 7, 2018; Consultor Jurídico (Conjur). June 7, 2018. [TSE usa conceito de fake news para mandar Facebook retirar postagens do ar.](#)

<sup>286</sup> [Tribunal Superior Eleitoral do Brasil \(TSE\). Representação No. 060054670.2018.6.00.0000 – Classe 115441 – Brasília – Distrito Federal.](#) Knight Center for Journalism in the Americas. June 13, 2018. [Judiciary and Congress confront ‘fake news’ in Brazil, but critics fear negative effects for freedom of expression.](#)

<sup>287</sup> Tribunal Superior Eleitoral do Brasil (TSE). December 18, 2017. [TSE aprova 10 resoluções sobre regras das Eleições Gerais de 2018](#); Tribunal Superior Eleitoral do Brasil (TSE). [Resolução No. 23.551.](#) December 18, 2017.

<sup>288</sup> Tribunal Superior Eleitoral do Brasil (TSE). October 25, 2018. [TSE determina exclusão de vídeo em que Jair Bolsonaro critica urnas eletrônicas.](#)

<sup>289</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). Projeto Ctrl+X. November 21, 2018. [Políticos tentaram ocultar informação mais de 500 vezes durante a campanha.](#)

<sup>290</sup> TSE, [Representações de competência do TSE que tratam de fake news.](#) Tribunal Superior Electoral. 2018.

<sup>291</sup> Projeto Comprova. Available at: <https://projeto comprova.com.br/?filter=Investigates>

<sup>292</sup> Projeto Comprova. Available at: <https://projeto comprova.com.br/>; PDF presentation of “Comprova” project: [https://static.poder360.com.br/2018/06/comprova\\_poder360.pdf](https://static.poder360.com.br/2018/06/comprova_poder360.pdf)

<sup>293</sup> First Draft. Available at: <https://firstdraftnews.org/>

<sup>294</sup> Meio e Mensagem. June 29, 2018. [Projeto Comprova reúne 24 veículos contra fake news](#); Associação Brasileira de Jornalismo Investigativo (Abraji). July 2, 2018. [Congresso da Abraji reúne 750 pessoas em 3 dias de debates sobre jornalismo.](#)

<sup>295</sup> Meio e Mensagem. June 29, 2018. [Projeto Comprova reúne 24 veículos contra fake news](#); Associação Brasileira de Jornalismo Investigativo (Abraji). July 2, 2018. [Congresso da Abraji reúne 750 pessoas em 3 dias de debates sobre jornalismo.](#)

Brazilians can file complaints about suspicious or false election-related content through the Whatsapp account of the “Comprova” Project.<sup>296</sup>

212. For its part, *Grupo Globo* launched a service for checking suspicious content in July, called “*Fato ou Fake*” [“Fact or Fake”]. According to the available information, “The department will identify messages that cause distrust and clarify what is real and what is false. The determination will be made jointly by journalists from *G1, O Globo, Extra, Época, Valor, CBN, GloboNews* and *TV Globo*. Politicians’ speeches will also be fact-checked.”<sup>297</sup> Journalists will monitor daily to identify suspicious messages that are widely shared through applications such as WhatsApp and social networks. According to reports, registered users will be able to use a WhatsApp number to access links to the checks made. There will also be a web robot on Facebook and Twitter that will answer what is false or true, in case the matter has already been verified by *Globo* journalists.<sup>298</sup>

213. Finally, Facebook and WhatsApp have also taken measures to prevent the dissemination of false information in Brazil.<sup>299</sup> According to the available information, on May 10, 2018, Facebook launched an initiative with two Brazilian fact-checking agencies, *Lupa* and *Aos Fatos*. In Brazil, these companies will have access to news reported as false by the Facebook community in order to analyze its veracity.<sup>300</sup> Content classified as false will have its “organic distribution reduced, and pages that repeatedly share false news will have their reach diminished.”<sup>301</sup> According to Facebook, “this mechanism allowed for an 80% reduction in the organic distribution of news considered false by associated verification agencies in the United States, where the tool has been in operation for some time.”<sup>302</sup>

214. On May 16, the Brazilian Association of Investigative Journalists (Abraji), reported that since the announcement of the initiative between Facebook and the agencies *Aos Fatos* and *Lupa*, “journalists and contributors to these vehicles have been subject to attacks on Facebook itself and on other platforms, such as Twitter and WhatsApp.” Using videos and montages of images, this initiative has reportedly been classified as a “right-wing censorship attempt,” and the agencies and the professionals that work with them have been labeled “leftists.” According to Abraji, the content and conversations have incited the public to react.<sup>303</sup>

215. For its part, WhatsApp announced that it would act on three fronts: forming partnerships with news checking services; strengthening engagement with authorities in order to respond promptly to “valid” orders indicating electoral manipulation and dissemination of false news; and using artificial intelligence to curb abuses.<sup>304</sup> The company also plans to carry out newspaper and online campaigns to raise awareness among users.<sup>305</sup>

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<sup>296</sup> Exame. June 29, 2018. [A imprensa brasileira se une no desafio de combater fake news](#); Poder 360. August 6, 2018 (updated on August 7, 2018). [Comprova entra em operação e lança número de WhatsApp: conheça o projeto](#).

<sup>297</sup> Original text in Portuguese: “Seção vai identificar as mensagens que causam desconfiança e esclarecer o que é real e o que é falso. Apuração será feita em conjunto por jornalistas de G1, O Globo, Extra, Época, Valor, CBN, GloboNews e TV Globo. Discursos de políticos também serão conferido[s].” Available at: G1. July 30, 2018. [G1 lança Fato ou Fake, novo serviço de checagem de conteúdos suspeitos](#).

<sup>298</sup> G1. July 30, 2018. [G1 lança Fato ou Fake, novo serviço de checagem de conteúdos suspeitos](#);

<sup>299</sup> Knight Center for Journalism in the Americas. June 13, 2018. [Judiciary and Congress confront 'fake news' in Brazil, but critics fear negative effects for freedom of expression](#).

<sup>300</sup> *Aos Fatos*. May 10, 2018. [Aos Fatos adere a iniciativa de verificação de notícias do Facebook](#); *Lupa*. May 10, 2018. [Lupa fecha parceria com Facebook e vai checar posts feitos na plataforma](#); Facebook. May 10, 2018. [Facebook lança produto de verificação de notícias no Brasil em parceria com Aos Fatos e Agência Lupa](#).

<sup>301</sup> *Aos Fatos*. May 10, 2018. [Aos Fatos adere a iniciativa de verificação de notícias do Facebook](#); *Lupa*. May 10, 2018. [Lupa fecha parceria com Facebook e vai checar posts feitos na plataforma](#); *Catraca Livre*. May 11, 2018. [Parceira do Catraca Livre vai ajudar Facebook a combater mentiras](#).

<sup>302</sup> Facebook. May 10, 2018. [Facebook lança produto de verificação de notícias no Brasil em parceria com Aos Fatos e Agência Lupa](#).

<sup>303</sup> Associação Brasileira de Jornalismo Investigativo (Abraji). July 15, 2018. [Grupos promovem ataques virtuais a agências de checagem de fatos](#).

<sup>304</sup> Exame. August 16, 2018. [WhatsApp anuncia planos para tentar combater fake news no Brasil](#); Estadão. August 11, 2018. [WhatsApp anuncia planos para tentar combater 'fake news' no Brasil](#); Knight Center for Journalism in the Americas. June 13, 2018. [Judiciary and Congress confront 'fake news' in Brazil, but critics fear negative effects for freedom of expression](#); *Folha de São Paulo*. May 13, 2018. [Popular e de difícil controle. WhatsApp mira notícias falsas](#).

<sup>305</sup> Estadão. August 11, 2018. [WhatsApp anuncia planos para tentar combater 'fake news' no Brasil](#).

## E. Legal reforms

216. On August 14, President Michel Temer partially approved Law No. 13.709/2018<sup>306</sup> on the protection of personal data in Brazil. According to reports, one of the president's vetoes was related to clause II of Article 23. This paragraph established that "data on the person requesting access to information should be protected and preserved, in the terms of Law No. 12,527, of November 18, 2011 (Law on Access to Information), and shall not be shared within the government or with private legal entities."<sup>307</sup> According to the Transparency and Social Participation Network [*Rede de Transparência e Participação Social*] (RETPS), this veto is "extremely prejudicial to the right to information in Brazil," in view of the fact that the vetoed clause "would ensure the privacy of persons requesting information."<sup>308</sup>

217. Additionally, during the *on-site* visit, civil society organizations reported on bills making their way through the Brazilian Congress that seek to amend the Antiterrorist Law in order to make it more restrictive. That law was enacted in 2016 under strong repudiation from civil society. The bills in question seek, among other things, to broaden the concept of what is considered a terrorist act, which could be used to criminalize activists and social movements in the country. Particularly with respect to Senate Bill No. 272/2016,<sup>309</sup> civil society organizations presented a technical note, in which they pointed out, *inter alia*, that "This bill is viewed with extreme concern by organized civil society, as it seeks to include, unconstitutionally, political and ideological motivation among the elements of the crime of terrorism, in addition to expanding the role of acts considered terrorist and reinserting certain provisions that were no longer included in the final version of the law enacted, with special emphasis on supporting and financing the crime of terrorism."<sup>310</sup>

218. On October 31, the Senate Committee on the Constitution and Justice (CCJ) approved the holding of a public hearing to discuss the expansion of this law, thereby postponing the vote on the matter in the Senate Committee. According to reports, this hearing was held on November 20.<sup>311</sup>

## F. Speech inciting hatred and discrimination

219. During its *on-site* visit, the IACHR noted with extreme concern the reports received regarding the rise in speech inciting violence for discriminatory reasons in public spaces and on social networks, especially with regard to women, LGBTI persons, people of African descent from urban sectors, and social movements fighting for land, housing, and the environment. According to reports, many of these comments on social media even come from or are enabled by public servants or candidates for elected office.

220. This Office notes that this type of speech by senior officials enables the use of violence by groups professing racist, homophobic, and misogynist rhetoric. With regard to this matter, the IACHR has repeatedly stated that public officials should use public discourse to help prevent violence on discriminatory grounds, which requires public officials to refrain from making statements that expose different groups to an increased risk of violence. Thus, authorities must not only refrain from spreading messages of hatred against people on

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<sup>306</sup> Presidência da República do Brasil. [Lei No. 13.709](#). August 14, 2018.

<sup>307</sup> Texto original: Subsection II of art. 23: "sejam protegidos e preservados dados pessoais de requerentes de acesso à informação, nos termos da Lei nº 12.527, de 18 de novembro de 2011 (Lei de Acesso à Informação), vedado seu compartilhamento no âmbito do Poder Público e com pessoas jurídicas de direito privado". (Presidência da República do Brasil. [Mensagem No. 451](#). August 14, 2018).

<sup>308</sup> Artigo 19. August 16, 2018. [Carta da Rede de Transparência e Participação Social \(RETPS\) contra o veto da Lei Nº 13.709/2018](#); Instituto Ethos. August 28, 2018. [Organizações manifestam contrariedade a veto na lei de proteção de dados pessoais](#).

<sup>309</sup> Senado Federal do Brasil. [Projeto de Lei do Senado No. 272](#). March 16, 2016.

<sup>310</sup> Original text in Portuguese: "Este projeto é visto com extrema preocupação pela sociedade civil organizada, uma vez que busca inserir, de modo inconstitucional, a motivação política e ideológica entre as razões do cometimento do crime de terrorismo, além de ampliar o rol de atos considerados terroristas e reinsertar alguns dispositivos que deixaram de constar na versão final da lei aprovada, com especial destaque para a apologia e financiamento ao crime de terrorismo". ([Technical note on PLS 272/2016](#) dated November 18, 2018, presented by the following organizations: Artigo 19, Rede Justiça Criminal, Terra de Direitos, Comitê Brasileiro de Defensoras e Defensores de Direitos Humanos, Instituto de Defesa do Direito de Defesa, AJD - Associação Juízes para a Democracia, IBCCRIM - Instituto Brasileiro de Ciências Criminais, Intervozes - Coletivo Brasil de Comunicação Social, JusDh - Articulação Justiça e Direitos Humanos, Justiça Global, Conectas Direitos Humanos, Instituto Pólis, MLB - Movimento de Luta nos Bairros, Vilas e Favelas, Centro de Assessoria Popular Mariana Criola, Plataforma Dhesca, Fórum Justiça, Geledés - Instituto da Mulher Negra, CPT - Comissão Pastoral da Terra, Justiça nos Trilhos, Centro de Defesa de Direitos Humanos da Serra, and MNDH - Movimento Nacional de Direitos Humanos).

<sup>311</sup> Artigo 19. November 26, 2018. [Organizações alertam para o grave risco de violação de direitos fundamentais em projeto de lei que altera Lei Antiterrorismo](#); Senado Federal do Brasil. Comissão de Constituição e Justiça (CCJ). November 20, 2018. [Audiência Pública Interativa](#).

the basis of their gender, sexual orientation, race, or status, but also must contribute decisively to building a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of attack.

221. The Office of the Special Rapporteur recalls that freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information received favorably or considered inoffensive or indifferent, but also with regard to information which offends, shocks, disturbs, or is unpleasant to public officials or a sector of the population. However, Article 13.5 of the American Convention establishes that, “Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.” The IACHR and its Office of the Special Rapporteur for Freedom of Expression have found that, in light of the general principles of treaty interpretation, “hate speech” directed against persons on the basis of their sexual orientation, gender identity, or body diversity that constitutes incitement to violence or “any other similar illegal action” falls within this provision and is therefore contrary to the American Convention.

### G. Subsequent liability

222. According to reports, on November 9, journalist Paulo César de Andrade Prado was reportedly arrested on charges of criminal insult. The journalist is said to be the author of the “*Blog do Paulinho*,” and his arrest apparently stemmed from a 2013 case filed by a Brazilian broadcaster, whom the journalist allegedly referred to as “empty belly” in his blog.<sup>312</sup> According to the available information, Andrade Prado was initially sentenced to 4 months and 20 days in jail, which was reduced by the São Paulo Court of Justice to 1 month and 23 days, to be served in a minimum security facility. Notwithstanding the above, the journalist was allegedly arrested on the basis of a pretrial detention order issued by the Paraná courts, where he was facing a criminal defamation charge.<sup>313</sup>

223. According to information of public knowledge, the journalist Wellington Macedo would face 59 denunciations for the crime of defamation, after having revealed in a series of reports a presumed fraud to improve the general evaluation of the schools of the municipality of Sobral, in the state of Ceará. According to the information available, these processes had been filed by directors of 59 schools in the municipality, in a coordinated manner, and each complaint would request compensation of more than 530,000 euros for moral damages. Likewise, it was informed that the lawyer of all the proceedings would be responsible for the contracts and agreements of the Secretary of Education of Sobral.<sup>314</sup>

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<sup>312</sup> Artigo 19. December 3, 2018. [ARTIGO 19 repudia prisão de jornalista Paulo César de Andrade Prado por injúria e difamação](#); Instituto Vladimir Herzog. November 16, 2018. [Nota do IVH: Após críticas a apresentador, blogueiro é preso em São Paulo](#).

<sup>313</sup> Artigo 19. December 3, 2018. [ARTIGO 19 repudia prisão de jornalista Paulo César de Andrade Prado por injúria e difamação](#).

<sup>314</sup> Reporters Without Borders. February 19, 2019. [BRASIL | Decenas de directores de escuela denuncian al periodista Wellington Macedo](#); Nova Escola. October 1, 2018. [Sobral: 10 perguntas e respostas sobre as suspeitas de fraude na rede](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 8, 2019. [Jornalista é processado 59 vezes após publicação de reportagem sobre suposta fraude em Sobral \(CE\)](#); Folha de São Paulo. September 30, 2018. [Estudantes de Sobral, berço de Ciro, relatam pressão para fraudar provas](#).

## 8. CANADA

224. Canada continues to be a country in which journalists can work safely. Nevertheless, the Office of the Special Rapporteur received information about some incidents that hindered the ability of some journalists and media workers to work freely. This Office also took note in its 2017 Annual Report of the enactment of a law to protect journalistic sources (Journalistic Sources Protection Act), and so it received with concern the information that the Supreme Court of Canada ordered journalist Ben Makuch to turn over all communications with his source concerning a story published in 2014. There is another case also currently pending before the Court that concerns a journalist who was summonsed to a court in March and ordered to reveal the sources of information that she had published related to the trial of a former public servant on corruption charges. Finally, civil society has spoken out about the decline and danger of closure of several print media outlets for financial reasons.

### A. Progress

225. On April 27, in *Toronto Star v. AG Ontario*, the Ontario Superior Court of Justice declared unconstitutional certain provisions of the Freedom of Information and Protection of Privacy Act that authorized public officials to deny access to documents from administrative tribunals on the grounds and on the presumption that they contain “personal information.” In this regard, the decision creates the precedent that access to information is to be regarded as the rule.<sup>315</sup>

### B. Attacks, threats, and intimidation of journalists and media outlets

226. According to available information, Martine Ouellet, former leader of the *Bloc Québécois* political party, reportedly made a number of threats to take legal action alleging defamation against media outlets which, she alleged, expressed defamatory opinions about her. For instance, she reportedly sent a formal letter of notice to the TVA Group, as well as to the host and panelists of *La Joute*, because they stated in a March 8 broadcast that she was “dishonest” and “unbalanced” in her remarks.<sup>316</sup> She also reportedly threatened to sue CBC host Catalina Perrin and two psychologists for having suggested during a segment of the program *Medium* that she had mental health problems.<sup>317</sup> The Office of the Special Rapporteur recalls that “the expression of statements, information and opinions regarding matters of public interest, the State and its institutions enjoy greater protection under the American Convention on Human Rights. This means that the State must refrain more rigorously from placing limitations on these forms of expression, and that State entities and officials, as well as those who aspire to hold government positions, must have a higher threshold of tolerance in the face of criticism because of the public nature of their duties.”<sup>318</sup>

227. On March 13, *Radio Canada* journalist Antoine Trépanier was arrested in Québec on charges of criminal harassment. He had reportedly attempted to interview Yvonne Dubé, the executive director of Big Brothers Big Sisters, about a case involving the forgery of a diploma with which she had allegedly practiced law without a license.<sup>319</sup> The journalist reportedly tried to contact her on the phone and via email. Because of this, she reportedly complained to the Police that she was being harassed by a man and that she feared for her safety.<sup>320</sup> The Chief of Police of Gatineau stated at a press conference—when asked whether it was normal to arrest a journalist during the course of his or her work—that the police involved in the case acted according to the complaint they had received, and acted within the protocols that require them to take action. He stated that these procedures are followed regardless of people’s professions, but that he understood the sensitive nature of the case because it involved a journalist. When asked whether he was suggesting that the journalist

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<sup>315</sup> Canada. Ontario. Superior Court of Justice. *Toronto Star v. AG Ontario*, 2018 ONSC 2586 (CanLII). April 27, 2018. Available at: <http://www.ontariocourts.ca/search-canlii/scj/scj-en.htm>

<sup>316</sup> Montreal Gazette. March 23, 2018. [Martine Ouellet makes public her formal notice sent to TVA in potential lawsuit](#); Journal de Québec. March 23, 2018. [Après La Joute, Martine Ouellet pourrait envoyer d'autres mises en demeure](#).

<sup>317</sup> La Presse. April 12, 2018. [Martine Ouellet met en demeure Radio-Canada](#); Radio Canada. April 12, 2018. [Radio-Canada réagit à la conférence de presse de madame Martine Ouellet](#).

<sup>318</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 36.

<sup>319</sup> CBC News. March 16, 2018. [Gatineau Big Brothers' director illegally acted as lawyer](#); Canada’s National Observer. March 16, 2018. [Gatineau police defend decision to arrest reporter](#).

<sup>320</sup> CBC News. March 16, 2018. [Journalists say arrest of Ottawa reporter is abnormal, unacceptable](#); Ottawa Citizen. March 16, 2018. [Journalists say arrest of Ottawa reporter is abnormal, unacceptable](#).

had committed a crime, he reiterated that the police had acted according to the complaint and that it was not up to them to determine that situation.<sup>321</sup> The Director of Criminal and Penal Prosecutions of Quebec later issued a press release on March 22, stating that the journalist had not committed any crime. In addition, the Gatineau Police Chief reportedly stated that the decision to make the arrest was based solely on Dubé's statement and that the officer involved had not properly assessed the situation.<sup>322</sup>

228. On May 23, members of an anti-immigrant group called Atalante caused a disturbance in the Montreal offices of *Vice Media*. They reportedly entered without warning wearing masks, making noise, and throwing flyers into the press room. According to available information, this attack was triggered by an article published by journalist Simon Coutu about the emergence of extreme right-wing groups in Montreal.<sup>323</sup> Prime Minister Justin Trudeau stated with regard to this matter that his administration would always defend and support the right of the media to do their job; he also found the incident alarming and considered it to be an act of intimidation.<sup>324</sup> The Office of the Special Rapporteur recognizes the importance of the prime minister's statement on the incident, given that "public officials have a duty to prevent violence against journalists by both speaking out against such violence and responding in a "mature and non-violent" way to criticism from the media."<sup>325</sup>

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

### C. Social Protest

230. On August 11, *Toronto Soul* photographer Stan Behal was physically assaulted while covering a protest march "against hate" in Toronto.<sup>326</sup> The assailant attacked the photographer's face, in the presence of law enforcement officers. Some demonstrators rebuked the police officers for not arresting the assailant, who was even caught on video during the violent act.<sup>327</sup> Behal filed a formal complaint with the Police, and the institution reportedly said that it had opened an investigation.<sup>328</sup>

231. The Office of the Special Rapporteur recalls 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"<sup>329</sup>.

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<sup>321</sup> Ottawa Citizen/YouTube channel. March 16, 2018. [Radio Canada reporter arrested after requesting interview](#). [2:31]; The Sudbury Star / Facebook. March 17, 2018. [Radio Canada reporter arrested after requesting interview](#).

<sup>322</sup> CBC News. March 22, 2018. [Radio-Canada reporter won't face harassment charge](#); The Globe and Mail. March 22, 2018. [One Radio-Canada journalist is exonerated but another is ordered to reveal her sources](#).

<sup>323</sup> Canadian Journalist for Free Expression (CJFE). May 25, 2018. [CJFE strongly condemns the irruption into Vice Quebec's newsroom](#); CBC News. May 23, 2018. [Far-right group intimidates Vice journalists in their Montreal office](#).

<sup>324</sup> CBC News. May 23, 2018. [Far-right group intimidates Vice journalists in their Montreal office](#); Vice. May 24, 2018. [Far-Right Extremists Stormed the VICE Office in Montréal](#).

<sup>325</sup> IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against journalists and media workers: InterAmerican standards and national practices on prevention, protection and prosecution of perpetrators ). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 41.

<sup>326</sup> CBC News. August 14, 2018. [A Canadian journalist was physically attacked for doing his job. That should be huge news: Robyn Urback](#); Toronto Sun. August 15, 2018. [Police investigating attack on Toronto Sun journalist](#); Reporters Without Borders (RSF). August 16, 2018. [RSF condemns attack on Toronto Sun photojournalist at protest](#).

<sup>327</sup> Reporters Without Borders (RSF). August 16, 2018. [RSF condemns attack on Toronto Sun photojournalist at protest](#); Toronto Sun/YouTube channel. August 11, 2018. [CAUGHT ON CAMERA: Toronto Against Racism Rally Not So Peaceful](#). [1:41].

<sup>328</sup> CBC News. August 16, 2018. [Photographer files complaint with police after alleged assault while on the job](#); Toronto Sun. August 15, 2018. [Police investigating attack on Toronto Sun journalist](#).

<sup>329</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. Confidentiality of sources

232. According to the information available, on November 30, the Supreme Court of Canada ordered journalist Ben Makuch of *Vice Media* to turn over communications between him and an alleged ISIS combatant to the Royal Canadian Mounted Police (RCMP).<sup>330</sup>

233. The Office of the Special Rapporteur documented the case of Ben Makuch in its 2016 and 2017 Annual Reports. According to the information gathered by this Office, in a court case brought in February 2015, the Superior Court of Ontario had ordered Ben Makuch to disclose the details and content of his correspondence with Farah Shirdon, an alleged ISIS combatant, to the Royal Canadian Mounted Police on March 1, 2016.<sup>331</sup>

234. Between June and October 2014, Makuch wrote a number of articles for *Vice Media* about Farah Shirdon, a Canadian citizen tried in his absence on terrorism-related charges. In February 2015, Canadian security officials obtained *ex parte* a production order from the Ontario Court of Justice demanding that the reporter turn over “unedited copies of any electronic records” and “paper printouts, screen captures, or any other computer records” pertaining to the Internet exchanges with Shirdon. The March 2016 decision dismissed the request of *Vice Media Canada* to quash, set aside, or amend the production order. On April 28, 2016, *Vice Media* filed an appeal with the Ontario Court of Appeal.<sup>332</sup>

235. On May 6, 2016 the Office of the Special Rapporteur sent a letter to the Illustrious State of Canada requesting information about this matter. The State, in a communication received by this Office on August 5, 2016, replied that the production order requested by the RCMP was not intended to identify a confidential source, as Farah Shirdon’s identity was known, but rather that the aim was to obtain copies of the messages exchanged between the journalist and his source.<sup>333</sup>

236. In 2018, the case was brought before the Supreme Court, and a hearing was held on May 28. A group of various civil society organizations participated in the hearing.<sup>334</sup> According to the information published by the high court, “[a]ll of the judges at the Supreme Court agreed that *Vice* had to give police the screenshots. They looked at all the factors and said the original judge’s decision was reasonable. They noted it was important for media to be able to gather and share news with the public without government interference, and that it had a special role in society. But, in this case, society’s interest in investigating and prosecuting crimes outweighed it.”<sup>335</sup> In addition, the information mentions that the justices arrived at the conclusion that the rules on the rules on media search warrants and production orders should be changed. Among other considerations, it stated that judges “have to look at all the facts and circumstances” and “balance society’s interest in investigating and prosecuting crimes against the media’s right to privacy in gathering and sharing news”, and think about ways to make sure the media will not be overly restricted in carrying out its work. Finally, the information makes clear that the Journalistic Sources Protection Act did not apply to this case because the events happened before it came into force.<sup>336</sup>

237. In another case, in March of this year the Superior Court of Québec reportedly ordered *Radio Canada* journalist Marie-Maude Denis to reveal her source of information in connection with a 2012 investigative assignment into alleged collusion surrounding government contracts that reportedly implicated a former Vice Minister, resulting in his arrest and subsequent prosecution. The court order was issued during the course of

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<sup>330</sup> Reporters Without Borders (RSF). November 30, 2018. [CANADA – Supreme Court rules against VICE reporter in trial on source protection](#); Radio Canadá Internacional. November 30, 2018. [Fallo de la Corte Suprema de Canadá ordena a periodista revelar sus fuentes](#).

<sup>331</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. 22/17. March 15, 2017. Para. 287.

<sup>332</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. 22/17. March 15, 2017. Para. 286.

<sup>333</sup> 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. Para. 195.

<sup>334</sup> Reporters Without Borders (RSF). August 16, 2018. [RSF condemns attack on Toronto Sun photojournalist at protest](#); Canada. Supreme Court of Canada. [R. v. Vice Media Canada Inc. 2018 SCC 53](#). November 30, 2018.

<sup>335</sup> Canada. Supreme Court of Canada. November 30, 2018. [Case in Brief. R. v. Vice Media Canada Inc.](#); Canada. Supreme Court of Canada. [R. v. Vice Media Canada Inc. 2018 SCC 53](#). November 30, 2018.

<sup>336</sup> Canada. Supreme Court of Canada. November 30, 2018. [Case in Brief. R. v. Vice Media Canada Inc.](#); Canada. Supreme Court of Canada. [R. v. Vice Media Canada Inc. 2018 SCC 53](#). November 30, 2018.

the trial. The argument of the former Vice Minister's defense counsel was that he was entitled to know the source of information in order to be able to exercise his right to a defense.<sup>337</sup> This judgment also reportedly overturned a lower court decision that upheld the protection of sources.<sup>338</sup> According to the available information, the case went to the Supreme Court of Canada.<sup>339</sup>

238. The Inter-American Commission recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression states that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

#### **E. Access to public information**

239. According to the annual report of the Office of the Information Commissioner of Canada (OIC),<sup>340</sup> a bill is currently being studied to amend the current Access to Information Act and the Privacy Act. According to information made public by the government, the bill was most recently taken up on December 6, 2017, by the House of Commons.<sup>341</sup> The purpose of the bill is "to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions." The bill seeks to amend, *inter alia*, the functions of the Information Commissioner, as well as those of the Privacy Commissioner, and to clarify the powers of both commissioners. It also seeks to establish a new proactive publication system and increase the number of regulated entities.

240. The Office of the Special Rapporteur urges the State to adopt the highest standards on the subject, in keeping with the Model Inter-American Law on Access to Information.<sup>342</sup>

241. The Office of the Special Rapporteur has observed the results of the annual report presented in June by the Information Commissioner of Canada,<sup>343</sup> Caroline Maynard. According to the report, there were 23 legal proceedings in 2017–2018, eight of which resulted in final decisions. In addition, the OIC has conducted an investigation for purposes of assisting in the interpretation of the provisions of the Access to Information Act, based on the cases brought before that office. For instance, the OIC received several complaints about the Canadian Security Intelligence Service's (CSIS) refusal to provide information on the existence of records and/or data to individual requesters who wanted to know whether CSIS had files on them. According to CSIS, providing such information would indicate whether or not an investigation is taking place, which could be detrimental to that investigative work. The OIC found that the refusal to confirm nor deny the existence of this kind of information was a reasonable use of subsection 10(2)<sup>344</sup> and that that approach had recently been confirmed by the Federal Court. However, the OIC also found that once that information has been released to the public, that exception would no longer apply.<sup>345</sup>

242. The Office of the Special Rapporteur applauds these efforts of the Commissioner's Office and encourages it to continue to take further action to implement and ensure compliance with the law by all regulated entities.

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<sup>337</sup> CBC News. March 23, 2018. [Investigative journalist Marie-Maude Denis says confidential sources 'worth fighting for'](#); CBS News/YouTube channel. March 31, 2018. [Protecting Sources: Radio-Canada journalist under pressure \(The Investigators with Diana Swain\)](#) [4:52].

<sup>338</sup> CBC News. March 23, 2018. [Investigative journalist Marie-Maude Denis says confidential sources 'worth fighting for'](#); Reporters Without Borders (RSF). March 26, 2018. [ALERT - Canada: Quebec Superior Court orders journalist to reveal her sources](#).

<sup>339</sup> Canadian Journalist For Free Expression (CJFE). November 4, 2018. [CJFE will act as a intervener this month in the caso of Radio-Canada Journalist Marie-Maude Denis](#); Le Journal do Quebec. [Protection des sources: la Cour suprême entendra Marie-Maude Denis le 12 décembre](#); Radio-Canada. August 9, 2018. [La Cour suprême du Canada entendra la cause opposant Marie-Maude Denis à Marc-Yvan Côté](#).

<sup>340</sup> Canada. [Office of the Information Commissioner of Canada. Annual Report 2017-2018](#). June, 2017

<sup>341</sup> Canada. Parliament. [Bill C-58](#). December 6, 2017.

<sup>342</sup> OAS. Resolution AG/RES 2607 (XL-O/10). [Ley Modelo Interamericana sobre Acceso a la Información Pública](#). June 8, 2010.

<sup>343</sup> Canada. [Office of the Information Commissioner of Canada. Annual Report 2017-2018](#). June, 2017

<sup>344</sup> Subsection 10(2) – Refusal to Confirm or Deny Existence of Records. Subsection 10(2) of the Act allows an institution to neither confirm nor deny the existence of a record in response to an access request. This provision of the Act was designed to address situations in which the mere confirmation of a record's existence or non-existence would reveal information that should be protected under the Act.

<sup>345</sup> Canada. [Office of the Information Commissioner of Canada. Annual Report 2017-2018](#). June, 2017

243. In another context, according to information available in the media, the Supreme Court of Canada placed a 50-year embargo on public access to files related to the deliberations of the judges, from the time they rule on a case.<sup>346</sup>

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

#### **F. Print media in danger of closing**

245. According to the report of the Inter American Press Association (IAPA), the *Postmedia* group announced its decision to cease publication of at least six community newspapers. It also reportedly announced a reduction in the operations of this group of companies in a number of municipal regions.<sup>347</sup> In December 2017, Reporters Without Borders expressed its concern over the merger of *Postmedia* and *Torstar*, which reportedly own forty newspapers, as it is expected to result in the closure of a large number of media outlets in different regions.<sup>348</sup>

246. On various occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media in our region fulfill a fundamental function for the exercise by diverse sectors of society of freedom of expression and access to information.<sup>349</sup> Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

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

247. On June 26, the Office of the Privacy Commissioner of Canada (OPC) undertook a consultation and call for essays for the drafting of a position on the issue of “online reputation.” According to information available on the institution’s website, it received 28 written submissions from the academic sector, civil society, lawyers, and the general public, containing a variety of proposals.<sup>350</sup> Based on these submissions, the OPC published a “draft Position on Online Reputation,” which “champions solutions that balance freedom of expression and the privacy interests of individuals.”

248. The draft position establishes measures such as “the right to ask search engines to de-index web pages, as well as ‘source takedown,’ or the right of erasure.” Civil society has called this draft position a risk to freedom of expression.<sup>351</sup>

249. With respect to “freedom of expression considerations and the balance with privacy interests,” the Office of the Commissioner states that “this balance can best be achieved in the context of online reputation by considering whether the accessibility of personal information is in the public interest. In general, where

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<sup>346</sup> The Globe and mail. May 14, 2018. [Supreme Court of Canada to keep records of deliberations secret for at least 50 years](#); The Lawyer’s Daily. May 12, 2018. [Public to get access to SCC judges’ debates after 50-year embargo](#).

<sup>347</sup> Inter American Press Association (IAPA). 74th General Assembly Report. October 19 - 22, 2018. Salta, Argentina. [Canada](#). October 17, 2018.

<sup>348</sup> Reporters Without Borders (RSF). December 1, 2017. [RSF concerned by “largest closure of newspapers on single day in Canadian history”](#).

<sup>349</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>350</sup> Canada. Office of the Privacy Commissioner of Canada. No date. [Draft OPC Position on Online Reputation](#).

<sup>351</sup> Canadian Journalists For Free Expression (CJFE). April 20, 2018. [The Right to forgotten unacceptable risk to freedom of expression](#).

there is a sufficient public interest in the information remaining accessible, this will normally trump an individual's desire to control access to their personal information that has been lawfully published online"; it additionally considers "factors relevant to assessing the public interest," situations such as "whether the individual concerned is a public figure"; "whether the information at issue relates to a matter of public controversy or debate"; "whether the information relates to an individual's private life as opposed to, for example, their professional or working life"; "whether the information concerns a criminal offence for which the individual has been given a discharge, a pardon, or a record suspension"; and, "whether the information relates to a minor."<sup>352</sup>

250. The Office of the Special Rapporteur recalls that "procedures for de-indexing or removing content cannot be used as a preventive mechanism to protect the right to honor or reputation. Individuals have other remedies available to them to seek redress for the harm caused in the case of alleged dissemination of false, offensive, or inaccurate information by digital media, such as the right of correction and reply, and civil actions for damages. These remedies are less harmful to the right to freedom of expression and require the plaintiff to bear the burden of proving the falsity or inaccuracy of the information being disseminated"<sup>353</sup>.

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<sup>352</sup> Canada. Office of the Privacy Commissioner of Canada. No date. [Draft OPC Position on Online Reputation](#).

<sup>353</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. 22/17, March 15, 2017. Para. 139.

## 9. CHILE

251. In 2018, the Office of the Special Rapporteur noted with concern incidents related to journalists who developed reports on topics of high public interest, such as cases of sexual abuse, or other issues related to public persons. Various social demonstrations took place during the year and, in this context, there were situations of excessive use of force by the security forces. Likewise, the Office was informed about the destruction of video recordings by security forces officials who were involved in an operation that led to the death of a young Mapuche. On the other hand, this Office is concerned about information about a criminal conviction for "slandering accusation" imposed on a woman who claimed to be a victim of sexual abuse by a prosecutor. In another context, a civil proceeding was carried out against a media outlet for alleged offenses of insult that had been committed through the publication of a series of satirical content programs. In addition, this Office observed a decision of the Supreme Court of Justice of the country that ordered a group of media outlets to publish a series of rectifications regarding information by these media that the judicial body considered as incomplete. Finally, some progress in the field of community broadcasting is highlighted.

### A. Progress

252. On September 25, the Constitutional Court of Chile declared unconstitutional Article 36 B of the General Telecommunications Law No. 18.168, which punishes with prison sentences of up to three years the operation or exploitation of telecommunications services or facilities of free reception or broadcasting, without authorization from the competent authority. The Court ruled in the context of a lawsuit filed by community radio Aukan, of San Fernando, whose legal representative, Francisco Orellana, faced a prison sentence for being on the air without authorization. The decision only applies to the specific case, for this reason the law would continue to be in force<sup>354</sup>. In 2015 an initiative would have been presented in the Senate to modify the law, but it would continue to be studied by the Public Works, Transportation, and Telecommunications Commission of the House of Representatives<sup>355</sup>.

253. The Office of the Special Rapporteur, while celebrating the ruling, recalls that in its 2016 Special Report on the Situation of Freedom of Expression in Chile, it expressed concern about the existence in the country's legal system of criminal sanctions for the use of frequencies without authorization and for the lack of progress in Congress of the bill to modify this. As the Office has indicated on several occasions, the use of criminal law to punish violations to the broadcasting regime can be problematic in the light of the American Convention on Human Rights. The creation of criminal penalties for commercial or community broadcasting, which may be faced with a lack of non-existence or misuse of the license, is a disproportionate measure to the interests sought to be protected<sup>356</sup>.

### B. Attacks, Threats, and Intimidation of Journalists and the Media

254. The Office of the Special Rapporteur received information on some attacks perpetrated against journalists while they were working<sup>357</sup>. Of particular seriousness would have been the aggression against journalist Oscar Cáceres of radio *Bio Bio*, who would have suffered a cervical injury when, on September 16, after the ceremony of the Thanksgiving Service of the Evangelical Organizations of Chile, security guards of Bishop Eduardo Durán allegedly assaulted the reporters who tried to question the bishop about the investigation that links him to alleged money laundering<sup>358</sup>. The Government spokeswoman, Cecilia Pérez,

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<sup>354</sup> Diario UChile. October 3, 2018. [Fallo histórico: TC descarta la aplicación de prisión contra representante de radio comunitaria](#); Radio Konciencia. No date. [No pudieron contra Radio Aukan: TC Desestima aplicación de prisión contra comunicador comunitario](#).

<sup>355</sup> Cámara de Diputados. [Proyecto de ley que modifica la pena para la radiodifusión no autorizada](#). December 21, 2015.

<sup>356</sup> Office of the Special Rapporteur for Freedom of Expression. [Informe Especial Sobre la Libertad de Expresión en Chile 2016](#). OEA/Ser. L/V/II. CIDH/RELE/INF. 16/17. March 15, 2017. P Paras. 135 - 136.

<sup>357</sup> Tele 13. July 24, 2018. [\[VIDEO\] Agreden a la prensa tras incidente que terminó con tres baleados en el CDA](#); El Mostrador. July 24, 2018. [La agresión a periodista tras graves incidentes en CDA](#); Soy Chile. May 18, 2018. [Reporteros sufrieron violenta agresión frente a Carabineros en San Antonio](#); Colegio de Periodistas. May 20, 2018. [DECLARACIÓN PÚBLICA Colegas de Valparaíso rechazan agresión a periodista y exigen investigación](#).

<sup>358</sup> La Tercera. September 16, 2018. [Periodista fue agredido por guardias de obispo evangélico tras Te Deum](#); CNN. September 16, 2018. [La vocera de gobierno se refirió sobre el ataque por parte de los guardias calificándolo como "agresión matonesca e inaceptable"](#).

would have considered the assault on communicators "unacceptable"<sup>359</sup>. Likewise, on January 18, the bishop of San Bernardo, Juan Ignacio González, allegedly assaulted journalist Priscilla Vargas, of *Mega*, when she tried to approach priest Juan Barros to question him about accusations of sexual abuse against members of the Chilean Catholic Church<sup>360</sup>.

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

### C. Social Protest

256. The Office of the Special Rapporteur received a series of reports that point to an excessive use of force by elements of the Chilean police in order to disperse demonstrators. Among the cases reported to this Office, in the framework of a student march held on April 19 in Santiago, a young student was run over by an official vehicle of the security forces. According to the information, the student would have been left with serious body injuries. Also, the family would have filed a complaint against the police institution<sup>361</sup>.

257. On the other hand, this Office was informed about a demonstration held on June 6 in several cities of the country, in protest against the alleged existence of a "sexist education" system that would prevent the reduction of the gender gap. The demonstration held in the city of Santiago would have gathered some 15,000 people, held peacefully except for the end, when some hooded men would have caused riots that were repressed by police with the use of water jets and tear gas. During the confrontation, the work team of the show "Bienvenidos" broadcasted on *Canal 13* would have been attacked. According to the information, the attackers would have destroyed the equipment and stolen the mobile phone of reporter Marilyn Pérez, who covered the event<sup>362</sup>.

258. In another context, the Office of the Special Rapporteur received information that on July 25, as part of a march carried out by feminist groups demanding the legalization of free abortion, three women were stabbed by hooded persons who would have infiltrated. Faced with the fact, the government condemned the violent episodes and announced that it would file legal actions<sup>363</sup>.

259. On October 24, the Police would have dissolved a demonstration in the city of Santiago, called to protest the amount of the pensions paid to retirees. The demonstration, held next to the National Library, would have been held peacefully until the participants decided to march down Alameda Avenue, this would have caused the reaction of the Police, who used water jets and tear gas to dissolve it. At least a dozen people would have been arrested during the incident<sup>364</sup>.

260. On October 27, there would have been a confrontation between members of alleged anarchist groups and the participants in the so-called "March for Jesus," an activity carried out annually by various evangelical

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<sup>359</sup> Publimetro. September 16, 2018. [Gobierno exige explicaciones al Obispo Durán por agresión de sus guardaespaldas a periodistas tras Te Deum evangélico](#); CNN Chile. September 16, 2018. [Guardaespalda de obispo Eduardo Durán agredieron a periodistas tras Te Deum evangélico](#).

<sup>360</sup> Publimetro. January 18, 2018. [Chile: reportera acusa de agresión a obispo por preguntas de abuso sexual](#); La República. January 18, 2018. [Chile: Obispo González empujó a periodista que se acercó a Juan Barros \[VIDEO\]](#).

<sup>361</sup> Bibichile.cl. April 20, 2018. [Familia de joven atropellado tras marcha en Santiago presenta querrela contra Carabineros](#); adn Radio. April 20, 2018. [Familia de joven atropellado por Carabineros se querrela por homicidio frustrado](#).

<sup>362</sup> DW. No date. [Masiva marcha feminista exige en Chile educación no sexista](#); La Nación. June 6, 2018. [Encapuchados empañaron la marcha feminista con ataque a equipo de canal 13](#); Hoy x hoy. June 6, 2018. [Se registraron incidentes al final de la marcha feminista en Santiago](#); 24 horas. June 6, 2018. [Marcha feminista desarrollada en Santiago culmina con incidentes aislados](#).

<sup>363</sup> CNN en Español. July 27, 2018. [Indignación en Chile por apuñalamiento de tres mujeres en una marcha feminista](#); El País. July 27, 2018. [Apuñaladas tres chilenas en medio de una marcha feminista](#); T13. July 25, 2018. [Tres mujeres fueron apuñaladas durante marcha por el aborto libre](#); El Mostrador. July 26, 2018. [Gobierno anuncia querrela por incidentes ocurridos durante marcha de aborto libre, seguro y gratuito](#); Twitter account of Karla Rubilar @KarlaEnAccion. [July 26, 2018](#).

<sup>364</sup> EFE. October 24, 2018. [Una protesta en Chile contra el sistema privado de pensiones termina con 12 detenidos](#); ANEF Chile. October 24, 2018. [ANEF protesta por un nuevo sistema de pensiones que garantice jubilaciones dignas a trabajadores del país](#); Prensa Latina. October 24, 2018. [Protesta Nacional en Chile contra sistema de pensiones](#); Telesur/YouTube. October 24, 2018. [Chile: reprimen protesta contra sistema de pensiones AFP](#).

and Protestant churches in the city of Santiago. According to the information, three people would have been injured, including a member of the police, and 19 more would have been arrested after the confrontation<sup>365</sup>.

261. On November 14, as part of an operation by a Police team called Comando Jungla, which was chasing those responsible for a robbery, the 24-year-old Mapuche young man Camilo Catrillanca, was shot dead while he was riding in a tractor in the area of the Mapuche Temukuikui community, in the town of Ercilla, Araucanía region. After his death, a series of protests, that would have been repressed by the police, took place in the southern region of the country and in the capital, Santiago<sup>366</sup>. In the context of these protests, on November 27, the National Institute of Human Rights [*Instituto Nacional de Derechos Humanos*] (INDH) denounced the detention and mistreatment by security forces of Eloisa Gonzalez Dominguez, who would be a former spokesperson for the High-school Student Coordinating Assembly [*Asamblea Coordinadora de Estudiantes Secundarios*]. Also, it was informed that in the process of her detention she would have been forced to partially undress. According to the information, her body presented several bruises<sup>367</sup>.

262. Regarding the acts of violence that occurred in the community of Temukuikui, and the death of Camilo Catrillanca, the IACHR issued a statement on November 21, in which it expressed its concern regarding the events and called on the State to carry out an investigation. In addition, the IACHR noted that on November 18 it was announced that one of the members of the special operations group that participated in the operation in the community initially indicated that there were no recordings of the operation in the community. However, it was later verified that there were recordings of the operation and that this evidence was destroyed by the police officers themselves. The Government of Chile announced the immediate dismissal of four police officers involved in the operation and the resignation of the Chief of Order and Security of Araucanía and the prefect of the Special Forces of Araucanía<sup>368</sup>. For its part, the Chilean Journalists Association [*Colegio de Periodistas de Chile*] denounced a "serious manipulation and concealment of information on the part of the government and police authorities" on the actions of the police that caused the death of Catrillanca<sup>369</sup>. According to the information available, President Sebastián Piñera would have signed the dismissal of the police director after unpublished videos about the operation were made public<sup>370</sup>.

263. The National Human Rights Institute (INDH) announced in December that it would file three legal actions against the police institution for the alleged ill-treatment, insults, and threats that family members and the teenager accompanying Catrillanca had suffered at the time of his death<sup>371</sup>.

264. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"<sup>372</sup>

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<sup>365</sup> Publimetro. October 27, 2018. [Bombas molotov, ataques a Carabineros y al menos 19 detenidos: los desmanes registrados en la "Marcha por Jesús" en Santiago](#); biobiochile. October 27, 2018. ["Marcha por Jesús" en la Alameda terminó con 19 personas detenidas](#); Aciprensa, October 29, 2018. [Turba de encapuchados atacan "Marcha por Jesús" en Chile](#).

<sup>366</sup> El País. November 15, 2018. [La muerte de un mapuche intensifica el conflicto en la Araucanía chilena](#); Ciper. December 19, 2018. [Muerte de Catrillanca: CIPER revela en exclusiva tres de los videos que grabó Carabineros](#); Diario UChile. November 20, 2018. [Programa de Libertad de Expresión U. de Chile repudia la violencia y represión en la Araucanía](#); BBC. November 16, 2018. [Camilo Catrillanca: la muerte en Chile de un joven mapuche por disparos de la policía que causa controversia y protestas](#); RT. November 19, 2018. [Se intensifican las protestas en Chile por la muerte de un joven mapuche en un operativo policial](#); La Tercera. November 15, 2018. [Las dudas abiertas por la muerte del joven mapuche Camilo Catrillanca](#).

<sup>367</sup> Instituto Nacional de Derechos Humanos (INDH). November 27, 2018. [INDH presenta amparo por detención de ex vocera de ACES](#).

<sup>368</sup> IACHR. November 21, 2018. [Press Release R249/18. IACHR expresses its concern about the acts of violence that occurred in the Indigenous Community of Temukuikui in Chile](#).

<sup>369</sup> Colegio de Periodistas. November 18, 2018. [Declaración: Colegio de Periodistas denuncia grave ocultamiento de información en muerte de Catrillanca](#).

<sup>370</sup> La Tercera. December 21, 2018. [El paso a paso para la destitución de Hermes Soto luego de negarse a renunciar](#); BBC. December 21, 2018. [Hermes Soto, jefe de Carabineros: la petición del presidente Piñera de que renuncie el jefe de policía de Chile agrava la crisis por la muerte del mapuche Camilo Catrillanca](#).

<sup>371</sup> Instituto Nacional de Derechos Humanos. December 6, 2018. [INDH presentará acciones judiciales contra Carabineros por nuevo episodio de violencia a adolescente que acompañaba a Catrillanca](#).

<sup>372</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

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>373</sup>

265. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>374</sup>

#### **D. Source Confidentiality**

266. According to the information received by the Office of the Special Rapporteur, on November 27, during a public hearing with senators of the Defense Committee of the Upper House, the commander-in-chief of the army, Ricardo Martínez, announced that he would prosecute by the “illegal” filtering of a recording delivered anonymously to journalist Mauricio Weibel Barahona, which was the basis of a report published by *The Clinic* on November 21. The audio exposes a speech pronounced by the commander in an act in the great hall of the Military School in which he would have admitted to having information about a series of corruption acts in military ranks.<sup>375</sup>

267. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”<sup>376</sup>

268. The Office of the Special Rapporteur recalls that Principle 8 of the Declaration of Principles establishes that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” Likewise recalls that in Article 13.3 of the American Convention it is established that “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression “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.

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<sup>373</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>374</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>375</sup> Document sent to the Office of the Special Rapporteur for Freedom of Expression on November 27, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; *The Clinic*. November 22, 2018. [Comandante en jefe del Ejército revela que oficiales traficaron armas para bandas de narcos](#); *The Clinic*. November 27, 2018. [Comandante en Jefe del Ejército informó que llevará a tribunales filtración de audios a The Clinic donde se revela tráfico de armas](#); 24 Horas. November 28, 2018. [Comandante en jefe del Ejército anuncia acciones legales por filtración de audios](#).

<sup>376</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.

## E. Subsequent Liabilities

269. The Office of the Special Rapporteur received information on a three-year and one-day prison sentence imposed by a Puerto Montt court to a woman who had judicially denounced being sexually abused by a prosecutor. According to the information, after a dismissal of the case at the prosecution stage, the official filed a criminal complaint for "slandering accusation". The court found the complainant liable and sentenced her to three years in prison. Finally, the case would have been elevated to the Supreme Court<sup>377</sup>.

270. In another case, journalist Javier Ignacio Rebolledo Escobar would have been acquitted on 9 October of the crime of "serious insults with publicity" of which he would have been accused by the daughter of Raúl Quintana Salazar, a retired Chilean army officer, sentenced for the commission of crimes against humanity during the dictatorship of Augusto Pinochet, whom the journalist reported as allegedly responsible for acts of torture and rape in his book *Camaleón. Doble vida de un agente comunista*<sup>378</sup>.

271. According to the information available, Sebastián Dávalos, a former director of a Chilean public institution and the son of former President Michelle Bachelet, would have filed a claim for damages against *Canal 13*, due to a series of satirical content broadcasts that would have harmed his honor and reputation, and that of his family. According to the information, Dávalos would demand compensation for more than 3,000 million Chilean pesos<sup>379</sup>.

272. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,<sup>380</sup> because "they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power."<sup>381</sup> In this regard, the Inter-American Commission stated that "[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy."<sup>382</sup> Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, "[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official." That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and

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<sup>377</sup> Soy Chile. November 21, 2018. [Declaran culpable de denuncia calumniosa a joven que acusó por abuso](#); Soy Chile. November 12, 2018. [Joven que denunció abuso ahora enfrenta juicio por calumnia](#); AN. November 21, 2018. [Joven que acusó violación es condenada por denuncia calumniosa](#); Radio Sago. December 14, 2018. [Caso de joven condenada en Puerto Montt por denuncia calumniosa llegó a la Corte Suprema](#).

<sup>378</sup> The Clinic. July 23, 2018. [Justicia acogió querrela por injurias de exmilitar preso en Punta Peuco por crímenes de lesa humanidad contra periodista Javier Rebolledo](#); El Mostrador. July 23, 2018. [Indignante: Corte de Apelaciones acoge querrela contra periodista por injuriar a preso de Punta Peuco](#); CNN Chile. July 24, 2018. [Periodista arriesga cárcel tras ser denunciado por hija de criminal de Punta Peuco](#); Knight Center for Journalism in the Americas. October 10, 2018. [Judge acquits Chilean journalist Javier Rebolledo, sued for defamation by former Army official](#); La Vanguardia. October 9, 2018. [Absuelven en Chile a periodista querrellado por militar condenado por crímenes](#).

<sup>379</sup> The Clinic. August 16, 2018. [Dávalos se pica con Yerko Puchento y demanda a Canal 13 por ser tratado como "Epidemia con aros"](#); La Nación. August 16, 2018. [Por rutinas de "yerko puchento": hijo de Bachelet demandó a canal 13 por \\$3.360 millones](#).

<sup>380</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87.

<sup>381</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125-129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

<sup>382</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9. rev. February 17, 1995.

disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

#### **F. Censorship of journalistic material / Prior censorship / Direct and indirect censorship**

273. On April 6, a decision was issued by the UN Human Rights Committee that established that the Chilean State went against the right to freedom of expression by censoring an artistic demonstration, through the actions of the police, during the commemoration of the 40 years of the coup d'etat, on September 6, 2013<sup>383</sup>.

274. The directors of the "Accredited Press Association in Congress" [*Agrupación Prensa Acreditada en el Congreso Nacional*] sent, on May 16, a letter to the Minister of Justice and Human Rights, Hernán Larraín Hernández, denouncing alleged acts of harassment by the press chief of the Ministry, Daniela Lazo, who would have asked representatives of two media outlets to inform previously of the questions that they would ask the official during his visit to the Senate of the Republic. The official would also have contacted the editors of at least one of these media to make complaints against a reporter who had refused to make the concessions requested<sup>384</sup>.

275. The municipality of Providencia, which is part of the metropolitan region of Santiago, would have forbidden the exhibition, on June 15, of the documentary "Insiders", which was part of the third edition of the LGTB Amor festival and whose presentation was scheduled in several locations. According to the information, the municipal government would have justified its decision arguing that the documentary would not be suitable for all audiences, a fact that would have been a condition for its inclusion in the festival. The organizers of the event repudiated the decision, which they branded as censorship<sup>385</sup>.

276. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "[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. Right to rectification or response**

277. On July 9, the Supreme Court would have accepted an action filed against several media outlets because they would not have informed "in an accurate manner" about the judicial case of an event that took place in 2002. The ruling indicates that the media omitted to inform "with new publications" about the dismissal of the person charged in the case. The Supreme Court would have ordered the media *radio Bio Bio*, *Televisión Nacional de Chile*, *Crónica Digital*, and *Gestión Regional de Medios S.A.* to publish "on their Internet pages full judicial information regarding the events" that occurred in September 2012. Likewise, it would have ordered to "specially to inform that a definitive dismissal was rendered after court verified the compliance of the conditions and deadlines approved in a conditional suspension of the procedure"<sup>386</sup>.

#### **H. Access to public information**

278. On several occasions, journalists were prevented from entering the sessions of two Senate committees. According to a letter sent by the Accredited Press Association in Congress to the president of the Senate, Carlos Montes, "access of journalists to the sessions would have been systematically denied" to the

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<sup>383</sup> La Tercera. April 6, 2018. [Dictamen de Naciones Unidas declara que el Estado chileno vulneró la libertad de expresión en 2013](#); El Desconcierto. April 6, 2018. [Dictamen de ONU declara que el Estado chileno vulneró la libertad de expresión en conmemoración de 40 años de Golpe de Estado](#).

<sup>384</sup> El Desconcierto. May 16, 2018. [Periodistas acreditados del Congreso denuncian "hostigamiento" de la jefa de prensa del ministro Hernán Larraín](#); El Repùblico. May 16, 2018. [Periodistas acusan hostigamiento de la jefa de prensa del ministro Larraín](#); CNN Chile. [Periodistas del Congreso acusan hostigamiento de asesora de prensa de ministro Hernán Larraín](#); Colegio de Periodistas de Chile. May 17, 2018. [Colegio de Periodistas rechaza hostigamiento a profesionales de la prensa](#).

<sup>385</sup> El Mostrador. June 15, 2018. [Municipalidad de Providencia, que patrocina festival de cine LGTB, censura película por ser muy LGTB](#); AMOR festival. No date. [Declaración pública](#).

<sup>386</sup> Suprema Corte de Justicia de Chile. Sentence of July 9, 2018. Available at: <https://www.24horas.cl/incoming/article2768063.ece/BINARY/PROTECCION%20PUBLICACION%20NOTICIAS%20PORTALES%20ACOGIDO.pdf>

commissions of Constitution and Public Security, "even though they do not deal with issues that affect national security and issues of public interest have been addressed, such as the non-applicability of statutory penalties for sexual crimes against minors, modifications to the antiterrorist law, or plans of the Chilean police to improve and modernize its probity standards."<sup>387</sup> The Chilean Journalists Association expressed in a public statement its concern about restrictions to press access, which it considered transgress "the principle of transparency that must exist in the various parliamentary bodies that address issues of high public interest"<sup>388</sup>.

279. The Office of the Special Rapporteur takes cognizance of the annual report issued by the Human Rights Center (udp) of the Diego Portales University's Law School, which indicates that the Supreme Court, in a 12-month period, decided on two cases about the publicizing of the National Security Council's (Cosena) minutes in a controversial manner. Likewise, the report indicates that, in these cases, the Council for Transparency decided to reject some minutes "since it considered that their dissemination would affect the national security and interest, and it orders to deliver most of them."<sup>389</sup> According to the information received by this Office, the Supreme Court allegedly decided to modify its criterion regarding the Council's jurisdiction to determine the delivery of information and decided to exclude Cosena from the Transparency Act. In addition, the Court allegedly determined that the said institution shall decide whether the minutes are public or reserved. The Office of the Special Rapporteur was informed about the fact that the Council for Transparency decided on the application of severability principle in the indicated cases.<sup>390</sup>

280. Furthermore, regarding a case related to information on the presidential plane, the Council allegedly decided on the delivery of a model of the aircraft used for transfers, as well as maintenance's general costs.<sup>391</sup> Likewise, in another case, the Council allegedly decided on the delivery of the information about maintenance's general costs and the granted use of an Army liaison aircraft.<sup>392</sup>

281. This Office was informed about the fact that the Council for Transparency allegedly modified its case law regarding the delivery of information on matters related to harassment and sexual harassment acts at the workplace, determining the protection of information whose delivery might affect the compliance with the functions of the required institution and the right to privacy of the people involved in administrative procedures, granting the access to background material for the public function's social scrutiny, in pursuance of the severability principle.<sup>393</sup>

282. Finally, the Office of the Special Rapporteur highlights that the Council ordered the delivery of a list of people who are serving sentences while deprived of freedom due to causes related to human rights violations. In this sense, this Office allegedly ordered the delivery of the information without mentioning names, last names, and ID numbers.<sup>394</sup>

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

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<sup>387</sup> El Mostrador. June 14, 2018. [Senado reflota política del "secretismo": parlamentarios se niegan a hacer públicas sesiones en la Cámara Alta.](#)

<sup>388</sup> Colegio de Periodistas. June 18, 2018. [Declaración Pública: Colegio de Periodistas rechaza cortapisas a la prensa en el Senado.](#)

<sup>389</sup> Diego Portales University. [Human Rights Center. Annual Human Rights Report in Chile.](#) 2018.

<sup>390</sup> Council for Transparency. See: C566-18; C3854-18. Available at <https://www.consejotransparencia.cl/en/home/>

<sup>391</sup> Council for Transparency. See: C4328-17; C3187-18. Available at <https://www.consejotransparencia.cl/en/home/>

<sup>392</sup> Council for Transparency. See: C328-18. Available at <https://www.consejotransparencia.cl/en/home/>

<sup>393</sup> Council for Transparency. See: C2795-17; C3571-17; C1954-18; C1850-18; C2236-18; C2577-18; C1790-18; C1894-18; C2710-18. Available at <https://www.consejotransparencia.cl/en/home/>

<sup>394</sup> Council for Transparency. See: C328-18; C3932-18; C4065-18. Available at <https://www.consejotransparencia.cl/en/home/>

## I. Pluralism and diversity

284. On June 25, the Supreme Court of Justice of Chile ruled in favor of the National Corporation of Consumers and Users [*Corporación Nacional de Consumidores y Usuarios*] (Conadecus) in the claim filed by the organization against the telephone companies Telefónica Móviles Chile, Claro Chile, and Entel PCS Comunicaciones, which it said had incurred in monopolizing the spectrum of the 700 MHz band in a tender conducted at the end of 2013. Conadecus stated in its complaint that said companies would have committed anti-competitive practices when exceeding the limits of the radioelectric spectrum that an operator participating in the mobile telecommunications market can lawfully have. These limits would have been previously established in a judgment, dated January 2009, by the Supreme Court itself. Conadecus's claim would have been previously rejected by the Court of Defense of Free Competition, in 2016<sup>395</sup>.

## J. Other relevant situations

285. The Journalistic Research Center Foundation [*Centro de Investigación Periodística*] (CIPER) published, on March 7, a report in which it denounced the execution of alleged acts of espionage against journalists, by members of the Intelligence Unit of the police of the region of La Araucanía. According to the report, the espionage would have been carried out during the year 2017, in the framework of the so-called "Operation Hurricane", deployed to arrest eight Mapuche-born villagers accused of perpetrating terrorist acts. Journalists who worked then for *Radio BioBío*, *The Clinic*, *El Ciudadano* and *La Segunda* would have suffered intervention of their communications<sup>396</sup>.

286. In December, the National Television Council [*Consejo Nacional de Televisión*] (CNTV) would have sanctioned the program "El Cuerpo No Miente" of *Canal 13*, for having harmed the dignity of the people exhibited in the broadcast of July 2, by transgressing their privacy, honor, private life, presumption of innocence, and the right to have one's own image. After a complaint filed by the National Institute of Human Rights (INDH), the CNTV concluded that "the television cameras of the concessionaire intruded abusively on private life of the people who were being subjected to a control measure by the Investigative Police, portraying moments that refer to their privacy and personal life". The "overexposure and showcasing of the people affected, would show a negligence that completely forgets the need for safeguarding sensitive information, in order to entertain the audience, surpassing with this the legitimate exercise of freedom of expression and information," said the CNTV<sup>397</sup>.

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<sup>395</sup> Corte Suprema de Justicia de Chile. [Sentencia 154](#). June 25, 2018; La Tercera. June 25, 2018. [Suprema falla a favor de Conadecus en demanda contra Entel, Movistar y Claro por banda 700 MHz](#); SUBTEL. June 26, 2018. [SUBTEL destaca fallo de la corte suprema por espectro de 700 MHz y reitera el llamado al uso eficiente de este bien nacional de uso público](#); Observacom. July 13, 2018. [Corte Suprema de Chile contradice a Tribunal de Defensa de la Competencia y ordena a telefónicas devolver espectro en banda de 700 Mhz](#).

<sup>396</sup> CIPER. March 7, 2018. [Los periodistas que fueron objeto de espionaje electrónico de Carabineros](#); La Nación. March 8, 2018. [Colegio de Periodistas rechaza espionaje al gremio de Carabineros](#); Cooperativa. March 8, 2018. [Directora de Ciper: Espionaje de Carabineros a periodistas nos recuerda métodos de la dictadura](#); HispanTV. March 10, 2018. [Escándalo por espionaje de Carabineros a periodistas chilenos](#).

<sup>397</sup> Institución Nacional de Derechos Humanos. December 12, 2018. [CNTV sanciona a Canal 13 porque programa "El Cuerpo No Miente" vulneró derechos humanos](#).

## 10. COLOMBIA

287. In 2018, Colombia was marked by episodes of violence in different contexts that has mainly affected social leaders, human rights defenders, journalists, and the media. The IACHR urged the government to adopt measures to protect population groups and granted precautionary measures in favor of members of political and social movements who suffered different types of threats and harassment during the electoral process. In some cases, public officials and security forces members would have been at the center of attacks and stigmatizing statements against journalists. On the other hand, women journalists and civil society organizations made efforts to denounce and make visible gender-based violence and discrimination. In addition, civil society has reported deficiencies in the fulfillment of obligations of active transparency of public entities and political parties imposed by the transparency law.

### A. Progress

288. On February 1, the second specialized criminal judge of Florencia, Caquetá, sentenced the material author of the homicide of journalist Luis Antonio Peralta and his wife Sofía Quintero, which occurred in 2015<sup>398</sup>. According to the information available, the sentence handed down against Yean Arlex Buenaventura would be the highest penalty imposed in the country for an offense against freedom of expression.

289. On February 27, the Labor Cassation Chamber of the Supreme Court of Justice issued a ruling in which it favored *Publicaciones Semana* in response to a decision of the Civil Chamber of the Superior Court of Bogotá which, through the endorsement of a proof, exhorted the media to present documents protected by confidentiality of the journalistic source. The Chamber's ruling indicated that confidentiality of sources is a tool that allows the exercise of journalism and the protection of the freedoms of expression and information, as they constitute one of the foundations of democracy<sup>399</sup>. In addition, the Attorney General's Office had requested the Court in writing to protect press freedom and confidentiality of sources<sup>400</sup>.

290. On February 28, the Attorney General's Office reported that it "will appoint special agents to intervene in criminal proceedings where events that may affect freedom of the press and the rights of journalists are investigated." This provision would be in compliance with the "Internal Directive No. 002 of June 14, 2017 that contains the guidelines for the protection of human rights defenders and social leaders in the country. Also, the initiative would seek to "put a red light on judicial harassment"<sup>401</sup>.

291. On March 1, the Attorney General's Office reported on the sanction with suspension in the exercise of his position, and seven-month special inability to Santiago Jaramillo Botero, in his capacity as councilor of Medellín, Antioquia, for the aggression against Manuel Alejandro Gallego, journalist of *Telemedellín*<sup>402</sup>.

292. On May 26, the Attorney General's Office reported that it had presented charges against members of the central command of the National Liberation Army [*Ejército de Liberación Nacional*] (ELN) for the kidnapping of Salud Hernández and several journalists in the Catatumbo between 2016 and 2017<sup>403</sup>.

293. On June 6, the State's National Legal Defense Agency [*Agencia Nacional de Defensa Jurídica*] reported on the State commitment to comply with the ruling of the Inter-American Court that condemned Colombia in 2018 for violating the judicial guarantees for the extraordinary delays and for the inadequate investigation of the murder of journalist the Nelson Carvajal Carvajal. According to what was published, "[t]he Colombian State recognizes that these events are regrettable. It is the duty of the State to guarantee freedom of

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<sup>398</sup> FLIP. February 1, 2018. [Condena histórica en contra del homicida del periodista Luis Antonio Peralta y de Sofía Quintero](#); Committee to Protect Journalists (CPJ). February 2, 2018. [Colombia sentences gunman for 2015 murder of local radio journalist](#); Semana. February 5, 2018. [Condena histórica contra el sicario que silenció la voz de un periodista en Caquetá](#).

<sup>399</sup> República de Colombia. Corte Suprema de Justicia. February 27, 2018. [La reserva de la fuente no es un privilegio de la prensa, hace parte de los núcleos de la democracia: Corte Suprema](#).

<sup>400</sup> República de Colombia. Procuraduría General de la Nación. February 1, 2018. [Procuraduría pidió a la Corte proteger la libertad de prensa y la reserva de la fuente](#).

<sup>401</sup> República de Colombia. Procuraduría General de la Nación. February 28, 2018. [Procuraduría destinará agentes especiales en procesos que afecten la libertad de prensa](#).

<sup>402</sup> República de Colombia. Procuraduría General de la Nación. March 1, 2018. [Procuraduría sancionó con suspensión e inhabilidad de 7 meses a concejal de Medellín que agredió a periodista](#).

<sup>403</sup> República de Colombia. Fiscalía General de la Nación. May 26, 2018. [Imputados integrantes del Comando Central del ELN por secuestros de periodistas en la región de Catatumbo](#).

expression, the rights of journalists and their families. For this reason, it reiterates its commitment to the investigation of the Carvajal case and to the safe return of its relatives to the national territory. It also reiterates its commitment to the protection of journalists so they can carry out their work"<sup>404</sup>. On March 21, the Inter-American Press Association (IAPA), the NGO Robert F. Kennedy Human Rights, and the Foundation for Freedom of the Press [*Fundación para la Libertad de Prensa*] (FLIP) submitted a request to the Attorney General's Office to declare the murder of Carvajal as crime against humanity. However, according to the information available, on April 12, the Attorney General's Office denied the request<sup>405</sup>. Although the statute of limitations would have been extended ten years<sup>406</sup>, and although the possible declaration as a crime against humanity would be on appeal, it is worrisome for the IACHR that the statute of limitations could leave the case in impunity<sup>407</sup>. The IACHR notes that, according to the judgment of the Inter-American Court, "the State must continue with the ongoing investigations and legal proceedings that are necessary to determine and, if appropriate, prosecute and punish all those responsible for Nelson Carvajal's murder. This obligation must be fulfilled within a reasonable period of time, taking into account that more than 20 years have passed since the events of the case took place."<sup>408</sup>

294. In July, the administrative court of Medellín declared the State responsible for the breach of the right to life's security and protection obligations of journalist and opposition leader, Edison Alberto Molina Carmona, murdered on September 11, 2013, in Puerto Berrio, Antioquia<sup>409</sup>. The ruling indicates that Molina exercised journalistic activities and that, as a result of his work and his role as opposition leader, he would have been the target of threats that were not addressed by the State in a timely manner, for which it sentenced the Attorney General's Office and the National Police to repair economically the journalist's family and offer public apologies. The Foundation for Freedom of the Press (FLIP) recognized the ruling as a precedent for the protection of journalism in Colombia<sup>410</sup>.

295. On August 13, the Seventh Special Criminal Court judge in Bogotá sentenced the former deputy director of the now extinct Administrative Department of Security [*Departamento Administrativo de Seguridad*] (DAS), José Miguel Narváez, to 30 years in prison for his involvement in the crime against journalist and comedian Jaime Garzón, committed on August 13, 1999 in Bogotá. In addition, the judge ordered the payment of 500 monthly minimum wages in favor of his relatives. Although they celebrated the ruling, the defense of Garzón's relatives and the Foundation for Freedom of the Press (FLIP) regretted the judge's decision not to declare the crime as a crime against humanity, as the Prosecutor's Office had done in 2016<sup>411</sup>.

296. On October 1, the 3rd Civil Court of the Circuit of Bogotá denied under "inadmissibility" the writ of *amparo* filed by the prosecutor Daniel Hernández Martínez against an opinion column of journalist María Jimena Duzán, and rejected the rectification requested. The column, published on June 3, questioned the actions of the Attorney General's Office in the "Odebrecht case". According to the ruling, the published text "is

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<sup>404</sup> República de Colombia. June 6, 2018. [Corte IDH reconoce esfuerzos del Estado colombiano en el caso Nelson Carvajal](#).

<sup>405</sup> FLIP. March 23, 2018. [SIP, FLIP y RFK piden declarar de lesa humanidad crimen de Nelson Carvajal](#); El Tiempo. April 17, 2018. [A 20 años del crimen de Nelson Carvajal, Fiscalía niega solicitud](#); FLIP. April 16, 2018. [FLIP rechaza decisión de la Fiscalía que niega la declaratoria de lesa humanidad en el caso Carvajal](#).

<sup>406</sup> El Tiempo. July 19, 2018. [A 20 años del crimen de Nelson Carvajal, Fiscalía niega solicitud](#).

<sup>407</sup> El Tiempo. July 19, 2018. [A 20 años del crimen de Nelson Carvajal, Fiscalía niega solicitud](#); La Nación. June 7, 2018. [Ejemplar condena por crimen del periodista Nelson Carvajal](#).

<sup>408</sup> I/A Court H. R. *Case Carvajal Carvajal et al Vs. Colombia*. Merits, Reparations and Costs. Judgment of March 13, 2018. Serie C No. 352. Para. 204.

<sup>409</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. September 20, 2018. [Press Release R69/13 Office of the Special Rapporteur Condemns Murder of Lawyer and Radio Host in Colombia](#).

<sup>410</sup> FLIP. July 27, 2018. [El Estado colombiano es condenado por el homicidio del periodista Edison Alberto Molina](#); El Espectador. July 30, 2018. [La Fundación para la Libertad de Prensa reconoció esta sentencia como un precedente para la protección del periodismo en Colombia](#); Noticias Caracol. July 31, 2018. [Policía y Fiscalía deberán reparar económicamente a familia de periodista asesinado en Antioquia](#).

<sup>411</sup> Semana. August 14, 2018. [Condenan a José Miguel Narváez a 30 años de cárcel por el crimen de Jaime Garzón](#); El Espectador. August 14, 2018. [Abogado de familia de Jaime Garzón apelará condena contra exsubdirector del DAS](#); El Espectador. August 14, 2018. [Condenan a 30 años a José Miguel Narváez por el crimen de Jaime Garzón](#); FLIP. August 14, 2018. [Juez condena a José Miguel Narváez a 30 años pero desconoce labor periodística de Jaime Garzón](#).

framed within what is considered an opinion column", for which reason it is not subject to the right to rectification<sup>412</sup>

297. On November 1, Special Prosecutor 53 against Human Rights Violations decided to open an investigation and subpoenaed Jhon Jairo Velásquez Vásquez and Gustavo Adolfo Gutiérrez Arrubla for their alleged responsibility in the crime of journalist Guillermo Cano, murdered on December 17, 1986 by hit men belonging to the Priscos criminal group, who worked for the Medellín Cartel<sup>413</sup>.

## B. Murders

298. On March 26, three Ecuadorians who were part of the *El Comercio* newspaper team — reporter Javier Ortega, photographer Paúl Rivas, and driver Efraín Segarra — were kidnapped on the border between Ecuador and Colombia. On April 3, the Office of the Special Rapporteur issued a statement in which it expressed its extreme concern over the situation of the journalists kidnapped and called on both States to coordinate efforts to guarantee their release<sup>414</sup>. On April 12, the IACHR granted precautionary measures in favor of the three individuals abducted and requested the governments of Ecuador and Colombia to adopt the necessary measures to safeguard their life and physical integrity<sup>415</sup>. On April 13, the President of Ecuador, Lenín Moreno, officially confirmed the murder of the three members of the journalistic team<sup>416</sup>. On April 15, the then President of Colombia, Juan Manuel Santos, indicated that the murder of the Ecuadorian journalism team occurred in Colombian territory<sup>417</sup>. On May 11, the IACHR announced the creation of a special monitoring team to accompany the families of the victims and support the investigations of the national institutions<sup>418</sup>. On July 7, Jesús Vargas Cuajiboy, a member of the FARC's dissident group, was arrested in the municipality of Mondomo, Cauca. According to the Attorney General's Office, he was one of those responsible for the kidnapping of the journalistic team. He was charged for the crimes of aggravated extortion kidnapping and aggravated conspiracy, although he did not accept the charges<sup>419</sup>.

299. On December 21, the President of Colombia, Iván Duque, informed through his social network account of the death of Walter Patricio Arizala, alias 'Guacho', who was a dissident member of the FARC, and who had been accused as the intellectual author of the murder of the *El Comercio* journalistic team. In his publication, the president said, "[w]e can confirm that alias 'Guacho' has fallen, one of the most horrendous criminals that our country has known. He has been shot down by the heroes of Colombia", "[I] told the Ecuadorian people that the crime of the three journalists would not go unpunished. It's an achievement of the

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<sup>412</sup> Semana. October 2, 2018. [Tras polémica sobre libertad de expresión, juez falla a favor de María Jimena Duzán](#); El Espectador. October 2, 2018. [Juez niega tutela contra María Jimena Duzán por columna de opinión](#); FLIP. October 3, 2018. [Juez protege libertad de opinión de María Jimena Duzán](#).

<sup>413</sup> El Espectador. November 2, 2018. [Popeye rendirá indagatoria por crimen de Guillermo Cano](#); El País. November 2, 2018. [Alias Popeye rendirá indagatoria por muerte del periodista Guillermo Cano](#); FLIP. November 2, 2018. [Popeye y Alias Maxwell, vinculados por el homicidio de Guillermo Cano](#).

<sup>414</sup> IACHR Special Rapporteur for Freedom of Expression. [Press Release R76/18 The Office of the Special Rapporteur of the IACHR expresses extreme concern over the situation of the journalists kidnapped in the border between Ecuador and Colombia; and calls on both States to coordinate efforts to guarantee their release](#). April 3, 2018.

<sup>415</sup> IACHR. [Resolución 25/18. MC 209/18 y 210/18 - Javier Ortega Reyes, Paúl Rivas Bravo y Efraín Segarra Abril. Colombia y Ecuador](#). April 12, 2018.

<sup>416</sup> El Comercio. April 13, 2018. [Gobierno confirma el asesinato del equipo de EL COMERCIO secuestrado](#); BBC. April 13, 2018. [El gobierno de Ecuador confirma la muerte de los tres miembros del equipo de prensa de El Comercio que fueron secuestrados por un grupo disidente de las FARC](#).

<sup>417</sup> CNN en Español. April 15, 2018. [Santos sobre muerte de periodistas: "Esto es una consecuencia del coletazo de una guerra"](#); Infobae. April 16, 2018. [Juan Manuel Santos reconoció que el asesinato de los periodistas ecuatorianos ocurrió en Colombia](#).

<sup>418</sup> IACHR. May 11, 2018. [Comunicado de prensa 106-2018. CIDH y su Relatoría de Libertad de Expresión informan respecto del seguimiento del asesinato de miembros de un equipo periodístico de Ecuador](#).

<sup>419</sup> Caracol. July 7, 2018. [Capturan a cabecilla que custodiaba a periodistas ecuatorianos asesinados por 'Guacho'](#); El Universo. July 7, 2018. [Capturan a 'Reinel', quién vigilaba el equipo periodístico de El Comercio asesinado en Colombia](#); FLIP. July 8, 2018. [La captura de alias 'Reinel' es un primer paso para la búsqueda de justicia en el caso de los periodistas ecuatorianos asesinados en la frontera](#).

entire country"<sup>420</sup>. The death of Arizala would have occurred in the framework of an operation carried out by the Colombian authorities in a jungle area of the Nariño border department<sup>421</sup>.

300. During a hearing of the Special Follow-Up Team ("ESE" by its Spanish acronym) of the IACHR supporting the investigations into the murder of the *El Comercio* task force, held on December 6, the Colombian Government reported that the investigations concluded that the murder of the workers did not occur because of their status as journalists, and that during the interrogations the members of the criminal organization "have clearly stated that the death ensues due to the refusal of the Ecuadorian government" to exchange the reporters for three individuals in their custody. That is the reason why the order to execute them was given," said Claudia Carrasquilla, National Director against Organized Crime of the Attorney General's Office of Colombia<sup>422</sup>.

301. On August 1, Valentín Tezada Rúa, radio announcer of a community radio station called *Salvajina Estéreo*, was murdered in the Suárez municipality, Cauca;<sup>423</sup> also, on the same day, Jairo Alberto Calderón Plaza, director of the news portal *Contacto*, was murdered in Tuluá, Valle del Cauca.<sup>424</sup>

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

### C. Attacks, Threats, and Intimidation of Journalists and the Media

303. According to civil society's reports, violence against journalists and the media intensified during 2018, and was strengthened during the electoral period<sup>425</sup>. For example, as of December 20, the Foundation for Freedom of the Press (FLIP) reported 452 violations to freedom of the press and a total of 578 victims. According to these registries, the regions with the most attacks are Bogotá, Tolima, Antioquia, and Norte de Santander<sup>426</sup>. According to the surveys conducted by civil society, threats against the press have grown in recent years<sup>427</sup>. At the same time, in this period these continued to be the most recurrent type of violence; for example, FLIP documented 194 cases between January and November, a pattern that was also underlined by the Colombian Federation of Journalists [*Federación Colombiana de Periodistas*] (Fecolper) when presenting its last annual report in February 2018<sup>428</sup>.

304. The Illustrious State of Colombia noted that "within the category of attacks on the press, FLIP accounts for cases related to aggression, threat, murder, damage to infrastructure, displacement, illegal detention, espionage or invasion, stigmatization, exclusion, exile, harassment, obstruction to journalistic

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<sup>420</sup> Twitter account of Iván Duque @IvanDuque. [December 21, 2018](#).

<sup>421</sup> BBC. December 22, 2018. [Muere alias "Guacho": Colombia confirma el abatimiento del líder guerrillero acusado del asesinato de tres periodistas de Ecuador](#); El Tiempo. December 22, 2018. [Estos son los detalles del operativo en el que cayó alias 'Guacho'](#).

<sup>422</sup> IACHR. 170 Period of Sessions. Hearings on [MC 309/18 - ESE \(Colombia\)](#) and [MC 309/18 - ESE \(Ecuador\)](#). December 6, 2018; El Comercio. December 6, 2018. [Colombia dice que equipo de prensa de EL COMERCIO fue asesinado porque Ecuador se negó a canje](#).

<sup>423</sup> Proclama del Cauca. August 2, 2018. [Asesinan a locutor en Suárez](#); Radio Super Popayán. August 2, 2018. [Valentin Tezada Rúa locutor de Salvajina Estéreo fue asesinado a Balazos](#).

<sup>424</sup> Inter American Press Association (IAPA). August 7, 2018. [IAPA condemns murders of journalists in Mexico, Colombia](#); Knight Center for Journalism in the Americas. August 8, 2018. [Authorities investigate motives behind murders of two journalists killed in southwestern Colombia](#).

<sup>425</sup> FLIP. May 3, 2018. [2018: recrudescen la violencia contra la prensa](#); FLIP. [Informe especial sobre la libertad de expresión en Ibaqué](#). April 18, 2018; FLIP. February 8, 2018. [Informe anual 2017: Un Estado depredador de la libertad de prensa](#); El Espectador. February 9, 2018. [La libertad de prensa está en riesgo](#); El Espectador. February 15, 2018. [De Presidencia sobre un editorial](#).

<sup>426</sup> FLIP. Mapa de violaciones a la libertad de prensa. Available at: <https://flip.org.co/index.php/es/atencion-a-periodistas/mapa-de-agresiones>

<sup>427</sup> FLIP. Mapa de violaciones a la libertad de prensa. Available at: <https://flip.org.co/index.php/es/atencion-a-periodistas/mapa-de-agresiones>; Fecolper. Annual reports. Available at: <http://fecolper.com.co/documentos/>

<sup>428</sup> Federación Colombiana de Periodistas (Fecolper). Las fórmulas del silencio. Annual report 2017. February 8, 2018. Available at: <http://fecolper.com.co/informe2017/>; Human Rights Watch. World Report 2018. Colombia. Events of 2017. Available at: <https://www.hrw.org/world-report/2018/country-chapters/colombia>; Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Colombia](#). April 13-15, 2018.

work, others, theft or elimination of journalistic material, kidnapping, sexual violence" and about the category of censorship on the Internet, "records cases of cyber-attack to websites, and requests for removal or blocking of content on the Internet." The State indicated that "this clarification is relevant to grant the reader elements of interpretation of the statistical information used".<sup>429</sup>

305. Precisely on May 5, the IACHR granted precautionary measures in favor of Daniel Silva Orrego, who when requesting the measures was in a serious situation of risk due to his work as a journalist and columnist<sup>430</sup>, in particular, due to a series of allegations made against public servants in the department of Risaralda, because of this he was subjected to various threats and intimidations<sup>431</sup>.

306. In addition, the Office of the Special Rapporteur collected information on numerous death threats and reprisals against journalists and media workers in retaliation for their professional work<sup>432</sup>. The Office of the Special Rapporteur noted with concern the case of journalist Jhanuaria Gómez, of the website *Informativo Segoviano*, who, according to the information available, had received a death threat from members of criminal gangs after the publication of notes about the capture of alleged drug traffickers reportedly linked to the *Clan del Golfo*. Those who threatened her would even have made contact with her underage daughter. The journalist was forced to move with her family and, as indicated, she had the support of the Secretary of Government of Segovia to leave the municipality with her family<sup>433</sup>. Another case that attracted important attention at the national level and that took place in the electoral context involved the cartoonist Julio César González ("Matador") who was threatened via Twitter as a result of his cartoons, which led to his decision to temporarily withdraw of the social network. According to press information, the Attorney General's Office initiated an investigation into these events and would have pressed charges against the perpetrator of the threat<sup>434</sup>.

307. Some attacks on the press that were reported allegedly involved public officials and security forces members<sup>435</sup>. For example, according to the information available, on December 17, 2017, the mayor of Rionegro (Santander), Wilson González Reyes, would have threatened with a firearm and physically and

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<sup>429</sup> Republic of Colombia, Note MPC/OAS No.:238/2019 of March 14, 2019.

<sup>430</sup> Additionally, on October 14, 2017, he was elected Departmental President of the opposition political party *Polo Democrático Alternativo* in Risaralda.

<sup>431</sup> IACHR. [RESOLUCIÓN 31/2018. Medida cautelar No. 739-17 Daniel Silva Orrego respecto de Colombia](#). May 5, 2018.

<sup>432</sup> Federación Colombiana de Periodistas (Fecolper). December 26, 2017. [Periodistas Asociados de Bolívar rechaza amenazas contra el periodista Carlos Figueroa, director de Ideas Políticas](#); Caracol Radio. March 2, 2018. [Periodista ambiental denuncia amenazas](#); FLIP. March 2, 2018. [Alberto Castaño fue víctima de amenazas a través de Twitter](#); FLIP. September 7, 2018. [Por amenazas contra su vida, dos periodistas ambientales se encuentran exiliados](#); Federación Colombiana de Periodistas (Fecolper). March 7, 2018. [Periodista del Putumayo Nixon Piaguaje denuncia amenazas contra su vida e intimidación y persecución](#). Proclama del Cauca. March 9, 2018. [Periodista del Putumayo denuncia amenazas contra su vida](#); Reporters Without Borders (RSF). August 3, 2018. [Urgen medidas eficaces de protección para periodistas en Colombia](#); FLIP. April 10, 2018. [FLIP exige a las autoridades que garanticen la integridad de periodista amenazado en el Magdalena Medio](#); FLIP. November 11, 2018. [Nuevas intimidaciones en contra del periodista Ricardo Ruidíaz](#); RCN. July 7, 2018. [La Flip exige mantener protección al periodista Ricardo Ruidíaz](#); Federación Colombiana de Periodistas (Fecolper). April 17, 2018. [En dos días, amenazan a seis periodistas colombianos, en tres departamentos del país](#); El Nuevo Día. April 17, 2018. [Periodista de Planadas fue víctima de amenazas](#); FLIP. September 6, 2018. [En 2018 las Águilas Negras han hecho siete amenazas a periodistas y medios de comunicación nacionales](#); El Espectador. September 4, 2018. [Con panfleto. "Águilas Negras amenazan a congresistas, periodistas y líderes sociales"](#); FLIP. July 16, 2018. [Joneth Bedoya y María Jimena Duzán fueron amenazadas a través de Internet](#).

<sup>433</sup> FLIP. April 26, 2018. [Periodista de Segovia, Antioquia, recibe amenazas y es obligada a desplazarse](#); El Tiempo. April 24, 2018. [Reportera tuvo que huir de Segovia \(Antioquia\) por amenazas](#); Blu Radio. April 26, 2018. [Amenazan a periodista en Segovia, Antioquia](#).

<sup>434</sup> Twitter account of Julio César González [@matadoreltiempo](#). "Friends, due to the death threats from some followers of Uríbismo and the [@CeDemocratico](#), I have decided not to publish anything on my social networks. If they want to come for me, I have no guards or anything... I have a pencil and my brain. To the people who follow me, a big hug." [April 2, 2018](#); El Tiempo. April 3, 2018. [Matador anuncia que se retira de redes sociales tras recibir amenazas](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Colombia](#). April 13-15, 2018; RCN Radio. April 3, 2018. [Gobierno dice que garantizará la protección de 'Matador'](#); El Espectador. April 3, 2018. [Tras amenazas a 'Matador', Uribe pide extender rechazo a amenazas contra políticos](#); El Tiempo. April 16, 2018. [Hombre que amenazó a 'Matador' rendirá interrogatorio en la Fiscalía](#); El Espectador. April 21, 2018. [En libertad abogado que amenazó al caricaturista Matador](#); El Tiempo. April 21, 2018. [Ordenan medida no privativa de libertad para Ariel Ortega](#); Semana. May 30, 2018. [Matador regresó recargado a las redes sociales](#); El Tiempo. May 30, 2018. [Matador anunció su regreso a las redes sociales](#).

<sup>435</sup> Federación Colombiana de Periodistas (Fecolper). February 16, 2018. [Periodistas araucanos denuncian abusos de la Policía Nacional](#); Federación Colombiana de Periodistas (Fecolper). April 5, 2018. [Diputado de Arauca cuestiona a periodista por entrevista en emisora comunitaria](#).

verbally assaulted journalist Luis Carlos Ortiz of the community radio station *La Voz de la Inmaculada*, presumably as a result of reports of irregularities in the Mayor's office. On January 31, 2018, the Attorney General's Office informed that it opened an investigation against the municipal mayor<sup>436</sup>. Likewise, through a publication on Twitter, on March 18, Senator Álvaro Uribe hinted at the adoption of reprisals against journalist Daniel Coronell and *Noticias Uno* in case the presidential candidate of his party won the national elections<sup>437</sup>.

308. The Illustrious State of Colombia observed that the "Inter-American Commission should not make conjectures from publications on the Social Network Twitter, which could be taken out of context. The IACHR qualifies the pronouncements a priori as an adoption of reprisals, without this necessarily being the purpose of the message."<sup>438</sup>

309. Likewise, as reported, during 2018 members of the ELN, the EPL, and dissidents of the Revolutionary Armed Forces of Colombia (FARC), would have continued to exert threats and carry out intimidating actions against journalists and the media. In this regard, the Office of the Special Rapporteur noted that in the first half of the year various alerts were issued for threats attributed to these different actors in the Catatumbo, Arauca, and Valledupar sub regions<sup>439</sup>. In its latest report on the country, Reporters Without Borders indicated that "armed groups, such as the National Liberation Army (ELN), try to silence the alternative or community media that investigate their activities, generating real black holes of information, especially in rural regions"<sup>440</sup>.

310. The Office of the Special Rapporteur also identified at least one case of work equipment being taken away from a journalist who was under threat and under protection, it has also identified cases of threats and intimidation against the media with the intention of silencing them and limiting their coverage in various contexts<sup>441</sup>. For example, the facilities of RCN radio, in Bogotá would have been attacked at least three times in the year<sup>442</sup>.

311. On August 3, in a joint press release, the heads of the, the Attorney General's Office, the Prosecutor's Office, the Ombudsperson's Office, the Ministry of the Interior, the Protection Unit Directorate, and a government commission, as well as representatives of the Colombian Media Association [*Asociación Colombiana de Medios de Información*], and the Foundation for Freedom of the Press (FLIP), rejected "the growing wave of events that threaten the physical and moral integrity of journalists and convened [...] the

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<sup>436</sup> República de Colombia. Procuraduría General de la Nación. [Procuraduría indaga al alcalde de Rionegro, Santander](#). January 31, 2018; FLIP. December 17, 2017. [Periodista denuncia que el alcalde de Rionegro, Santander, lo atacó con un arma de fuego](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Colombia](#). April 13-15, 2018.

<sup>437</sup> Senator Álvaro Uribe Vélez. Twitter account [@AlvaroUribeVel](#): "Daniel Coronel, a Santos politician and contractor, is terrified and with reason; a govt of Iván Duque will handle television licences with transparency". [March 18, 2018](#); Daniel Coronell. Twitter account [@DCoronell](#) "Already [@AlvaroUribeVel](#) begins to announce the revenge against the media that have exposed the corruption acts and abuses of power of his government (ChuzadAS, AIS, free zone, notaries, parapolitics, etc.)". [March 18, 2018](#); Semana. March 19, 2018. [Trino de Álvaro Uribe contra Daniel Coronell desata dura controversia](#); El Espectador. March 19, 2018. [La pelea en Twitter entre Uribe y Daniel Coronell por las concesiones de televisión](#).

<sup>438</sup> Republic of Colombia, Note MPC/OAS No.:238/2019 of March 14, 2019.

<sup>439</sup> FLIP. February 23, 2018. [Disidencias de las Farc amenazan a la prensa en Arauca](#); El Espectador. March 18, 2018. [Una periodista en el Catatumbo ahora es objetivo militar del Eln y del Epl](#); Blu Radio. March 18, 2018. [Terror en el Catatumbo: Periodista fue declarada objetivo militar por EPL y ELN](#); Federación Colombiana de Periodistas (Fecolper). April 18, 2018. [Amenazan a periodista y a emisora en Valledupar](#); El Heraldo. April 18, 2018. [Con supuesto mensaje de 'Guacho', amenazan a periodista en Valledupar](#); Federación Colombiana de Periodistas (Fecolper). April 17, 2018. [En dos días, amenazan a seis periodistas colombianos, en tres departamentos del país](#); FLIP. April 18, 2018. [Catatumbo: Censurado](#).

<sup>440</sup> Reporters Without Borders (RSF). No date. Available at: <https://rsf.org/en/colombia>

<sup>441</sup> FLIP. January 13, 2018. [Roban equipos y material de reportería de periodista de El Espectador y Colombia 2020](#); El Tiempo. January 17, 2018. [Roban computador y material confidencial a periodista, en el Tolima](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Colombia](#). April 13-15, 2018; FLIP. April 19, 2018. [Emisora recibió cinco amenazas en las últimas 24 horas](#); W Radio. April 19, 2018. [Investigación presunta amenaza a emisora en Valledupar](#).

<sup>442</sup> RCN. November 8, 2018. [Nuevo ataque contra las instalaciones de RCN Radio en medio de marchas estudiantiles](#); Inter American Press Association (IAPA). November 9, 2018. [IAPA protests attack on RCN radio station in Bogotá](#).

public authorities in charge of preventing this attempt to limit the exercise of freedom of the press and the right to information in the country”<sup>443</sup>.

312. Finally, the Office of the Special Rapporteur notes with concern that these violent acts continue to be carried out in a context of impunity, since a very low percentage of murders, attacks, and other human rights violations suffered by journalists and communicators are clarified by the judiciary and those responsible are punished<sup>444</sup>.

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

#### **D. Social Protest**

314. Within the framework of the Universal Periodic Review, social and human rights organizations reported the persistence in recent years of a pattern of stigmatization and excessive use of force in the context of social protests. As indicated by the Report of the United Nations High Commissioner for Human Rights published in May 2018, 14 people were killed in the context of social protests in 2017. Throughout the last year in the country, multiple protests took place, where murders continued to be reported.

315. The Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia published in March 2018, indicated that members of the Police and the Army were being investigated for 14 murders committed during social protests in 2017<sup>445</sup>. Also, in April, in the framework of the evaluation of the Universal Periodic Review before the Human Rights Council, more than 500 social and human rights organizations published a joint report in which complaints were made about stigmatization and excessive use of force against protesters in the country in the last period<sup>446</sup>. The document indicates that in these years the social protest “has increased”, but warns that “the right to protest does not have the necessary guarantees”. Among the main obstacles for its exercise are: i) stigmatization; ii) criminalization of the exercise of social protest; iii) violent repression of the protest by the Mobile Anti-riot Squad [*Escuadrón Móvil Antidisturbios*] (ESMAD), without respecting the international standards of proportionality, necessity, gradual escalation, and exceptionality<sup>447</sup>.

316. During the first semester of 2018, multiple protests and social demonstrations in different areas of the country continued to be registered in the country<sup>448</sup>. According to press reports, at the beginning of

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<sup>443</sup> República de Colombia. Ministry of the Interior. [Comunicado de las autoridades frente al aumento de amenazas contra periodistas](#). August 3, 2018; FLIP. August 3, 2018. [Autoridades nacionales expresan su rechazo ante el aumento de violencia contra la prensa](#); DW. July 18, 2018. [Amenazas a periodistas en Colombia: ¿vuelve la guerra?](#); Infobae. August 11, 2018. [Crecen las amenazas de muerte a periodistas en Colombia tras la firma de la paz](#); El País. July 16, 2018. [Colombia sufre una oleada de amenazas de muerte a periodistas](#).

<sup>444</sup> During 2018 homicides of journalists continued to prescribe. For example, as reported by Fundación para la Libertad de Prensa (FLIP), On February 22, the case of journalist Oscar García Calderón, murdered on February 22, 1998 in Bogotá, supposedly prescribed without punishment. According to the organization’s figures, 126 cases of murders of journalists remain unpunished in Colombia. The case of Orlando Sierra (columnist and deputy editor of *La Patria* newspaper, murdered in February 2002) would be the only one of 158 murders in which the entire criminal chain had been convicted. Only in 28 cases were sentences issued against those materially responsible and only in three were the masterminds convicted. The problem of impunity is repeated for other types of violence, says FLIP. Threats, which lead to exile and self-censorship, are allegedly unpunished in about 99% of cases. See: FLIP. February 22, 2018. [Prescribe en la impunidad el asesinato contra Oscar García Calderón](#); FLIP. November 2, 2018. [No más impunidad en crímenes contra la prensa](#); Inter American Press Association (IAPA). 74th General Assembly Report. October 19 - 22, 2018. Salta, Argentina. [Colombia](#). October 17, 2018.

<sup>445</sup> OACNUDH. [Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#). March 2, 2018. Para. 13.

<sup>446</sup> ACOOC, et. al. [Situación de derechos humanos y derecho humanitario en Colombia 2013-2017. Informe conjunto de las organizaciones de derechos humanos colombianas para el Examen Periódico Universal de Colombia](#). October, 2017. Pages 28 - 29.

<sup>447</sup> ACOOC, et. al. [Situación de derechos humanos y derecho humanitario en Colombia 2013-2017. Informe conjunto de las organizaciones de derechos humanos colombianas para el Examen Periódico Universal de Colombia](#). October, 2017. Pages 28 - 29.

<sup>448</sup> Alianza Medios Alternativos. April 27, 2018. [Se agrava la situación de afectados por Hidroituango - 39 días de protestas en Sabana larga](#); Pacifista. March 26, 2018. [‘Lo de Santander no es un incidente, es una tragedia’, el grito de los ambientalistas](#); Semana. May

January the demonstrations that took place in the Urabá region in protest against the installation of tolls would have resulted in violent actions that would have left at least two people dead. Also 36 people would have been detained<sup>449</sup>. At the end of January, the National Indigenous Organization of Colombia [*Organización Nacional Indígena de Colombia*] (ONIC) denounced the murder of the indigenous leader of Chocó Eleazar Tequia Bitucay at the hands of the Army, in the context of a peaceful protest to demand the right to education; The Army would have offered public apologies to community members for these events<sup>450</sup>.

317. In 2018, the Office of the Special Rapporteur continued to report allegations of excessive use of force by the Mobile Anti-riot Squad (ESMAD) in the context of social protests<sup>451</sup>. Likewise, in February, the Foundation for Freedom of the Press (FLIP) reported the detention, by the national police, of Erick Silva Contreras, of the neighborhood media *Noticiero Barrio Adentro*, while covering a protest in the city of Bogotá<sup>452</sup>.

318. On January 27, social leader Temistocles Machado, who was one of the promoters of the civic strike that lasted for several weeks in 2017, was murdered in the municipality of Buenaventura. The United Nations Office in Colombia, the Ombudsperson, and the interior minister condemned the event<sup>453</sup>.

319. On September 13, the National Police would have attacked several journalists (from *RT*, *El Tiempo* and *Revista Semana*, among others) during the coverage of student demonstrations at the Pedagogical University [*Universidad Pedagógica*] in Bogotá. The worst aggression would have been suffered by César Melgarejo, from *El Tiempo*, who would have been brutally beaten on the back by one police officer with his cane. The Foundation for Freedom of the Press (FLIP) denounced the case and warned that on several occasions members of the Mobile Anti-Riot Squad (ESMAD) have attacked citizens and journalists for documenting social protests with video cameras or their mobiles. After this new episode, FLIP decided to suspend its collaboration with the National Police in the process of training its members to reduce aggression against the press, within the framework of a program supported by UNESCO, until there is a public pronouncement that announce sanctioning measures for these events and reaffirm the commitment of the National Police with freedom of the press<sup>454</sup>.

320. On March 7, the Constitutional Court issued a ruling in which: 1) it maintained judgment C-223 of 2017, which declared articles 53, 54, 55, 56, and 57 of Law 1801 (National Code of Police and Coexistence) unconstitutional, with deferred effects until June 20, 2019, due to the violation of the statutory law reserve<sup>455</sup>; 2) it maintained judgment C-281 of 2017, which declared enforceable the fourth paragraph of article 53 of Law 1801 of 2016, which states: "any meeting and demonstration that causes alterations to coexistence may be dissolved", given that "(i) the alteration must be serious and imminent and (ii) there is no other less

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10, 2018. [Así transcurrieron las marchas de profesores](#); El Colombiano. May 18, 2018. [En Valdivia, evacuados por Hidroituango protestan por falta de alimentos](#).

<sup>449</sup> Telesur. January 6, 2018. [Paro continuado en Urabá deja varios muertos y daños. Colombia](#); El Espectador. January 5, 2018. [Lo que se sabe del paro que avanza en Urabá](#); El Herald. January 7, 2018. [Van 36 capturados por disturbios tras paro en el Urabá: Mindefensa](#); El Tiempo. January 5, 2018. [ANI decidió suspender por un mes el cobro en los peajes de Urabá](#).

<sup>450</sup> ONIC. January 27, 2018. [SOS. ONIC denuncia y rechaza asesinato Guardia Indígena en Choco](#); El Espectador. January 31, 2018. [Ejército ofreció disculpas a comunidad indígena por asesinato de líder en Chocó](#); RCN/Noticias RCN. January 31, 2018. [Ejército ofreció excusas públicas por la muerte de líder indígena en Chocó](#); ONIC. January 31, 2018. [El General de la Fuerza Titán del Ejército Nacional, Mauricio Moreno, pidió perdón público a los Pueblos Indígenas por el asesinato del Guardia Indígena](#).

<sup>451</sup> Telesur. January 28, 2018. [Esmad ataca a dos observadores internacionales en Colombia](#); Colombia Inforama. January 28, 2018. [Esmad ataca a observadores internacionales de Derechos Humanos en Casanare](#); Noticias RCN. January 26, 2018. [Esmad lanzó gases contra los motociclistas en la calle 26 de Bogotá](#); El Colombiano. January 26, 2018. [El Esmad lanza gases contra motociclistas que protestan en Bogotá](#); Colectivo de Abogados José Alvear Restrepo/Movimiento Ríos Vivos. [400 campesinos son desalojados por el ESMAD en Portachuelo Sabanalarga, Antioquia](#). February 22, 2018; Agencia Prensa Rural/Movimiento Ríos Vivos. [400 campesinos son desalojados por el ESMAD en Portachuelo, Sabanalarga](#). February 22, 2018; Colectivo de Abogados "José Alvear Restrepo". April 5, 2018. [Pronunciamento: Estado y EPM vulneran derecho a la protesta en Sabanalarga, Antioquia. April 27, 2018](#).

<sup>452</sup> FLIP. February 15, 2018. [Periodista de medio de comunicación alternativo lleva cerca de 30 horas retenido](#).

<sup>453</sup> El Tiempo. January 27, 2018. [Asesinan a Temistocles Machado, líder social de Buenaventura](#); Deutsche Welle. January 8, 2018. [Colombia: asesinan a líder social que promovió un paro cívico](#).

<sup>454</sup> FLIP. September 14, 2018. [FLIP suspende colaboración con la Policía por agresiones del ESMAD a periodistas](#).

<sup>455</sup> 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. Para. 289.

burdensome means for the exercise of the rights of peaceful and public assembly and demonstration"; 3) it declared enforceable the expression "any other legitimate purpose" contained in article 53 of the Code on the understanding that it is not a legitimate aim: (i) war propaganda; (ii) the advocacy of hatred, violence, and crime; (iii) child pornography; (iv) public and direct instigation to commit crimes; and (v) what the Legislator expressly indicates; 4) it declared enforceable the condition of giving "notice in writing before the first administrative authority at the place or by electronic mail" contained in the second paragraph of Article 53 of the Law; 5) it declared enforceable the expression "except in exceptional circumstances or force majeure" contained in Article 54 of the Law, on the understanding that the non-authorization of a protest must be reasoned and the reasons made explicit<sup>456</sup>.

321. In August, the Constitutional Court decided to endorse the legality of Article 169 of the National Code of Police and Coexistence, which stipulates the urgent support of individuals in Police activities in cases where there is an imminent risk to the life and integrity of a person<sup>457</sup>.

322. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"<sup>458</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>459</sup>

323. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."<sup>460</sup>

#### **E. Stigmatizing statements**

324. According to the annual reports presented in February 2018 by the Colombian Federation of Journalists and the Foundation for Freedom of the Press (FLIP), which describe the situation of press freedom in the country during 2017, the accusations and stigmatization of journalists by public officials constitute a recurrent form of aggression against communicators in the country. According to the statistical data collected by Fecolper, this constituted 7.4% of the total number of attacks reported in 2017; while FLIP documented 29 cases and affirmed that these situations increased "drastically" in 2017 compared to the previous year. In 2018 the Office of the Special Rapporteur observed that social networks continued to be one of the main scenarios used to point out and stigmatize journalists<sup>461</sup>.

325. The Attorney General, Néstor Humberto Martínez, reportedly made accusations against the press during an intervention in the Senate on November 27, within the framework of a political control process

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<sup>456</sup> Corte Constitucional de Colombia. Demanda de inconstitucionalidad contra los artículos 53, 54, 55, 56 y 57 de la Ley 1801 de 2016 "por la cual se expide el Código Nacional de Policía y Convivencia Ciudadana". [Sentence C-009-18](#). March 7, 2018.

<sup>457</sup> Corte Constitucional. [Sentence C-082/18](#). August 22, 2018.

<sup>458</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>459</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>460</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>461</sup> See other cases in: República de Colombia. Alcaldía Municipal de San Cayetano. April 21, 2018. [Falsa Noticia Sobre Pérdida De La Retroexcavadora del Municipio de San Cayetano](#); FLIP. April 24, 2018. [Alcalde de San Cayetano amenaza con denuncias penales por quejas sobre la pérdida de una retroexcavadora](#); FLIP. April 18, 2018. [Informe especial sobre la libertad de expresión en Ibaqué](#); FLIP. [Mapa de violaciones a la libertad de prensa](#).

presented by Congress due to his relationship to Odebrecht. The Attorney General would have indicated that the media would be used by people who conspire against him to damage his honor<sup>462</sup>.

326. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."<sup>463</sup>

## F. Subsequent liabilities

327. In another order of ideas, in a year in which lawsuits were filed in order to censure political satire, a court in the circuit for the execution of sentences denied the writ of *amparo* filed by a citizen against the cartoonist of *El Tiempo* Julio Cesar González ("Matador"), following the publication of a cartoon about the then presidential candidate by the Democratic Center, Iván Duque, with which it was intended that *El Tiempo* and "Matador" be ordered to publicly apologize for the content of the cartoon<sup>464</sup>.

328. According to the information available, in 2018 judicial harassment continued to be a recurrent way to seek to restrict critical journalism. The 2017 annual report of the Foundation for Freedom of the Press published in February 2018 noted that "the forms of attacking journalists are transforming" in the country and in this regard affirmed that "[t]he allegations of crimes of insult and slander against journalists are increasingly frequent, as well as lawsuits against the media demanding multimillion-dollar damages for alleged damages to a good name." In accordance with the information compiled by the Office of the Special Rapporteur, in January, for example, a judicial decision ordering the arrest of journalist William Restrepo for a rectification deemed as "insufficient" in the framework of a writ of *amparo* filed by the president of the Chamber of Commerce of Pereira, motivated by the communicator's opinions. In March, the parties published a conciliation<sup>465</sup>. On the other hand, to the writ of *amparo* filed by a citizen against the cartoonist "Matador", already mentioned, was added a lawsuit for libel and slander presented by the Mayor of Floridablanca, in Santander, against the caricaturist of *Vanguardia Liberal*, Diego García, for the publication of a cartoon titled "Modus operandi" regarding complaints about alleged irregularities in an adjudication process. The journalist was subpoenaed to a conciliation hearing for June 21<sup>466</sup>. On the other hand, on February 13, journalist Jorge Gómez Pinilla, a columnist for *El Espectador*, announced that he was subpoenaed by the Prosecutor's Office to testify on an insult complaint filed by a lawyer<sup>467</sup>.

329. In January, the Criminal Cassation Chamber of the Supreme Court of Justice upheld a decision of the Criminal Chamber of the Superior Court of Bogotá of November 8, 2017, which dismissed as inadmissible a

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<sup>462</sup> FLIP. November 29, 2018. [El Fiscal General de la Nación debe ser garante de la libertad de prensa](#); El Tiempo. November 28, 2018. [Así es la teoría de conspiración denunciada por el Fiscal](#).

<sup>463</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>464</sup> El Tiempo. March 22, 2018. [Jueza niega tutela contra el caricaturista Matador](#); El Espectador. March 22, 2018. ["Siento como si le hubiera ganado a Duque en la segunda vuelta": Matador](#); El tiempo. March 8, 2018. [Interponen tutela contra caricatura de 'Matador'](#); FLIP. [Interponen tutela contra de El Tiempo y Matador por caricatura de Iván Duque](#). March 7, 2018; "With a lawsuit they want to censor my freedom of expression and ask me to take this cartoon back. The plaintiff is lawyer José Luis Reyes Villamizar who defines himself as "sympathizer of the democratic center" the same party that alters my cartoons and uses them illegally". Twitter account [@matadoreltiempo](#), [March 7, 2018](#). Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Colombia](#). April 13-15, 2018.

<sup>465</sup> FLIP. January 16, 2018. [Juez ordena arresto a periodista de Pereira porque una rectificación le pareció insuficiente](#); Semana. January 18, 2018. [Un periodista en Pereira a punto de pagar arresto por sus comentarios](#); Eje21. No date. [Juzgado de Pereira decreta nulidad de proceso contra el periodista William Restrepo](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Colombia](#). April 13-15, 2018.

<sup>466</sup> FLIP. March 22, 2018. [El alcalde de Floridablanca, Santander, quiere censurar a un caricaturista de Vanguardia Liberal](#); La FM. March 22, 2018. [Controversia porque Héctor Mantilla demandó a un caricaturista en Floridablanca](#).

<sup>467</sup> El Espectador. February 13, 2018. [Abelardo de la Espriella me quiere matar... del susto](#); FLIP. [Carta abierta a la Fiscalía General de la Nación por el caso contra el periodista Jorge Gómez Pinilla](#). February 15, 2018; El Espectador. February 16, 2018. [La FLIP rechaza "intento de censura" al periodista Jorge Gómez Pinilla](#).

writ of *amparo* presented by former guerrilla leader Seuxis Hernández Solarte, known as 'Jesús Santrich', so that congressmen Edward Rodríguez, Santiago Valencia González, journalist Salud Hernández Mora, and lawyer Gustavo Rugeles would retract and apologize for their "dishonorable and insulting" statements by having linked him to the commission of murders, crimes against humanity, and other crimes<sup>468</sup>.

330. In April, the Constitutional Court decided to order the rectification of a publication on a Blog that reported on a complaint against a judge. The ruling provides that "the affirmations that are maintained must be duly supported and corroborated in order to comply with the requirements of truthfulness and impartiality. This rectification must also be shared on your Facebook social network. On the other hand, you must remove the photograph of the plaintiff used in the publication"<sup>469</sup>.

331. In June, the Constitutional Court overturned a decision of the Fifth Civil Municipal Oral Court of Medellín and upheld the claim of a person who worked as a domestic employee and whom her former employer accused of stealing on her Facebook account. The Court protected "the fundamental rights to the good name, honor, and human dignity" of the claimant and ordered that, if it were in the interest of the affected party, the employer would rectify the information published on Facebook<sup>470</sup>.

332. The Seventh Criminal Court of the Circuit of Medellín ordered, on June 12, *Noticias Uno* to rectify information about the former governor of Antioquia, Luis Alfredo Ramos, who in May filed a writ of *amparo* against the media claiming the violation of his rights to dignity, honor, and good name. The information was linked to the process before the Supreme Court of Justice against Ramos for his alleged links to paramilitaries<sup>471</sup>.

333. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,<sup>472</sup> because "they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power."<sup>473</sup> In this regard, the Inter-American Commission stated that "[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy."<sup>474</sup> Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, "[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official." That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

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<sup>468</sup> Corte Suprema de Justicia. Sala de Casación Penal. [STP687-2018](#). January 23, 2018; El Colombiano. November 8, 2017. [Rechazan tutela de Santrich contra congresistas y periodistas](#); KienyKe Noticias. May 25, 2018. [Niegan tutela a Santrich para no ser llamado 'asesino'](#).

<sup>469</sup> Corte Constitucional. [Sentence T-117/18](#). April 6, 2018.

<sup>470</sup> Corte Constitucional. [Sentence T-243/18](#). June 26, 2018.

<sup>471</sup> FLIP. June 29, 2018. [Juez ordena a Noticias UNO rectificar información cierta](#); Noticias Uno. July 1, 2018. [Orden de rectificación a Noticias Uno preocupa a la prensa](#); RCN. June 30, 2018. [Juez ordena a Noticias UNO rectificar información que corresponde a la verdad](#).

<sup>472</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of August 31, 2004. Serie C No. 111. Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151. Para. 87.

<sup>473</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111. Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125-129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151. Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193. Para. 115.

<sup>474</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

334. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information." Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.<sup>475</sup>

### G. Source confidentiality

335. Likewise, civil society organizations expressed concern that the Constitutional Court did not select for review a case of "serious violation to professional secrecy" that protects journalist William Vianney Solano, from the city of Buga, and his sources. In this case a judge of control of guarantees authorized a prosecutor who was investigating Solano, for the alleged crime of insult, to enter the journalist's Facebook account and, in this way, have access to his conversations<sup>476</sup>.

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

### H. Legal Reform

337. The questionings generated between May and June regarding the content and procedure for the study of the bill for the creation of the convergent regulatory body of the ICT sector, which had been filed in Congress by the Executive at the end of the previous year, and for which it had sent a message of urgency in March in order to accelerate its approval, led to the Government's decision to request the withdrawal of the initiative. Through a letter published on social networks, public media directors warned that, if the project was approved, public television would be put at risk; Also, several civil society organizations warned that beyond some positive aspects, the initiative did not comply with international standards and entailed serious risks for freedom of expression, diversity, and pluralism, and questioned the lack of opportunities for participation and debate around to the initiative<sup>477</sup>. As reported, the study of the initiative mentioned above, as well as the approval on May 22 in the Senate of a bill that reforms the copyright law, were driven by the Government's intention to specify the entry of Colombia to the OECD, something that finally happened on May 30; the text approved by the Senate passed to conciliation<sup>478</sup>. The bill to regulate the procedure of the Special Jurisdiction for Peace [Jurisdicción Especial para la Paz] (JEP), which has provisions regarding publicity and access to information, was approved by the Senate and the House of Representatives on June 28<sup>479</sup>.

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<sup>475</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>476</sup> FLIP/Fundación Karisma. January 24, 2018. [La Corte Constitucional nos dejó en visto: la violación de la reserva de la fuente es un asunto grave](#); FLIP. [Estado Depredador. Informe sobre el estado de la libertad de prensa en Colombia 2017](#). February, 2018.

<sup>477</sup> Congreso de la República de Colombia. Gaceta 248 de 2018. Available at: [http://www.imprenta.gov.co/gacetap/gaceta\\_nivel\\_3](http://www.imprenta.gov.co/gacetap/gaceta_nivel_3); Fundación Karisma/FLIP. May 28, 2018. [Comentarios proyecto de ley No. 174 Cámara – 224 Senado y sus dificultades para satisfacer exigencias de la OCDE en materia de regulador convergente](#); El Espectador. May 31, 2018. [Regulador convergente o el gol de último minuto de Santos](#); El Colombiano. June 3, 2018. [Advierten que proyecto de ley pondría en riesgo la televisión pública](#); Caracol Radio. June 3, 2018. [Polémico proyecto del Gobierno acabaría la televisión pública en el país](#); Observacom. June 4, 2018. [Proyecto de regulador convergente de Colombia incumple estándares internacionales sobre libertad de expresión, dice OBSERVACOM](#); El Espectador. June 5, 2018. [Mintic pide retirar proyecto de ley que crea nueva autoridad para las comunicaciones](#); El Tiempo. June 12, 2018. [Congreso aprueba retiro del proyecto de regulador convergente](#); RCB radio. June 12, 2018. [Congreso hunde polémico proyecto sobre servicios de telecomunicaciones](#).

<sup>478</sup> El Espectador. March 22, 2018. [Ley Lleras ahora con trampa](#); RCN Radio. March 22, 2018. [Polémica por proyecto que supuestamente reviviría la 'Ley Lleras'](#); La Silla Vacía. March 23, 2018. [La agonía de la OCDE y el discreto encanto de legislar](#); Congreso de la República. Senado. Prensa. [Congreso, gobierno y Sayco logran acuerdo para proteger derechos de autores colombianos](#). May 22, 2018; RCN Radio. May 22, 2018. [Aprueban ley de derechos de autor, último requisito para ingresar a la OCDE](#); Fundación Karisma. May 24, 2018. [Una de las Ley Lleras por fin será Ley y reformará el derecho de autor en Colombia](#).

<sup>479</sup> Congreso de la República de Colombia. Cámara de Representantes. June 28, 2018. [Cámara aprobó conciliación de proyecto de procedimiento de la JEP](#); El Tiempo. June 28, 2018. [Senado y Cámara aprueban conciliación de procedimiento de la JEP](#).

## I. Freedom of expression in electoral contexts

338. On May 27, presidential elections were held in Colombia, which had a second round of elections on June 17. Iván Duque Márquez was elected as the head of the Executive Branch with 53.98% of the votes. The Electoral Observation Mission of the Organization of American States (EOM/OAS) highlighted in its preliminary report "the climate of tranquility in which the first presidential elections, after the signing of the peace agreements, took place." In turn, it welcomed the considerable increase in citizen participation, estimated at 53.38% of the electoral roll, "the highest figure in the country's recent history" in both the first and second round, and welcomed the "broadly pluralist" character of the election, which offered citizens diversity of options across the political spectrum. "

339. On the other hand, the Mission observed "a high degree of tension during the campaign, which in some cases led to verbal and physical confrontations between sympathizers of the different candidates, as well as threats against some candidates". Added to this, in the social networks defamation and fake news promotion campaigns were confirmed, according to the preliminary report<sup>480</sup>.

340. The Office of the Special Rapporteur received information that in the context of the electoral campaign and in the post-electoral period, civil society reported an upsurge in attacks against the press and an increase in threats against journalists by different actors<sup>481</sup>.

341. Likewise, stigmatizing expressions were produced by candidates for elective positions or by public officials related to the electoral process. On February 10, Senator Álvaro Uribe Vélez used his Twitter account to attack journalists who have denounced his actions during his term as president<sup>482</sup>. Former presidential candidate Carlos Caicedo<sup>483</sup> and former congressional candidate Leszli Kalli made accusations against the *La Silla Vacía* newspaper<sup>484</sup>, while presidential candidate Gustavo Petro made accusations against the RCN channel<sup>485</sup>.

342. The Office of the Special Rapporteur recalls that "[e]lections 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>486</sup>

## J. Access to public information

343. The organization 'Alianza Más información Más derechos' reported deficiencies in the fulfillment of obligations of active transparency by public entities and political parties imposed by Law No. 1,712 of

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<sup>480</sup> OAS. Preliminary Report of the OAS Electoral Observation Mission for the 2018 legislative elections in Colombia. First round. No date. Available at: <http://www.oas.org/eomdatabase/MoeReport.aspx?Lang=es&Id=405&MissionId=482>

<sup>481</sup> For example, journalists from *Caracol Radio*, *Caracol Televisión* and *Red Más Noticias* were attacked by members of the Escuadrón Móvil Antidisturbios (ESMAD) in Cúcuta, while covering the visit of then presidential candidate Gustavo Petro. FLIP. *ESMAD agredió a periodistas en Cúcuta durante la visita de Gustavo Petro*. March 3, 2018; Caracol Radio. March 3, 2018. *Gobierno ordena investigación interna por agresión del Esmad a periodistas*; Caracol Radio. March 3, 2018. *Federación Colombiana de Periodistas rechazó agresiones a comunicadores*.

<sup>482</sup> Uribe wrote: "Daniel Coronel proceeds with a mafia attitude to do electoral damage, his business with drug trafficking remains unpunished and he has sued me because I think he would be extraditable." On March 5, the Superior Court of Bogotá granted the senator a maximum of 48 hours to "recant". On March 6, he published a rectification that had been described as "ambiguous." Twitter account of Álvaro Uribe (@AlvaroUribeVel). *February 10, 2018*; FLIP. March 5, 2018. *Tribunal Superior de Bogotá ordena a Álvaro Uribe rectificar señalamientos contra Daniel Coronel*; Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. *Colombia*. April 13-15, 2018; Tribunal Superior del Distrito Judicial de Bogotá. Sala Penal. Tutela de primera instancia. *Resolution of March 5, 2018*; El tiempo. March 7, 2018. *Álvaro Uribe publica rectificación por trino sobre Daniel Coronel*; Revista Semana. March 6, 2018. *La rectificación a medias de Uribe frente a Daniel Coronel*.

<sup>483</sup> Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. *Colombia*. April 13-15, 2018; La Silla Vacía. February 19, 2018. *Respuesta a Carlos Caicedo*.

<sup>484</sup> Vanguardia.com. February 21, 2018. *Juez ordena retractarse a candidata Leszli Kalli por afirmaciones en redes sociales*; Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. *Colombia*. April 13-15, 2018.

<sup>485</sup> Noticias RCN. February 28, 2018. *Comunicado*: "@FLIP org, through its director @PVacaV, rejected the accusations of @petrogustavo against @NoticiasRCN and warned they are violations to freedom of expression <https://goo.gl/Ncch3M>". Twitter account of Noticias RCN. *February 28, 2018*.

<sup>486</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.

Transparency and Access to Public Information of 2014<sup>487</sup>. Likewise, monitoring carried out by the organization on the fulfillment of the obligations of active and passive transparency by the four High Courts and the Attorney General's Office identified progress and deficiencies in the implementation of the law of access to information by these entities and formulated a set of recommendations<sup>488</sup>.

344. In April, the Constitutional Court rejected a writ of *amparo* filed against Ecotermales San Vicente S.A. by a person who requested to have the recordings of the surveillance cameras of the thermal park to know the circumstances of the accident that caused the death of his father in said site. The company responded negatively to the request because the required videos "show sensitive data where there are children, and the data protection law prevents them from sharing them". The Court confirmed the first and second instance judgments that denied the protection of the fundamental rights invoked by the plaintiff, on the understanding that the refusal to request information was due to the reservation of the information authorized in the sensitive data law. The Court indicated that the content of said camera recordings could be delivered in the event that a judicial proceeding is initiated on said death, and that the judge who hears that litigation requests the film records<sup>489</sup>.

345. In May, journalists, citizens, and social organizations made different complaints, including accusations of censorship, regarding the handling of information during the emergency of the Hidroituango hydroelectric project, which forced the evacuation of nearby towns, causing a serious social and environmental crisis, and warned about the risk that the lack of clear, complete, and timely information generated for the inhabitants of the affected areas. In this context, the governor of Antioquia himself questioned the Empresas Públicas de Medellín (EPM) on several occasions for the handling of information on the matter. On June 4, *Noticias Uno* reported that an attempt was made to restrict the entry of a team to one of the shelters in which the displaced people were located as a result of the emergency, as well as the possibility of speaking with the victims. EPM rejected questions about the way in which it handled the information during the crisis<sup>490</sup>.

346. Principle 4 of the Declaration of Principles on Freedom of Expression which states that "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be

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<sup>487</sup> See: Alianza Más Información Más derechos. [Resumen ejecutivo avances en el seguimiento al cumplimiento de transparencia activa en entidades públicas y organizaciones políticas](#). No date. According to the technical data of the study presented in March 2018, the monitoring of public agencies and political parties corresponds to previous periods. For example, in the case of public agencies, the study indicated that "there are significant gaps" regarding information of mandatory publication and, in the case of political parties, monitoring included the websites of 13 parties between April and June 2017. Among the results, the report pointed out that only one party had published its internal management report for 2016; others had previous information on these categories of information, and only two parties had published their audit results for the budget year 2016.

<sup>488</sup> Alianza Más Información Más derechos. [Informe de resultados de la veeduría al cumplimiento de las obligaciones de transparencia activa y pasiva por parte de las cuatro Altas Cortes y de la Fiscalía General de la Nación](#). November 18, 2017. On the other hand, in February 2018 the nine judges of the Constitutional Court made their income statement public through the institution's website as an exercise in transparency, as was reported. See: *El Espectador*. February 28, 2018. [Magistrados de la Corte Constitucional publicaron su patrimonio](#); *Semana*. February 27, 2018. [Los nueve magistrados que se lanzaron a publicar sus patrimonios](#).

<sup>489</sup> Corte Constitucional. [Sentence T-114/18](#). April 3, 2018.

<sup>490</sup> "The [@siatamedellin](#) censors its meters to the public once again. It is clear that from [@AlcaldiaMed@EPMestamosahi](#) insist on the concealment of information cc [@FLIP org @FECOLPER](#)". Twitter account of journalist Claudia Julieta Duque [@JulieDuque1](#). [May 22, 2018](#); "The emergency in [@hidroituango](#) has been handled confusingly and with censorship. They have taken to show the benefits of boats, hostels and food. They are press [@EPMestamosahi](#). Do not ask real journalists to offer bland replies and abandon our duty". [May 29, 2018](#); *El Tiempo*. May 31, 2018. [Tras más de un mes en emergencia, crecen los riesgos por Hidroituango](#); *Noticias RCN*. May 31, 2018. [Hidroituango: EPM "no comparte" declaraciones de Luis Pérez, gobernador de Antioquia](#); *Caracol*. May 31, 2018. [Protestas en Cauca por lo que llaman "el silencio de Hidroituango"](#); *FLIP*. June 1, 2018. [Alerta de la FLIP por censura en Hidroituango](#); "The emergency in [@hidroituango](#) has been handled confusingly and with censorship. They have taken to show the benefits of boats, hostels and food. They are press [@EPMestamosahi](#). Do not ask the real journalists to offer bland replies and abandon our duty". Twitter account of journalist Claudia Julieta Duque. [May 29, 2018](#); " The [@siatamedellin](#) censors its meters to the public once again. It is clear that from [@AlcaldiaMed@EPMestamosahi](#) insist on the concealment of information cc [@FLIP org @FECOLPER](#)". [May 22, 2018](#); " Members of the Board of Directors [@EPMestamosahi](#): the rights of people, however small they may seem, must prevail over material goods, no matter how dazzling they may be. [#HidroituangoPrimeroLaVida](#)" Twitter account of Luis Pérez Gutierrez (Governor of Antioquia). [June 4, 2018](#); *Noticias Uno* (You Tube). June 4, 2018. [Damnificados en Puerto Valdivia tienen que hacer denuncias a través de rejas](#). *El Tiempo*. June 5, 2018. [EPM dice que división por Hidroituango podría ser perjudicial](#); *El Espectador*. June 6, 2018. [EPM responde a comunicado de la FLIP sobre denuncias de censura en Hidroituango](#).

previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

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

347. In February, a Constitutional Court judgment of November 24, 2017 was published, which reiterated that when disseminating information, individuals must observe the standards of truthfulness and impartiality. The ruling ordered the user to withdraw his web address and his Twitter account from a press release "containing the information that transgresses the fundamental guarantees" of the plaintiff and another citizen. In addition, it ordered to "thereafter, refrain from publicly referring" to the plaintiff "using statements that affect their rights to good name and honor"<sup>491</sup>.

348. In April, the Constitutional Court issued a judgment regarding of several cases in which the alleged violation of the fundamental rights to the good name and personal and family privacy and honor was argued as a consequence of the publication of videos on Facebook and YouTube, in which reference would be made to events that do not correspond to reality. In one of the cases, the Court understood that Google, the defendant company, did not violate the rights argued by the plaintiff and that it did not have the duty to include in its policies the removal of prima facie contents that violate the rights to the good name and honor, for which it denied the writ of *amparo* presented. In another complaint, the Chamber verified that the events object of "the claim" published by the defendant in her Facebook profile had no support and affected the right to the good name of the plaintiff and protected the plaintiff in her claim for rectification<sup>492</sup>.

349. In May, the Constitutional Court annulled the sentence T 063 A / 17 issued the previous year, by which, in accepting a writ of *amparo*, it had ordered Google Inc., in its capacity as owner of the tool "Blogger.com" to remove a blog of the company Caquetá Furniture. The Court granted the request for nullity filed by the Ministry of Information and Communication Technologies, Google LLC, and Google Colombia Ltda., upon finding proven the grounds for omitting the study of matters of constitutional relevance, by virtue of which it declared the nullity of the aforementioned judgement<sup>493</sup>.

#### **L. Community broadcasting**

350. In May, the Nariño Branch Prosecutor's Office allegedly raided three indigenous stations, *La Voz de Obunoco*, *Quilla Huirá Stereo de Catambuco*, and *La Voz Quillasinga de Mocondino*, and two stations from rural areas of Pasto, *Chuquimarca Stereo* and *Latina Stereo*, because it was denounced their operation without a license. The Foundation for Freedom of the Press indicated that the owners of the Pasto stations face difficulties in obtaining operating licenses<sup>494</sup>.

351. On various occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media in our region fulfill a fundamental function for the exercise by diverse sectors of society of freedom of expression and access to information.<sup>495</sup> In that sense, it is necessary for the states to legally recognize community media and to consider fair spectrum reserves for this type of media, along with adequate conditions of access to licenses that would take into account the circumstances. Similarly, community media must benefit from fair and simple procedures for obtaining licenses, must not have to comply with technological or other types of requirements that involve disproportionate barriers for access to

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<sup>491</sup> Corte Constitucional. [Sentence T-695/17](#). November 24, 2017; El tiempo. February 7, 2017. [Concejal Guerra apelará fallo de la Corte Constitucional](#).

<sup>492</sup> Corte Constitucional. [Sentence T-121-18](#). April 9, 2018.

<sup>493</sup> Corte Constitucional. [COMUNICADO No. 17 May 9 and 10 de 2018](#) (See: AUTO A-285/18); El Tiempo. May 9, 2018. [Corte anula fallo que obligaba a Google a eliminar un blog](#); Observacom. May 28, 2018. [Fallo sobre Google repercutiría por fuera de Colombia](#).

<sup>494</sup> FLIP. May 29, 2018. [Los habitantes de Pasto llevan once días sin poder sintonizar siete emisoras](#); Colombia Informa. May 11, 2018. [Policía cierra tres emisoras comunitarias indígenas en Pasto](#).

<sup>495</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.

licenses, and in their operation must not be the target of differentiated treatments that are not adequately justified.<sup>496</sup>

### M. Other relevant situations

352. On January 17, the UN Verification Mission in Colombia condemned the murder of two members of the FARC political party, who participated in electoral activities in the municipality of Peque, in the department of Antioquia<sup>497</sup>. In February the party announced the temporary suspension of its electoral campaign after violent attacks that took place in the first acts of the presidential campaign of the then candidate Rodrigo Londoño. In March the party announced the withdrawal of their candidate from the presidential campaign indicating health reasons<sup>498</sup>. Other candidates to elective office also reported receiving threats and attacks during the development of the electoral process<sup>499</sup>. Also, in the context of the coverage of the elections for Congress and the interparty consultation that took place on March 11, *La Silla Vacía* denounced in Sincelejo that leaders of a senator intimidated a journalist from the media, after he took a picture of them distributing money<sup>500</sup>. In April, the Electoral Observation Mission (EOM) platform presented a report on the conversation citizens were having through social networks in the context of the electoral process. The study indicated that 20% of the messages analyzed (1,509,483) were charged with intolerance and polarization<sup>501</sup>. In this context, the candidates for the presidency of the Republic signed a national pact for Nonviolence, in which they committed themselves to move the campaign forward without grievances<sup>502</sup>.

353. In the framework of International Women's Day, on March 8, the Colombian Federation of Journalists (Fecolper) issued a statement in which it referred to the discrimination and violence faced by women journalists in Colombia and demanded that the State and the media ensure conditions of equity and non-discrimination for women journalists<sup>503</sup>. In 2018 women journalists made public reports about situations of violence and sexual harassment that they had to face in the exercise of their profession<sup>504</sup>.

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<sup>496</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>497</sup> ONU. January 17, 2018. [Misión de verificación de la ONU condena asesinato de dos integrantes del partido político FARC en campaña electoral en Antioquia](#).

<sup>498</sup> Fuerza Alternativa Revolucionaria del Común (FARC). Press release (No date). [Hemos decidido suspender las actividades de campaña, hasta tanto contemos con las garantías suficientes](#); BBC. February 9, 2018. [Colombia: el partido político FARC suspende su campaña presidencial y legislativa](#); El Espectador. February 9, 2018. [Por falta de garantías, FARC suspende temporalmente su campaña política](#); BBC. March 8, 2018. [FARC se retira de las elecciones presidenciales de Colombia por el estado de salud de su candidato Rodrigo Londoño, alias Timochenko](#); El Tiempo. March 8, 2018. [La Farc renuncia a tener candidato a la Presidencia](#).

<sup>499</sup> Caracol.com.co. February 7, 2018. [Descubren plan para atentar contra el candidato al congreso Miguel Matus](#); El Espectador. February 7, 2018. [Candidato al Senado del Centro Democrático denuncia amenaza de muerte](#); EFE. March 2, 2018. [El ataque a un vehículo del candidato presidencial Gustavo Petro causa revuelo en Colombia](#). WRadio. March 2, 2018. [Atacan camioneta en la que se movilizaba Gustavo Petro en Cúcuta](#); El Espectador. March 6, 2018. [Petro denunciará en la OEA ataque en Cúcuta; El País. 8 de marzo de 2018. El video con el que la Fiscalía descarta disparos contra Petro en Cúcuta](#); El Espectador. March 8, 2018. [Según Santos, Petro en la OEA "está haciendo un espectáculo"](#); El Espectador. May 2, 2018. [Iván Duque dice que existe plan para atentar contra su vida](#); Pulzo. May 2, 2018. [El atentado con explosivos que según Duque estarían planeando en su contra](#).

<sup>500</sup> "ATTENTION! Sincelejo: Leaders of Liberal Senator Mario Fernandez intimidate La Silla Vacía journalist because he took a picture of him handing out money. They threatened him with taking his cell phone and took him by force to a police station. #EleccionesLSV PLEASE RETWIT". La Silla Vacía/Twitter account. [March 11, 2018](#). On March 12, Fundación para la Libertad de Prensa published a report on the obstructions to professional practice observed during the coverage of the elections of Sunday 11. As it stated, it registered five assaults during the day of voting for Congress and interparty consultations. Of these, four were obstructions during the coverage and a threat. The situations occurred in Sucre, Risaralda, Caqueta and Bogota. The organization said most cases were carried out by police agents.

<sup>501</sup> MOE. April 12, 2018. [El 20% de la conversación sobre las elecciones en Colombia pasa por agresividad e intolerancia. April 12, 2018; MOE. Discurso de intolerancia Monitoreo de Opinión pública en RRSS Elecciones presidenciales 2018](#).

<sup>502</sup> Semana. April 25, 2018. [Un pacto que hizo el milagro de unir a los candidatos](#); El Espectador. April 25, 2018. [Candidatos presidenciales se comprometerán a dejar atrás el odio en sus campañas](#).

<sup>503</sup> Federación Colombiana de Periodistas (Fecolper). March 8, 2018. [Periodistas hacen llamado por un periodismo en equidad y libre de violencias](#).

<sup>504</sup> El Espectador. January 19, 2018. [Una defensa del silencio](#); FLIP. February 9, 2018. [Respaldo de Organizaciones de mujeres y libertad de expresión a la periodista Claudia Morales](#); El Espectador. January 28, 2018. [Claudia Julieta Duque dice que exfiscal Gómez Méndez la acosó en 2003, él dice que esto nunca pasó](#); FLIP. [Estado depredador. Informe sobre el estado de la libertad de prensa en Colombia 2017](#). Page 49.

354. At the end of December 2017 and the beginning of 2018, the courts continued to prosecute the serious acts of psychological torture to which journalist Claudia Julieta Duque was subjected by officials of the now extinct Administrative Department of Security (DAS), as a result of their investigation into the homicide of journalist Jaime Garzón, which occurred in 1999<sup>505</sup>. According to the information available, on December 27, 2017, former DAS official, Nestor Javier Pachón, was released, he was investigated for his alleged responsibility in the follow-ups, interceptions, and psychological torture of which the journalist was victim. In February 2018, Duque requested a declaration of nullity of this decision, arguing that there were irregularities in due process and that the right to defense was violated a<sup>506</sup>. At the end of September, the journalist filed a complaint regarding her case before the IACHR<sup>507</sup>.

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<sup>505</sup> Equipo Nizkor. March 19, 2018. [El testimonio del exdirector del DAS, clave en el caso de la periodista Claudia Julieta](#); Equipo Nizkor. March 29, 2018. [Del Grupo Especial de Inteligencia 3 al G-7: El revelador memorando del detective 1949 sobre la persecución a la oposición en Colombia](#).

<sup>506</sup> FLIP. February 21, 2018. [Exfuncionario del DAS investigado por crímenes contra Claudia Julieta Duque fue dejado en libertad](#).

<sup>507</sup> FLIP. October 1, 2018. [Periodista Claudia Julieta Duque demanda a Colombia ante la CIDH](#).

## 11. COSTA RICA

355. During 2018, the Special Rapporteurship was informed about the fact that the first months of the year were marked by a strong political polarization in the framework of the electoral campaign. In this context, the Office received information about an increase in violence, and intolerance and hate expressions against LGBTI people and women's rights defenders. Finally, the Office of the Special Rapporteur notes that a legislative project about honor protection on social media, whose provisions might negatively affect the right to freedom of expression, is currently before the Congress.

### A. Freedom of expression in electoral contexts

356. The general elections for President, Vice-president, and Congress representatives were held on February 4. In this opportunity, the candidates could not reach the required percentage of votes, so the dispute came to the second ballot on April 1, in which Carlos Alvarado Quesada from "Restauración Nacional" party was elected. The Special Rapporteurship was informed on the fact that during the electoral process, the media and journalists were the victims of questioning, verbal attacks, and stigmatizing statements by different candidates for elective office and their followers. Likewise, by virtue of the advisory opinion of the IAHR Court on equal marriage, there was a strong response and polarization during the campaign, and LGTBI groups were the constant victims of hate rhetoric and expressions. The Office of the Ombudsman pronounced itself more than once to require citizens and candidates to refrain from reproducing this kind of speech.<sup>508</sup>

357. In many cases, the attacks were targeted to the managers of *La Nación y Telenoticias* from Channel 7. For instance, according to the information released by the Special Rapporteurship in January, the then-candidate for president from the "Partido Integración Nacional" party, Juan Diego Castro, allegedly branded *La Nación* newspaper as "an evil rag" and its journalists as "psychopaths," and stated that if he was president, the print edition would stop operating in a year. Afterward, he allegedly said that the newspaper would stop operating, since it is not profitable.<sup>509</sup> His statements were condemned by the Costa Rican Journalists' Association.<sup>510</sup> Furthermore, in the framework of these statements, IPLEX rejected the verbal attacks against the press in the electoral context and required the candidates, without exception, to decisively contribute to the building of a tolerance and respect atmosphere, in which everybody can express their thoughts and opinions without feeling afraid of being attacked, punished, or stigmatized.<sup>511</sup>

358. Furthermore, the Elections' Supreme Court (TSE) passed different resolutions through which it stated that the Episcopal Conference of Costa Rica and the Costa Rican Evangelical Alliance Federation had to refrain from carrying out actions which directly or implicitly represent a call (based on religious reasons or symbols) to vote for certain parties or to refrain from voting for others. Likewise, the Court also required these two organizations to instruct their priests and pastors on the prohibition of using the pulpit, prayer sites, or liturgical ceremonies to induce parishioners regarding their vote.<sup>512</sup> In view of a precautionary measure adopted in this sense by the TSE, the entities involved lodged remedies; according to the information available, the Episcopal Conference allegedly stated that the measure violated the right to freedom of opinion, expression, and worship.<sup>513</sup> Moreover, on March 6, the Episcopal Conference issued a communication in which it rejected "any interpretation" of their acts "as means of interfering with the conscience of our citizens in exercise of their right to vote."<sup>514</sup> On March 26, the TSE granted another precautionary measure after receiving 86 complaints. Through this measure, it stated that the candidate for president Fabricio Alvarado

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<sup>508</sup> Defensoría de los Habitantes. February 14, 2018. [Defensoría hace llamado a detener discursos de odio](#); Defensoría de los Habitantes. February 27, 2018. [Defensoría pide un alto rotundo a violencia y discursos discriminatorio](#).

<sup>509</sup> El mundo.cr. January 7, 2018. [La guerra de Juan Diego Castro contra medios de comunicación y periodistas](#); El confidencial/ EFE. January 18, 2018. [Los ataques a la prensa empañan la campaña electoral en Costa Rica](#); Multimedios. January 17, 2018. [Juan Diego Castro sobre el cierre de 'La Nación'](#); Inter American Press Association (IAPA). 2018 Midyear Meeting Report. Medellín, Colombia. [Costa Rica](#). April 12, 2018.

<sup>510</sup> Colper. January 17, 2018. [Comunicado Junta Directiva](#).

<sup>511</sup> IPLEX. January 17, 2018. [Condenamos la violencia verbal contra la prensa](#).

<sup>512</sup> Tribunal Supremo de Elecciones. [Comunicado de Prensa](#). January 24, 2018; Crhoy.com. January 24, 2018. [TSE ordena a Iglesia Católica y Evangélica no pedir votos](#). See also: Tribunal Supremo de Elecciones. Resolution [Nº 1375-E1-2018](#), March 5, 2018.

<sup>513</sup> El mundo.cr. January 31, 2018. [TSE rechaza recursos de Iglesia Católica y Evangélica contra medida que les prohíbe influir en el voto](#); crhoy.com. January 31, 2018. [Tribunal Supremo de Elecciones rechazó pedido de Iglesia Católica](#).

<sup>514</sup> Conferencia Episcopal de Costa Rica. March 6, 2018. [Comunicado sobre sentencia de amparo electoral 6-3-2018](#).

and the Superior Executive Committee of the party “Partido Restauración Nacional” (PRN) shall refrain from “carrying out any action that might interfere with voters’ freedom of choice, based on their religious beliefs or appealing to religious reasons, pursuant to Article 28 of the Political Constitution and Article 136 of the Electoral Code.”<sup>515</sup>

359. Furthermore, the report of the OAS’s electoral mission highlights that, during the electoral campaign, multiple discussions in the media were held, which allowed society to get to know the candidates’ electoral proposals, even though it also highlights that the candidates with less voting intentions allegedly had difficulties participating in the said discussions. The report emphasizes that social media have been crucial tools regarding the participation and free exchange of ideas on public interests matters, and that in this context, the electoral dispute has been evened out. However, the report also highlights that social media have been a tool to launch attack and disinformation campaigns.<sup>516</sup>

360. The Office of the Special Rapporteur recalls that “[e]lections 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>517</sup>

361. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues<sup>518</sup>. Likewise, public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”<sup>519</sup>.

362. The Commission and the Special Rapporteurship for Freedom of Expression insist that to effectively fight against hate speech it is necessary to take a comprehensive and constant approach, which goes beyond legal measures and includes the adoption of preventive and educational mechanisms.<sup>520</sup> As it was indicated by the Special Rapporteurship for Freedom of Expression, this kind of measures aim for the cultural origin of systematic discrimination, and as such, they can become valuable instruments for the identification and rejection of hate speech and promote the development of a society based on diversity, pluralism, and tolerance principles.<sup>521</sup>

363. Likewise, when senior public workers make use of hate speech, they affect not only the right to non-discrimination against affected groups, but also the trust of those groups in state institutions, and thus, the quality and level of their participation in democracy. Due to the foregoing, the States shall adopt appropriate disciplinary measures regarding hate speech or incitement to violence carried out by public workers. The media also have an important role in fighting against discrimination, stereotypes, prejudice, and bias,

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<sup>515</sup> Tribunal Supremo de Elecciones. March 26, 2018. [Comunicado de Prensa](#).

<sup>516</sup> OAS. Department of Electoral Observation and Cooperation. [First Round Preliminary Statement](#). February 5, 2018; OAS. Department of Electoral Observation and Cooperation. [Second Round Preliminary Statement](#). April 2, 2018.

<sup>517</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. 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. 7. 27 February, 2006. Para. 2.

<sup>518</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>519</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>520</sup> [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, Para. 11; United Nations. General Assembly. Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357. September 7, 2012, para. 33.

<sup>521</sup> IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 4, 2011, para. 48.

including the highlighting of their dangers, so they shall adhere to higher professional and ethical standards, and adopt professional voluntary codes of conduct.<sup>522</sup>

## B. Social protest

364. According to the information available, in the framework of the public protests carried out on March 8 because of International Women's Day, five people were allegedly arrested due to the spray-painting of graffiti on public and religious buildings. "Partido de los Trabajadores" party would have reported an attempt at criminalizing protest and would have questioned the coverage of the press on the facts, and would have accused it of "intending" to turn the people arrested "into 'targets' of the conservative right's hate."<sup>523</sup>

365. According to the information available, on September 12, in the framework of a student protest heading toward the University of Costa Rica, San José, Journalist Javier Córdoba from *Semanario Universidad*, a photographer from *MundoCR*, and several students were allegedly attacked by the police.<sup>524</sup> Likewise, according to the information available, journalists from *Extra* newspaper and other media were allegedly the victims of different kinds of harassment and attacks committed by public workers and multiple protesters when covering the demonstrations and protests carried out in September.<sup>525</sup> Also, on September 12, in a protest in the town of Santa Eduviges de Limón, a minor died as a result of a shot in his head.<sup>526</sup>

366. The UN's and the IACHR's Special Rapporteurs, in their joint statement on violence against journalists and communicators in the framework of social protests, observed that "in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority." They also mentioned that "[t]he State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession."<sup>527</sup>

## C. Legal reforms

367. According to the information gathered by the Special Rapporteurship, by the closing date of this report, no progress has been registered regarding the approval of the initiatives presented in 2017 by the previous government on the bills about freedom of expression and access to public information.

368. Furthermore, the Special Rapporteurship was informed about the fact that a bill was presented in June about "Honor protection in view of the abusive use of expression on social media." The initiative caused great concern in different sectors and caused rejection on the part of the Journalists' Association (Colper).<sup>528</sup> According to what was informed, the exposition of the bill's reasons and bases presents a series of considerations through which it argues on the need for protecting the honor and reputation of the people and

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<sup>522</sup> IACHR. [Annual Report 2015. Report of the Office of The Special Rapporteur for Freedom of Expression](#). Chapter IV (Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. November 12, 2015. Para. 17.

<sup>523</sup> Crhoy.com. March 8, 2018. [Detienen a 5 personas por daños a edificios públicos](#); Partido de los Trabajadores. March 9, 2018. Available at: <http://www.ptcostarica.org/una-gran-marcha-del-8m-sigamos-adelante-no-permitamos-la-criminalizacion-de-la-lucha-de-las-mujeres-y-los-pueblos/>

<sup>524</sup> Inter American Press Association (IAPA). 74th General Assembly Report. October 19 - 22, 2018. Salta, Argentina. [Costa Rica](#). October 17, 2018; La Nación. September 13, 2018. [Periodista del 'Semanario' relata agresión de Policía a él y a estudiantes: 'La situación no ameritaba violencia'](#);

<sup>525</sup> Diario Extra. [Costa Rica denuncia agresión a periodistas en informe ante la Sociedad Interamericana de Prensa, Argentina](#). October 22, 2018; Inter American Press Association (IAPA). 74th General Assembly Report. October 19 - 22, 2018. Salta, Argentina. [Costa Rica](#). October 17, 2018.

<sup>526</sup> Diario Extra. September 13, 2018. [Menor muere de balazo en la cabeza durante protesta](#); TN8. September 13, 2018. [Reportan el primer fallecido durante protestas en Costa Rica](#).

<sup>527</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

<sup>528</sup> Colper. June 25, 2018. [Comunicado](#); CRHoy. June 25, 2018. [Colegio de Periodistas califica de ley mordaza proyecto de diputado Prendas](#).

especially those of the political candidates and public workers, since they are the victims of disinformation campaigns, attacks, and threats through social media.

369. This Office observes that, by the closing date of the present report's edition, the said bill is not available in the Congress' official web page.<sup>529</sup> According to the information available, the bill's text includes the following provisions:

Slander. Article 145.-Anyone who by word or deed offends the dignity or decorum of an individual, either in his presence or by means of a communication addressed to him, shall be punishable by a fine equivalent to from ten to fifty days. The penalty shall be equivalent to from fifteen to seventy-five-days if the offense is caused in public, or through any social network or mass communication technological tool.

Defamation. Article 146.-Anyone who insults another person or who discloses true information to harm his reputation shall be punishable by a fine equivalent to from twenty to sixty days of imprisonment. The penalty shall be equivalent to from thirty to ninety days if the offense included in the previous paragraph is caused through any social media, or mass communication technological tool.

Falsehood. Article 147.-Anyone who falsely accuses another of committing a criminal act shall be punishable by a fine equivalent to from fifty to one-hundred-and-fifty days. The penalty shall be equivalent to from seventy-five to two-hundred days if the offense included in the previous paragraph is caused through any social media, or mass communication technological tool.

Offense to the memory of a deceased person. Article 148.-Anyone who offends the memory of a deceased person through slander or defamation expressions shall be punishable by a fine equivalent to from ten to fifty days. The right to report this offense includes the spouse, consanguineous children, parents, grandchildren, and siblings of the deceased person. The penalty shall be equivalent to from fifteen to seventy-five days if the offense included in the previous paragraph is caused through any social media, or mass communication technological tool.

Publication of offenses. Article 152.-Anyone who, as perpetrator, publishes or reproduces insults against the honor of another person through any medium shall be punishable by a fine equivalent to from ten to fifty days. The penalty shall be equivalent to from fifteen to seventy-five-days if the offense is caused in public, or through any social network or mass communication technological tool.<sup>530</sup>

370. The Office of the Special Rapporteur highlights that all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings.

371. Pursuant to principles 10 and 11 of the IACHR Declaration of Principles on Freedom of Expression, this Office recalls that "the protection of a person's reputation should only be guaranteed through civil sanctions", particularly "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 "officials are subject to greater scrutiny by society". Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression<sup>531</sup>.

#### **D. Restrictions on journalistic coverage**

372. On May 2, by means of a press release, the Costa Rican Journalists' Association required legislators to respect the right to freedom of press. In this sense, a representative allegedly prevented Journalist Roberto Acosta Díaz from getting the accreditation to cover a parliament session.<sup>532</sup>

373. The Special Rapporteurs of the UN, AICHR, and OSCE, in their joint statement on media regulation, indicate that the 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

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<sup>529</sup> República de Costa Rica. Asamblea Legislativa. Available at : <http://www.asamblea.go.cr>

<sup>530</sup> Aselex Consultores Legislativos. Proyecto de ley Protección del honor ante el uso abusivo de la expresión en redes sociales. Available at: <http://www.aselex.cr/boletines/Proyecto-20864.pdf>

<sup>531</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>532</sup> Colegio de Periodistas de Costa Rica. May 2, 2018. [Legisladores deben respetar el derecho de libertad de prensa](#).

body, and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non-discriminatory criteria published in advance."<sup>533</sup>

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

374. On June 4, the Electoral Supreme Court declared inadmissible a motion of appeal, which questioned the fact that ex-candidate for president Juan Diego Castro blocked a journalist on Twitter.<sup>534</sup> According to the ruling adopted by the majority, the presidential candidates “are fully empowered to manage or administrate their accounts without the State’s interference.” Pursuant to the reasoning expressed, even if a candidate for president posts political or electoral information on a personal account, this does not turn it into the party’s public or official account. The ruling indicates that “the citizens will be able to assess how their electoral decision influences whether a representative accepts or eliminates a follower on a social network or blocks their access to a certain account for being against their electoral proposal or other reasons, but in a Democratic State, it is inadmissible that a state body (whether it is the Electoral Supreme Court) impose criteria on the use of these computing tools to the detriment of personal freedom and autonomous will, inherent to all people.” Magistrate Zetty María Bou Valverde, who disputed the majority’s criteria, considered that the appeal was admissible, since the blocking of followers “affects free democratic exchange and access to information (...) which favor informed voting,” as it was carried out by a presidential candidate.

#### **F. Diversity and pluralism**

375. A study published in 2018 on the freedom of expression situation in Costa Rica, carried out by the Freedom of Expression Program, Right to Information and Public Opinion (Proledi), and the Investigation Center on Communication (Cicom) of the University of Costa Rica (UCR), states the persistence of a situation of media concentration that makes use of the radio spectrum “in a few hands.”<sup>535</sup> In this sense, the report cited Red MICA data, according to which “five big chain companies own a bit more than 50% of the radio states and only one company owns four network TV channels, which means 70% of the existing channels.” The report indicates that this “concentration process, which is gradually accelerating, is not regulated nor limited by the current legislation.”

376. The investigation also indicates that “more than 90% of the frequencies used for radio and television broadcasting is used for commercial aims” and that according to the analyzed information, “the allocation of radio and TV licenses or concessions (...) is not based on public and transparent democratic criteria and pre-established proceedings, which insure equality of opportunity conditions for all the interested people and sectors.” Proledi recommends the “urgent creation of a new radio and TV act considering communication needs and the right to communication of all social sectors (...) establishing a balance between not-for-profit commercial and social uses, promoting the creation of community and public media (...) In conclusion, a new act, which considers the needs of the population and that is pursuant to the standards of freedom of expression and all the recommendations of the Inter-American System on Human Rights related to broadcasting, shall be promoted,” the report indicates.

377. Furthermore, the investigation concludes that “media concentration leads to the concentration of formal guidance.” In this sense, the document recommends establishing a legal and transparent framework including the Inter-American standards, and establishing open, transparent, and non-discriminatory procedures for the allocation of formal guidance.<sup>536</sup>

378. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of

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<sup>533</sup> IACHR. Special Rapporteur for Freedom of Expression. December 18, 2003. [Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption.](#)

<sup>534</sup> Semanario Universidad. June 5, 2018. [TSE: candidatos presidenciales sí pueden bloquear a sus seguidores en redes sociales](#); La Nación. January 23, 2018. [TSE admite amparo electoral contra Juan Diego Castro por bloquear a usuario en Twitter](#); crhoy. January 23, 2018. [Juan Diego Castro tendrá que explicar por qué bloquea a tuitero.](#)

<sup>535</sup> Universidad de Costa Rica/PROLEDI. [Primer informe del Estado de la Libertad de Expresión en Costa Rica](#). 2018. Chapter V.

<sup>536</sup> Universidad de Costa Rica/PROLEDI. [Primer informe del Estado de la Libertad de Expresión en Costa Rica](#). 2018. Chapter VI.

radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

379. According to the joint statement of 2007 on broadcasting diversity, the Special Rapporteurs of the IACHR, UN, OSCE, and ACHPR indicated that “[i]n recognition of the particular importance of media diversity to democracy, special measures, including anti-monopoly rules, should be put in place to prevent undue concentration of media or cross-media ownership, both horizontal and vertical. Such measures should involve stringent requirements of transparency of media ownership at all levels. They should also involve active monitoring, taking ownership concentration into account in the licensing process, where applicable, prior reporting of major proposed combinations, and powers to prevent such combinations from taking place.”<sup>537</sup>.

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<sup>537</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples’ Rights) Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

## 12. CUBA<sup>538</sup>

380. During 2018, the situation of the right to freedom of expression in Cuba did not undergo substantial changes and continued under State repression and control. The accession of Miguel Díaz-Canel to the presidency of the Cuban government did not signify an opening in the exercise of fundamental freedoms by Cuban citizens. Of particular concern is the persistent selective and deliberate persecution of journalists, the media, human rights defenders, political dissidents, and independent organizations that disseminate information and opinions on subjects of public interest that the State considers contrary to its official discourse.

381. In fact, criminal proceedings continue to be brought frequently in Cuba as a means of inhibiting or punishing speech and positions critical of the ruling party; threatening summonses or police visits, pressure on family members, and travel restrictions on journalists, human rights defenders, activists, and political dissidents are also common. Likewise, the Cuban State uses arbitrary detentions - generally of short duration - as a method to harass independent journalists, among others.

382. Despite this situation, the regime discussed this year a constitutional reform that establishes the general obligation of the State to recognize, respect, and guarantee freedom of thought, conscience, and expression, whereas the 1976 Constitution contains no similar provision. Nevertheless, the IACHR and its Office of the Special Rapporteur note that the draft does not contain guarantees for the effective judicial protection of fundamental rights, maintains the single-party system, and still makes it impossible to establish media outlets—all of which impedes the functioning of a pluralist society.

### A. Violence in connection with the exercise of freedom of expression and the situation of impunity

383. In 2018, non-governmental organizations reported an ongoing policy of harassment by State security agencies against, *inter alia*, journalists, human rights defenders, activists, and political dissidents. According to these organizations, there has been “increased repression” in Cuba since 2017, when the government announced its general elections. According to the available information, for purposes of keeping such persons from freely carrying out their activities, the Cuban State used arbitrary detentions (generally of short duration), criminal proceedings, internal deportations, summonses to police centers, searches of their homes, pressure on family members, travel restrictions, and the confiscation of their work instruments. The information received shows that those affected are reportedly intercepted on the streets, and that State agents frequently conduct “seizures” during operations in which they search homes, intimidate family members, and detain journalists. In the cases reported, the authorities have allegedly refused to return the confiscated items and, according to reports, the political police have refused to provide a copy of the list of such items after seizing or confiscating materials and work equipment.<sup>539</sup>

384. In addition, there have been reports of restrictions on the right of free expression through, for instance, the use of preventive arrests to keep individuals from participating in protests, the excessive use of force in this context, and impunity in such cases. The IACHR and its Office of the Special Rapporteur have also been aware of frequent interrogations aimed at intimidating independent journalists. According to reports, those journalists were directly threatened by State agents with deprivation of liberty or other retaliation for the practice of journalism. According to one statement received, “the more critical [the media], the harsher they [security agents] were going to be in their treatment.”<sup>540</sup>

385. The procedures used for summoning journalists are irregular<sup>541</sup> and, with some frequency, State Security reportedly use non-police facilities to interrogate them. This was reported by Ileana Álvarez, Adriana

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<sup>538</sup> This chapter is a summary version of the Special Report on the situation of freedom of expression in Cuba, by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, and covers only the events that occurred during 2018.

<sup>539</sup> Diario de Cuba. May 9, 2018. [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'](#).

<sup>540</sup> Testimony of Diario de Cuba journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica*. Diario de Cuba. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>541</sup> According to the testimony of Ernesto Carralero Burgos, he was allegedly summoned to be interviewed the following day at the Department of Immigration. He said the summons was left by plainclothes police and not delivered directly, but through the president of the revolutionary defense committee of his building. Testimony of Diario de Cuba journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca*

Zamora, and Ernesto Carralero, who were summonsed to the Department of Immigration where they found that political police officers were waiting for them.<sup>542</sup> According to statements from Carralero, upon arrival at the Department of Immigration, he was received by two officers who introduced themselves as the Lieutenant of State Security who handles *Diario de Cuba*, in charge of “monitoring that specific platform,” and the Chief of the State Security Digital Platforms Monitoring Section. A similar situation occurred with journalists Rafael Gordo Núñez and Laura Rodríguez Fuentes, who were reportedly called into Immigration, but interrogated and threatened by State Security agents. Gordo Núñez reportedly stated that, among other things, he was threatened with detention “of up to 30 years,” and they gained access to his private conversations.<sup>543</sup>

386. Another practice concerns the harassment of female journalists by male officers. Iris Mariño, for example, indicated that she had been subject to 22 instances of harassment involving detentions and interrogations in which no female officer had been present. One such instance, she said, occurred on May 1, 2018, when she was allegedly arrested while attempting to take a picture in the street.<sup>544</sup> Previously, in February 2018, State Security agents reportedly threatened Adriana Zamora, a journalist with *Diario de Cuba*, saying they would cause her to miscarry. According to reports, during a police interview, she was told “to think of her other son.”<sup>545</sup> According to her husband, Mr. Carralero, they said that “anything can happen in the delivery room, you get the wrong medication and there you stay.”<sup>546</sup> This threat, made by a police official, is of great concern—especially considering that the health system in Cuba is under the exclusive control of the State.

387. The IACHR and its Office of the Special Rapporteur were also informed of various cases of independent journalists in Cuba who have reportedly had their homes searched, and their journalistic equipment confiscated by State agents. Thus, for example, *Diario de Cuba* contributor Eliécer Palma Pupo was reportedly detained for 72 hours. His home was also reportedly searched, at which time agents confiscated his work materials, including about 100 books—which the agents reportedly considered “subversive material”—and documents.<sup>547</sup> Other journalists from *Diario de Cuba* who have reportedly been detained or subject to harassment include: Osmel Ramírez of Holguín;<sup>548</sup> Maykel González Vivero of Villa Clara;<sup>549</sup> Frank Correa of Havana,<sup>550</sup> and Manuel Alejandro León of Guantánamo.<sup>551</sup> In addition, in February, immigration

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*de la libertad de expresión en Cuba: una represión sin huella jurídica.* *Diario de Cuba*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>542</sup> Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica.* *Diario de Cuba*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>543</sup> *Diario de Cuba*. July 8, 2018. [‘No queremos que estés del lado equivocado’, dice la Seguridad del Estado a un periodista independiente](#); CiberCuba. No date. [¿Cruzada contra los medios independientes? Policía detiene a varios periodistas cubanos esta semana](#).

<sup>544</sup> *Diario de Cuba*. May 1, 2018. [Una periodista independiente es detenida en Camagüey al intentar hacer una foto del Primero de Mayo](#); Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica.* *Diario de Cuba*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>545</sup> *Diario de Cuba*. February 2, 2018. [‘Tu embarazo depende de ti’, amenaza la Seguridad del Estado a la periodista de DDC Adriana Zamora](#); Civicus. February 16, 2018. [Journalists, human rights defenders and artists persecuted and harassed in Cuba](#); Cuba en Miami. February 2, 2018. [La Seguridad del Estado amenaza a una periodista gestante de 11 semanas: “Tu embarazo depende de ti”, le dicen los agentes](#).

<sup>546</sup> *Diario de Cuba*, February 2, 2018. [‘Tu embarazo depende de ti’, amenaza la Seguridad del Estado a la periodista de Diario de Cuba Adriana Zamora](#).

<sup>547</sup> *Diario de Cuba*. January 26, 2018. [El régimen detiene a Eliécer Palma Pupo, colaborador de DIARIO DE CUBA](#); Martí Noticias. January 30, 2018. [Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba](#).

<sup>548</sup> *Diario de Cuba*. June 23, 2018. [Liberado el periodista de DDC Osmel Ramírez tras ‘72 horas de injusta prisión’](#); *Diario de Cuba*. January 30, 2018. [La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo](#); Knight Center for Journalism in the Americas. June 26, 2018. [Cuban journalists report increase in detentions and other abuses of power by authorities](#).

<sup>549</sup> *Diario de Cuba*. January 30, 2018. [La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo](#); Martí Noticias. January 30, 2018. [Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba](#).

<sup>550</sup> *Diario de Cuba*. January 30, 2018. [La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo](#); Martí Noticias. January 30, 2018. [Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba](#).

<sup>551</sup> *Diario de Cuba*. January 30, 2018. [La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo](#); Martí Noticias. January 30, 2018. [Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba](#).

officials reportedly prevented Jorge Enrique Rodríguez from traveling abroad, alleging that he was subject to an “exit restriction.”<sup>552</sup>

388. In addition, several independent journalists were allegedly expelled from their State workplaces or studios. This is the case of Iris Mariño, who lost her job as a teacher at an art school in Camagüey, and Aimara Peña, who was allegedly expelled from the university.<sup>553</sup>

389. According to the available information, there has been ongoing repression in Cuba against the directors and journalists of the Cuban Institute for Freedom of Expression and the Press (ICLEP). In January, ICLEP’s Executive Director, Raúl Velázquez, was reportedly detained for 24 hours while traveling from Artemisa to Pinar del Río.<sup>554</sup> On June 25, ICLEP reported that, in the previous six days, its community media outlets had been subjected to “abuse of power and larceny” by the Political Police, which had confiscated newspaper equipment and raided four homes. It also indicated that ten journalists “have been the targets of numerous attacks, ranging from interrogations, to arbitrary arrests, to physical and psychological assaults.” Reported cases include those of Martha Liset Sánchez,<sup>555</sup> Liset Sánchez,<sup>556</sup> and Alberto Corzo.<sup>557</sup>

390. Journalists detained in 2018 reportedly include Roberto de Jesús Quiñones, who published on the *Cubanet* website;<sup>558</sup> Manuel Alejandro León Velázquez, a *Diario de Cuba* journalist and member of the audiovisual agency *Palenque Visión*;<sup>559</sup> and Eider Frómeto Allen.<sup>560</sup> In particular, it was reported that in August 2018 alone, at least 13 journalists were arbitrarily detained in different parts of Cuba.<sup>561</sup>

391. Retaliation, harassment, and detentions of journalists, activists, and human rights defenders who speak out about the situation of freedom of expression in Cuba before international forums continued in 2018. It was reported that members of the *Asociación Pro Libertad de Prensa* [Association for Press Freedom] (APLP)—Odalina Guerrero Lara, Manuel Morejón, Amarilis Cortina Rey, and Miriam Herrera Calvo—were reportedly interrogated by State Security after sending a report on the situation of the right to freedom of expression in Cuba to the UN Human Rights Council for the Universal Periodic Review (UPR); the same thing occurred after APLP Director José Antonio Fornaris and Guerrero Lara took part in an event in Geneva in December 2017. In February, four members of APLP were prevented from leaving the country to participate in a journalism workshop in Trinidad and Tobago. In May, the APLP’s headquarters were reportedly searched by the police and, that time, Fornaris was arrested. The agents also seized his personal belongings and a

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<sup>552</sup> *Diario de Cuba*. February 19, 2018. [El régimen impide viajar al periodista de DDC Jorge Enrique Rodríguez](#).

<sup>553</sup> *Diario de Cuba*. May 9, 2018. [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'](#); Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica*. *Diario de Cuba*.

<sup>554</sup> Martí Noticias. February 7, 2018. [Periodista Raúl Velázquez había sido detenido por la Seguridad del Estado](#); Inter American Press Association (IAPA). February 6, 2018. [Cuba: IAPA calls for urgent investigation into disappearance of journalist](#); Knight Center for Journalism in the Americas. February 6, 2018. [Executive director of Cuban press freedom organization goes missing amid threats against independent journalists](#).

<sup>555</sup> Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). June 25, 2018. [NOTA DE PRENSA #4: Cuando pensábamos que terminaba, la ola represiva contra los periodistas del ICLEP se extendió a Matanzas](#); Knight Center for Journalism in the Americas. June 25, 2018. [Cuban journalists report increase in detentions and other abuses of power by authorities](#).

<sup>556</sup> Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). February 7, 2018. [NOTA DE PRENSA: Aumenta represión contra directivos del ICLEP](#).

<sup>557</sup> Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). February 7, 2018. [NOTA DE PRENSA: Aumenta represión contra directivos del ICLEP](#); Inter American Press Association (IAPA). March 2, 2018. [Cuba: Detenciones y amenazas a la orden del día](#).

<sup>558</sup> CCDHRN. July 4, 2018. [Detienen al periodista independiente Roberto de Jesús Quiñones](#); Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). [Detenido abogado y periodista independiente cubano](#). July 5, 2018; *Diario de Cuba*. July 7, 2018. [La Seguridad del Estado amenaza a otro periodista independiente: 'Vas a saber lo que es represión'](#).

<sup>559</sup> *Diario de Cuba*. July 8, 2018. [El régimen detiene al periodista de DIARIO DE CUBA Manuel Alejandro León Vázquez](#); CiberCuba. No date. [Cruzada contra los medios independientes? Policía detiene a varios periodistas cubanos esta semana](#).

<sup>560</sup> *Diario de Cuba*. July 8, 2018. [El régimen detiene al periodista de DIARIO DE CUBA Manuel Alejandro León Vázquez](#).

<sup>561</sup> Among the journalists arrested were Mario Echeverría Driggs, from Dos Mundos agency; Osniel Carmona Breijo, from Cubamedia Press; Adriana Zamora and Ernesto Corralero, and Borís González Arenas, from *Diario de Cuba*; Henry Constantín and Iris Mariño, from *La Hora de Cuba*; Dagoberto Valdés, editor of the Project and magazine *Convivencia*; Alejandro Hernández Cepero, Roberto Rodríguez Cardona and Luis Cino Álvarez, from *CubaNet*; Oscar Padilla Suárez, from *Red de Periodistas Comunitarios*; Odalina Guerrero Lara, legal advisor to the APLP, and José Antonio Fornaris Ramos, journalist from the APLP. *Cubanet*. September 17, 2018. [Denuncian "terrorismo de estado" contra periodistas independientes en Cuba](#); Asociación Pro Libertad de Prensa (APLP). August, 2018. Available at: <https://www.cubanet.org/wp-content/uploads/2018/09/Agresiones-a-periodistas-agosto-2018.pdf>

variety of work equipment. According to Amarilis Cortina Rey, DSE officials explained that the search was conducted for the purpose of “gathering information on the activities of the APLP.”<sup>562</sup>

392. During this year, the organization *Damas de Blanco* [Ladies in White] reported that it continued to be subjected to attacks, harassment, and detentions, including in the cases of members Marta Sánchez,<sup>563</sup> Leticia Ramos Herrería,<sup>564</sup> Marisol Fernandez Socorro,<sup>565</sup> Micaela Roll Gibert, and Aimara Nieto Muñoz.<sup>566</sup> Additionally, at least 24 Ladies in White were reportedly arrested on the eve of May 1.<sup>567</sup> In June, police also reportedly detained Ramos Herrería’s son, Randy Montes de Oca Ramos, on charges of “disobedience, resistance, and contempt of public authority.” According to Ramos Herrería, “this is yet another act of retaliation” against her, intended to make her leave the country and Ladies in White.<sup>568</sup>

393. Several journalists reported having criminal proceedings brought against them for the alleged offense of impersonation of a public official.<sup>569</sup> Henry Constantín Ferreiro, Iris Mariño García, and Sol García Basulto, journalists from *La Hora de Cuba*, were reportedly accused of this crime.<sup>570</sup> Reports were also received of the cases of Eliecer Góngora Izaguirre, a member of the Patriotic Union of Cuba (UNPACU),<sup>571</sup> and Zaqueo Báez, Isamel Boris Reñí, and Maria Josefa Acón Sardiñas.<sup>572</sup> Isamel Boris Reñí reportedly already served a year in prison between 2016-2017, also for distributing discs and printed materials in the streets.<sup>573</sup> In June, Claudio Fuentes, of the independent project *Estado de Sats*, reportedly spent 24 hours incommunicado in a police unit for having posted videos critical of Miguel Díaz-Canel on social media.<sup>574</sup>

394. The UNPACU also denounced that several of its activists had been arrested near the upcoming elections in Cuba. In February, the detained activists reportedly included Gilberto Hernández Lago, Alexander Verdecia Rodríguez, Carlos Alberto Rojas, Yuri Sollet Soto, and José Antonio López Piña.<sup>575</sup> Later, in April, Zaqueo Báez Guerrero, Ismael Boris Renhi, Alberto de Caridad Ramírez Baró, Alberto Antonio Ramírez Odio, and Leonardo Ramírez Odio had reportedly been detained.<sup>576</sup> According to UNPACU leader José Daniel Ferrer, as of July, 55 members of the organization were reportedly in custody. Ferrer stated that most of the detained members had been charged with “public disorder,” “pre-criminal social dangerousness,” and “contempt of public authority” [*desacato*].<sup>577</sup>

395. Similarly, Uruguayan journalist Fernando Ravsberg announced in July 2018 that he would close the *Cartas desde Cuba* [Letters from Cuba] blog, which he had been writing from the island for several years. The information available indicates that the Ministry of Foreign Affairs did not renew his residence permit and

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<sup>562</sup> CubaNet. May 30, 2018. [Policía registra la sede de la Asociación Pro Libertad de Prensa en Cuba](#); 14yMedio. May 30, 2018. [La policía incauta los implementos de trabajo de la APLP tras un registro en su sede](#); “#Cuba The headquarters of the Asociación Pro Libertad de Prensa suffered this Wednesday morning a police raid, in a new chapter of repression against the independent press”. Twitter account of @yoanisanchez. [May 30, 2018](#); Inter American Press Association (IAPA). March 2, 2018. [Cuba: Detenciones y amenazas a la orden del día](#).

<sup>563</sup> Martí Noticias. April 8, 2018. [Dama de Blanco Martha Sánchez sigue detenida, policía rodea sede del grupo opositor](#).

<sup>564</sup> Infobae. April 30, 2018. [Al menos 24 Damas de Blanco detenidas en una nueva ola de arrestos y allanamientos del régimen cubano](#); Diario de Cuba. April 30, 2018. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco](#).

<sup>565</sup> Infobae. April 30, 2018. [Al menos 24 Damas de Blanco detenidas en una nueva ola de arrestos y allanamientos del régimen cubano](#); Diario de Cuba. April 30, 2018. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco](#).

<sup>566</sup> Martí Noticias. May 9, 2018. [“¡Abajo Díaz-Canel!”, gritan Damas de Blanco mientras las golpea la policía \(VIDEO\)](#).

<sup>567</sup> Infobae. April 30, 2018. [Al menos 24 Damas de Blanco detenidas en una nueva ola de arrestos y allanamientos del régimen cubano](#).

<sup>568</sup> Diario de Cuba. June 19, 2018. [La Policía detiene al hijo de Leticia Ramos y lo acusa de 'desobediencia, resistencia y desacato'](#); Martí Noticias. June 19, 2018. [Detenido hijo de Dama de Blanco Leticia Ramos Herrería](#).

<sup>569</sup> Martí Noticias. June 18, 2018. [Periodismo ciudadano y redes sociales. ¿prohibidos para opositores en Cuba?](#)

<sup>570</sup> Martí Noticias. June 18, 2018. [Periodismo ciudadano y redes sociales. ¿prohibidos para opositores en Cuba?](#)

<sup>571</sup> Martí Noticias. July 5, 2018. [Distribuyó información sobre Cuba Decide y ahora paga seis meses de cárcel](#).

<sup>572</sup> Martí Noticias. June 18, 2018. [Periodismo ciudadano y redes sociales. ¿prohibidos para opositores en Cuba?](#)

<sup>573</sup> Martí Noticias. June 18, 2018. [Periodismo ciudadano y redes sociales. ¿prohibidos para opositores en Cuba?](#)

<sup>574</sup> Martí Noticias. June 18, 2018. [Periodismo ciudadano y redes sociales. ¿prohibidos para opositores en Cuba?](#)

<sup>575</sup> Martí Noticias. February 12, 2018. [UNPACU denuncia alza de represión mientras se acercan elecciones en Cuba](#).

<sup>576</sup> Diario de Cuba. April 30, 2018. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco](#).

<sup>577</sup> Martí Noticias. July 1, 2018. [Denuncian violencia contra miembros de UNPACU en prisión](#).

authorization to work on the island. According to the International Press Center, which reports to MINREX, the accreditation had simply expired. For his part, the journalist believed that it was related to the fact that UPEC officials questioned his “allowing people opposed to the Revolution to criticize it” in his blog. He further reported that, weeks prior to the announcement of its shutdown, the blog page received “thousands of daily attacks, some generated by robots, seeking out our vulnerabilities.”<sup>578</sup>

396. The Inter-American Commission reiterates that Principle 9 of the Declaration of Principles establishes that “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” Moreover, as established by the United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS), the State “has the duty to ensure that journalists and media workers [...] are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.”<sup>579</sup>

397. For this reason, the IACHR once again urges the government to take the necessary measures to guarantee the free practice of journalism and the safety of those who face special risks in the exercise of their right to freedom of expression, whether the threats come from State agents or private individuals. Moreover, in addition to ensuring that diligent, impartial, and effective investigations are carried out into such acts, the IACHR urges the State of Cuba to ensure that the perpetrators are tried by impartial and independent courts, removing legal obstacles to the investigation and punishment of those crimes.

## **B. Subsequent liability**

398. In Cuba, the criminal law and the offense of contempt of public authority are used as a mechanism to impose subsequent liability on persons who express or disseminate critical ideas, opinions, or information on matters of public interest, or toward the government. This year, the IACHR and its Office of the Special Rapporteur have observed an upsurge in the country in the criminalization of academics, journalists, artists, and activists, through the application of criminal offenses that penalize criticism of public officials. In many of these cases, defendants are immediately deprived of their liberty. On this point, the IACHR and its Office of the Special Rapporteur have maintained that the provisions on contempt of public authority are incompatible with the inter-American human rights system because they lend themselves 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.”<sup>580</sup> They have similarly affirmed that citizens are entitled to “to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office.”<sup>581</sup>

399. On May 8, Doctor of Biological Sciences Ariel Ruiz Urquiola was sentenced to a year in prison by the Viñales Municipal Court, in a summary trial, for the crime of contempt of public authority. The conviction was upheld on appeal, on May 22, by the First Criminal Chamber of the Popular Provincial Court of Pinar del Río. On July 3, the biologist was freed on conditional release [*licencia extrapena*] for health reasons, after he went on a 16-day hunger and thirst strike to protest his situation.<sup>582</sup>

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<sup>578</sup> Diario de Cuba. July 13, 2018. [‘El cerco se ha cerrado’: Fernando Ravsberg anuncia el fin de su blog ‘Cartas desde Cuba’](#).

<sup>579</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>580</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, page 223 (Spanish version).

<sup>581</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, page 218 (Spanish version).

<sup>582</sup> El Nuevo Herald. May 9, 2018. [Científico cubano es condenado a un año de cárcel por “desacato” a las autoridades](#); El Estornudo. June 28, 2018. [Ariel Ruiz Urquiola: “En una situación de indignidad no voy a vivir”](#); BBC. July 6, 2018. [Quién es Ariel Ruiz Urquiola, el científico cubano sentenciado a un año de cárcel por criticar a las autoridades](#); Univisión. July 3, 2018. [Liberan al científico cubano condenado a un año de prisión por llamar “guardia rural” a un guardabosques](#); Amnesty International. June 11, 2018. [Urgent Action - Environmental activist imprisoned](#); The Washington Post. July 9, 2018. [Ariel Ruiz Urquiola, un hombre libre en una sociedad presa](#).

400. on May 3, 2018, officials from the Ministry of the Interior's Forest Ranger Corps entered the lands that Ruiz Urquiola was reportedly using in Viñales National Park, in order to ask him to demonstrate ownership of his work instruments and show them the legal permits for the activities he was carrying out. The officials reportedly refused to show official identification, so the biologist referred to them as "rural guards," a term that is said to have a negative connotation in Cuba.<sup>583</sup> The same day, Ruiz Urquiola was reportedly arrested and charged with having committed the crime of contempt of public authority against the forest rangers. Previously, in 2016, he had been expelled from the Center for Marine Research (CIM) of the University of Havana allegedly for his political opinions and for having reported at an academic event in 2008, through the results of his doctoral research, that the government was allowing the fishing of endangered turtles.<sup>584</sup>

401. It was reported that Eduardo Cardet Concepción, coordinator of the Christian Liberation Movement (MCL), remained in prison pursuant to a March 2017 conviction for the offense of "attack against a public authority." Cardet Concepción was reportedly arrested on November 30, 2016, a few days after Fidel Castro's death, after allegedly criticizing him in an interview during a national mourning period imposed by the Cuban government.<sup>585</sup> On February 24, 2018, the IACHR granted precautionary measures on his behalf so that, among other things, the Cuban government would take the necessary measures to guarantee his life and personal integrity.<sup>586</sup>

402. In view of the foregoing, the IACHR once again urges the Cuban Government to repeal the laws establishing the offense of contempt of public authority, regardless of the form in which they are presented, given that such provisions are contrary to inter-American standards and restrict public debate, which is essential to the functioning of democracy. The State should also amend the criminal defamation laws that protect reputation and honor when information is disseminated on matters of public interest, on public officials, or on candidates for public office; and encourage democratic debate through public statements, practices, and policies that promote tolerance and respect for all people, on equal terms, whatever their thoughts or ideas.

### C. Freedom of Expression and Internet

403. In recent years, the use of the Internet and the development of digital media has opened up spaces for the circulation of information and ideas in Cuba outside official control. It has been thanks to these technologies that independent media have emerged, in addition to blogs and websites dedicated to cultural groups, activism, and social demands. Nevertheless, the IACHR and its Office of the Special Rapporteur have received information indicating that the Cuban population faces serious obstacles to connectivity and universal Internet access. In addition to the limited connectivity in Cuba, according to different sources, part of the content hosted on the global Internet is not accessible from Cuba because it is blocked or filtered by the authorities. According to reports, the number of censored websites has grown in recent years, and in order to access sites such as the news sites *CiberCuba*, *14ymedio* and *Cubamet*, Cubans use virtual private network (VPN) services or websites that function as anonymous proxies. In some cases, the blocks are temporary, but others it has proved to be impossible to access websites, platforms, and social networks like Facebook, Twitter, Youtube, Yahoo, MSN, and Hotmail.<sup>587</sup> The IACHR and its Office of the Special Rapporteur have also

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<sup>583</sup> El Nuevo Herald. May 9, 2018. [Científico cubano es condenado a un año de cárcel por "desacato" a las autoridades](#); El Estornudo. June 28, 2018. [Ariel Ruiz Urquiola: "En una situación de indignidad no voy a vivir"](#); BBC. July 6, 2018. [Quién es Ariel Ruiz Urquiola, el científico cubano sentenciado a un año de cárcel por criticar a las autoridades](#); Univisión. July 3, 2018. [Liberan al científico cubano condenado a un año de prisión por llamar "guardia rural" a un guardabosques](#); Amnesty International. June 11, 2018. [Urgent Action - Environmental activist imprisoned](#); The Washington Post. July 9, 2018. [Ariel Ruiz Urquiola, un hombre libre en una sociedad presa](#).

<sup>584</sup> Human Rights Foundation (HRF). June 29, 2018. [HRF a Cuba: Dictadura debe liberar al científico ambientalista Ariel Ruiz](#); Revista El Estornudo. June 28, 2018. [Ariel Ruiz Urquiola: "En una situación de indignidad no voy a vivir"](#).

<sup>585</sup> 14yMedio. March 22, 2017. [Amnistía Internacional dice que la condena a Cardet demuestra poca libertad de expresión](#); El Confidencial/EFE. March 21, 2017. [Opositor cubano Cardet condenado a 3 años de cárcel acusado de una agresión](#); Martí Noticias. March 18, 2017. [Ratifican sentencia a médico opositor Eduardo Cardet](#); Martí Noticias. June 10, 2018. [Acción urgente de Amnistía Internacional por Cardet recibe apoyo dentro y fuera de Cuba](#).

<sup>586</sup> IACHR. [Resolución 16/2018 – Medida Cautelar No. 39-18, Eduardo Cardet Concepción respecto de Cuba](#). February 24, 2018.

<sup>587</sup> Committee to Protect Journalists (CPJ). [Connecting Cuba: More Space for Criticism but Restrictions Slow Press Freedom Progress](#). 2016; Committee to Protect Journalists (CPJ). [Attacks on the Press. Journalism on the front lines in 2013. Cuba](#). 2013.

received information about alleged surveillance activities to monitor Internet users, contrary to the right to privacy and data protection.

404. In July it was reported that the new messaging app toDus, created by the University of Information Science (UCI) and ETECSA, endangered users' personal data held by the government. In particular, it was reported that the application asks "to connect with friends and family and exchange photos and videos with them, and gives ToDus access to your contacts, photos, media, and general files stored on your device." In addition, according to the terms of service, the user would reportedly agree "not to make comments that are offensive or contrary to morality, as well as those that denigrate or offend governments or government policies."<sup>588</sup>

405. In February, the digital magazine *El Estornudo* reported that the Cuban government had blocked access to its website in Cuba. The magazine, which reached its two year anniversary in March, stated in an editorial entitled "*Nota al Censor: ¿Por qué no puede leerse El Estornudo en Cuba?*" [Note to Censor: Why can't you read *El Estornudo* in Cuba?] that Cuba is a "country where printed publications cannot circulate outside the boundaries of the State, where access to the Internet is extremely limited, and where they then block your media outlet's address so that no one can read you even through limited access."<sup>589</sup>

406. More recently, on December 4, Etecsa President Mayra Arevich announced that as of December 6, Cuban citizens would be offered full Internet access on mobile phones. According to the announcement, on this date, Cubans could start subscribing to 3G service.<sup>590</sup>

407. As the Rapporteurs on Freedom of Expression of the UN, the Organization for Security and Cooperation in Europe (OSCE), the OAS, and the African Commission on Human and Peoples' Rights (ACHPR) stated in their Joint Declaration of 2011,<sup>591</sup> "Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure—analogueous to banning a newspaper or broadcaster—which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse." They similarly recalled, among other things, that "Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression."

408. Furthermore, the IACHR recalls that respect for privacy is a guiding principle of the digital environment. The right to privacy, according to which no one may be subject to arbitrary or abusive interference with his privacy, family, home, or correspondence, is a prerequisite for the exercise of the right to freedom of expression online, which must be protected by law and strictly promoted in public policy.<sup>592</sup> This point is closely linked to the State's obligation to create a safe environment for the exercise of freedom of expression, as the violation of communication privacy has a chilling effect and hinders the full enjoyment of the right to communicate.<sup>593</sup> Internet surveillance, in any of its forms, constitutes interference in the private lives of people and, when conducted illegally, can also affect the rights to due process and a fair trial, freedom

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<sup>588</sup> Martí. July 5, 2018. [Nueva App creada en la UCI compromete información de usuarios, alerta Yoani Sánchez](#); Cubanos por el mundo. No date, [Yoanis Sánchez advierte que el "Whatsapp cubano" compromete información de usuarios](#).

<sup>589</sup> Revista El Estornudo. February 26, 2018. [Nota al Censor: ¿Por qué no puede leerse El Estornudo en Cuba?](#)

<sup>590</sup> Telemundo 51. December 4, 2017. [Cuba dará acceso a internet en teléfonos celulares](#); The New York Times. December 5, 2018. [Cuba Will Allow Full Internet Access on Phones Starting This Week](#); El Nuevo Día. December 5, 2018. [Llega el internet a los teléfonos móviles en Cuba](#).

<sup>591</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

<sup>592</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 130; 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. Para. 10.

<sup>593</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 23. 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. Para. 10.

of expression, and access to information.<sup>594</sup> To protect privacy on the Internet, the confidentiality of personal online data must be guaranteed,<sup>595</sup> through any email, messaging, or other service.

409. Therefore, the IACHR reiterates to the Cuban government that it should extend connectivity to the Internet without restrictions, thus promoting universal access to the Internet in order to guarantee the effective enjoyment of the right to freedom of expression. The IACHR reiterates to the Cuban government that it should ensure that provisions regulating Internet access in the country comply with international standards protecting the right to freedom of expression and thought, including the right to privacy and the right to seek, receive, and impart ideas and information, without unnecessary restrictions. Similarly, the Cuban State should refrain from carrying out any type of surveillance or handling of data, including the storage, analysis, and disclosure of personal data, except when it is legitimate to do so or when the person concerned has given his or her informed consent; and it should adopt regulatory measures aimed at prohibiting these practices and establishing effective and independent oversight mechanisms.

#### **D. Constitutional Reform<sup>596</sup>**

410. The IACHR and its Office of the Special Rapporteur take note of the constitutional reform process currently underway in Cuba.<sup>597</sup> The information available indicates that, at the end of July 2018, the “Draft Constitution of the Republic of Cuba” was published, reportedly to be subject to popular consultation between August and November of the same year. According to the information available, the one-party political system and centralized economy is generally maintained, so the restrictions on the political rights of Cubans remain in force. In addition, the text of the draft amended Constitution expressly includes the obligation “to guarantee the enjoyment and exercise by the individual of the inalienable, indivisible and interdependent enjoyment and exercise of human rights, in accordance with the principle of progressivity and without discrimination.”<sup>598</sup> In addition, the preamble to the draft announces the intention to establish all “rights in keeping with the relevant international instruments to which Cuba is a party.”<sup>599</sup> These most notably include freedom of thought, conscience, and expression, as well as the right to a defense, due process, popular participation, and access to the courts.<sup>600</sup> However, the draft also contains provisions that are incompatible with Cuba’s human rights obligations.

411. The IACHR and its Office of the Special Rapporteur note that Article 56 of the Draft Constitution presented for public consultation recognizes that “All persons have the right to receive truthful, adequate, and timely information from the State, in accordance with established regulations.”<sup>601</sup> The provision appears to reflect progress, given that the 1976 Constitution does not recognize the right of access to information;

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<sup>594</sup> 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. Para. 212; United Nations. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#). A/HRC/23/40. April 17, 2013.

<sup>595</sup> 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. Para. 204.

<sup>596</sup> The IACHR in a press release dated March 4, 2019, reported that the reform process was concluded with the referendum held on February 24, 2019. On this occasion, the Commission expressed its concern, among others, regarding the possibility that the referendum may not have complied with the conditions necessary for free, secret, reliable, independent elections that safeguard the principles of universality and plurality. IACHR. March 4, 2019. [Press Release No. 058-19. IACHR Concerned about Cuba’s New Constitution and its Implementation](#).

<sup>597</sup> According to the information available, on June 2, 2018, the National Assembly agreed to initiate this process and created a Commission responsible for preparing the Draft Bill, which was presided over by Army General Raúl Castro Ruz and composed of 33 deputies. This Commission presented a Draft of a new Constitution to the VII Plenum of the Central Committee of the Party and the Council of State. Subsequently, it was presented to the National Assembly of People’s Power for approval, which took place on July 21 and 22, 2018. Granma. [Preparan proceso de consulta del Proyecto de Constitución](#). July 30, 2018; Alianza Regional por la libre Expresión e Información. [Acceso a la Información y la Libertad de Expresión en Cuba – Primer Reporte](#). 2018. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>598</sup> The draft Constitution in Article 39 states: The Cuban State guarantees the enjoyment and inalienable, indivisible and interdependent exercise of human rights of the person, in accordance with the principle of progressivity and non discrimination. Their respect and guarantee are obligatory for all. The rights and duties recognized in this Constitution are interpreted in accordance with international human rights treaties ratified by Cuba. [Proyecto de Constitución de la República de Cuba](#)

<sup>599</sup> [Proyecto de Constitución de la República de Cuba. Introducción al análisis del Proyecto](#).

<sup>600</sup> [Proyecto de Constitución de la República de Cuba](#), Title IV: Rights, duties and guarantees.

<sup>601</sup> [Proyecto de Constitución de la República de Cuba, artículo 56](#).

however, the wording does not fully address the scope and content of the right of access to information. According to 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.”

412. The IACHR and its Office of the Special Rapporteur similarly observe that the draft contains two other provisions directly referring to freedom of speech and of the press: Articles 59 and 60. The first of these provides as follows:

ARTICLE 59. The State recognizes, respects and guarantees freedom of thought, conscience and expression.

Conscientious objection may not be invoked for the purpose of evading law enforcement or preventing another from fulfilling it or exercising his or her rights.

413. The IACHR and its Office of the Special Rapporteur note that that the draft establishes the general obligation of the State to recognize, respect, and guarantee freedom of thought, conscience, and expression, while the 1976 Constitution contains no similar provision. However, in order for such rights to become a reality in Cuba, decisive action must be taken to bring them into line with other constitutional provisions and to establish an appropriate regulatory framework that does not contain arbitrary restrictions on their exercise, but rather serves as the framework for correcting the ongoing practice of persecuting journalists.

414. In this regard, it is troubling that the draft constitutional reform introduced would retain the main restrictions of the current legal system with regard to freedom of expression, which render the exercise of the right illusory and make it a recognition that may be merely rhetorical. This is related to Article 60 of the Draft Constitution, which would replace Article 53 of the current Constitution. This provision establishes:

ARTICLE 60. Citizens are entitled to freedom of the press. This right is exercised in accordance with the law.

The fundamental means of social communication, in any of its forms, are the socialist property of all the people, which ensures that they are used in the service of society as a whole.

The State establishes the principles of organization and operation for all media.

415. According to this wording, although freedom of the press would no longer be subject to the “objectives of socialist society,” it seems to maintain the obstacles to media other than State media. As the provision expressly states, the media “are the socialist property of all the people.” This is even more troubling considering that the aforementioned Article 5 designating the PCC as the highest leading force also remains. The Office of the Special Rapporteur. The IACHR and its Office of the Special Rapporteur recall that the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information.” Furthermore, “The State should not have monopoly control over the media and should promote plurality of the media,” as stated in General Comment 34 of the United Nations Human Rights Committee, also cited in various decisions by the Commission and the Inter-American Court of Human Rights.<sup>602</sup>

416. The IACHR and its Office of the Special Rapporteur observe that, with regard to the economic system, the Draft Constitution maintains as core principles the socialist ownership of all people over essential media and planning, but does acknowledge the role of the market and new forms of non-State ownership, including private ownership.<sup>603</sup> In keeping with this liberalization, one of the areas in which private ownership should be allowed as a matter of priority is the media, given how closely this area is connected to the enjoyment of a wide range of rights and freedoms. Maintaining the State monopoly over the media is also contradictory to an

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<sup>602</sup> United Nations. Human Rights Committee. General comment N° 34. Article 19: Freedoms of opinion and expression. CCPR/C/GC/34. September 12, 2011. para. 40; I/A Court H. R. *Case of Granier et al. (RCTV) vs. Venezuela*. Preliminary Objections, Merit, Reparations and Costs. Judgment of June 22, 2015. Serie C, No. 293. Para. 143. 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. CIDH/RELE/INF.16/17. March 15, 2017. para. 153. 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>603</sup> [Proyecto de Constitución de la República de Cuba](#).

aspect that seems central to this process of constitutional reform: the affirmation of Cuba as a democratic State governed by the rule of law.<sup>604</sup> In other words, we cannot speak of the existence of a democratic system without full respect for freedom of expression and the possibility for citizens to exchange information, ideas, and opinions from a variety of sources without interference.

417. Nor is there adequate regulation to meet the requirements of freedom of expression in relation to audiovisual communication, both from the point of view of access to resources to establish media outlets (granting, renewal, and revocation of licenses to operate radio and television frequencies), and in terms of the essential guarantees for the media to be virtually open to all without discrimination, which—as the Inter-American Court has pointed out—is an inherent requirement for the functioning of the media.<sup>605</sup> With regard to the Internet, the Draft Constitution does not contain rules on ensuring an accessible, open, and neutral Internet.

418. For all of the above reasons, the IACHR urges the Cuban State to bring the “Draft Constitution of the Republic of Cuba” into line with the relevant standards on human rights and freedom of expression.

### **E. Other relevant situations**

419. Information received recently indicates that numerous artists—such as theater directors, musical groups, writers, and others—continue to experience severe harassment designed to prevent them from expressing their social and political concerns through art. In addition, penalties for noncompliance with the cultural policy were recently adopted by Decree No. 349 of April 20, 2018 of the Council of Ministers. This policy establishes, in general terms, that Cuban artists must be qualified by the State in order to practice professionally. Only artists registered in the Registry of Fine Art and Applied Art Creators may give presentations, render services in public, or have commercial spaces. They are reportedly required to establish ties with a State institution in order to obtain remuneration for their work, and only institutions authorized by the Ministry of Culture or the Cuban Institute of Radio and Television (ICRT) may enter into working or commercial arrangements with artists. They may not enjoy productions and performances, or develop and exhibit their skills in public, without State authorization. State officials reportedly have the authority to decide when a work of art fails to meet ethical, cultural, or other broad criteria. The measures they can apply range from fines or the confiscation of property to the immediate suspension of the show or cancellation of the authorization to carry out the activity.

420. One of the main concerns regarding these regulations is that they contain limitations on equal access to decent work for all, regardless of political opinion. They also establish a system of prior censorship for cultural activities, the arts, and other forms of artistic expression, which is contrary to freedom of expression.<sup>606</sup> Moreover, they impose restrictions that neither pursue a legitimate aim nor are strictly necessary in a democratic society. Also of concern is the authorization of State agents to decide, at their discretion, whether any artistic expression promotes values considered contrary to the regime.<sup>607</sup> According to the available information, the Decree entered into force on December 7, and is supposed to be “implemented in a ‘consensual’ and ‘gradual’ manner.”<sup>608</sup>

421. On December 5, artist Tania Bruguera was reportedly detained on her way to a protest against Decree No. 349 outside the Ministry of Culture. This was reportedly the third time in a week that Bruguera was taken into custody. According to the available information, State Security had “warned her that if she went out, she would be detained.” She had previously been arrested on December 3 upon leaving her home,

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<sup>604</sup> Different provisions refer to the democratic character of the Cuban State, in particular Article 96 of the bill states: The State organs are integrated and carry out their activity on the basis of the principles of socialist democracy that are expressed in the following rules: (...) g) the freedom of discussion, the exercise of criticism and self-criticism and the subordination of the minority to the majority rule in all state collegiate bodies. [Proyecto de Constitución de la República de Cuba](#).

<sup>605</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. Serie A No. 5 para. 34.

<sup>606</sup> 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, Paras. 71-73.

<sup>607</sup> Cubalex. August 15, 2018. [La relación entre el Decreto 349 y la política cultural del Estado cubano en 7 puntos](#).

<sup>608</sup> 14yMedio. December 8, 2018. [El Gobierno frena la aplicación total del Decreto 349 y propone que sea gradual](#).

and on December 4 while participating in a protest outside the Ministry of Culture.<sup>609</sup> According to reports, other artists who were also arrested on December 3 include Luis Manuel Otero Alcántara, Yanelys Núñez Leyva, Amaury Pacheco, and Michel Matos.<sup>610</sup>

422. It was also reported this year that the political police had kept the literary event *Palabras Excluidas* [Excluded Words], scheduled for February 3 at the Dissidence Museum, from taking place. State Security reportedly prevented several writers from reaching the venue, as was the case with the writer Ángel Santiesteban. According to reports, Santiesteban was detained when he left his home to make his way to the literary event.<sup>611</sup> The Office of the Special Rapporteur notes that this occurred despite the fact that Santiesteban and his son are beneficiaries of precautionary measures granted by the IACHR in September 2014.<sup>612</sup>

423. In addition, in February 2018, painter Luis Trápaga and activist Lía Villares, artists from the El Círculo Gallery, were reportedly detained for 24 hours. Villares was also reportedly questioned about his connection to the distribution of documents and stickers about the “*Cuba Decide*” campaign. The house serving as the gallery was also searched, and the police reportedly seized USB flash drives, computers, cell phones, video and photo cameras, and hard drives containing the interviews Villares conducted with various censored artists. This material was going to be used for the documentary that she was making, called *Arte Libre vs. Censura Totalitaria* [Free Art vs. Totalitarian Censorship].” According to reports, in late 2017, the El Círculo Gallery had been subjected to various instances of censorship, including the detention of the artists.<sup>613</sup> Other artists reportedly censored in Cuba include writer and journalist Jorge Enrique Rodríguez, the director of the television project *Lente Cubano* Iliana Hernández, and Luis Manuel Otero Alcántara.<sup>614</sup> According to the available information, Rapper Maikel Castillo Pérez, “MC El Osokbo,” has reportedly been detained since September 24, following a September 21 concert in Havana, to which he had invited various rappers who had spoken out against Decree No. 349.<sup>615</sup>

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<sup>609</sup> AFP. December 5, 2018. [Artista Tania Bruquera detenida en Cuba por protestar contra decreto oficial](#); El Nuevo Herald/AFP. December 5, 2018. [Tania Bruquera detenida por tercera vez en Cuba por protestar contra un decreto oficial](#); The Guardian. December 6, 2018. [Cuban artists fear crackdown after Tania Bruquera arrest](#).

<sup>610</sup> 14yMedio. December 3, 2018. [Arrestados varios activistas que protestaban en el Ministerio de Cultura contra el Decreto 349](#); 14yMedio. December 5, 2018. ["La lucha contra el Decreto 349 continúa", asegura Amaury Pacheco tras ser liberado](#).

<sup>611</sup> Diario de Cuba. February 4, 2018. [La Seguridad del Estado impide la celebración de un evento literario con escritores censurados](#); Martí Noticias. February 4, 2018. [Policía política reprime evento literario contra la censura en Cuba](#).

<sup>612</sup> IACHR. [Resolución 26/2014](#), MC 206-13. *Asunto Ángel Lázaro Santiesteban Prats respecto de Cuba*, September 26, 2014.

<sup>613</sup> 14yMedio. February 4, 2018. [La policía detiene durante 24 horas a los artistas de la galería El Círculo](#).

<sup>614</sup> Diario de Cuba. May 13, 2018. [#00Bienal: el régimen responde al arte independiente con represión](#); Martí Noticias. February 27, 2018. [Creadores buscan espacios fuera de la UNEAC y las instituciones oficiales de Cuba](#).

<sup>615</sup> Diario de Cuba. September 29, 2018. [Detenido el rapero Maikel Castillo Pérez tras un concierto contra el Decreto Ley 349](#); 14yMedio. December 11, 2018. [Crece la preocupación por la salud de rapero en huelga de hambre](#).

### 13. DOMINICA

#### A. Subsequent Liability

424. According to the information available, the representative of the United Workers Party (UWP) and opposition leader Lennox Linton reportedly announced that the party's lawyers were instructed to pursue legal actions for defamation against the Minister of Agriculture Reginald Austrie, the television presenter Simeon Albert, and the radio station Kairi FM, due to alleged statements made by the minister where he accused UWP members of writing to Ross University asking them not to return to the country<sup>616</sup>.

425. In another case, according to available information, a court awarded \$160,000 in compensation to a police officer for a defamation case against QFM and the presenters Mathias Peltier and Angelo Allen. The facts that motivated the defamation lawsuit would have occurred in 2015. According to the publication, the presenters would have been sued for allowing anonymous people to make public statements on the radio in which they pointed to the police officer as corrupt and dishonest<sup>617</sup>.

426. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as "the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a 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>618</sup>

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<sup>616</sup> Dominica News Online. August 3, 2018. [UWP takes legal action against Austrie, Albert and Kairi FM](#); Da Vibes. August 8, 2018. [Deputy PM will not be intimidated by legal action threat](#).

<sup>617</sup> Dominica News Online. June 5, 2018. [Court awards police superintendent \\$160,000 in defamation lawsuit](#); The Sun. June 19, 2018. [Radio Talk Show Hosts Peltier and Allen to Pay Large Sum in Damages](#).

<sup>618</sup> I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

## 14. ECUADOR

427. In August 2018, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) paid an official visit to Ecuador to evaluate the situation of freedom of expression in the country at the invitation of President Lenín Moreno, as part of the process for the normalization of the Ecuadorian State's relations with civil society, the media, journalists, and international human rights monitoring bodies. This visit was coordinated with the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who also made an official visit to the country in October 2018.

428. The country visit showed that Ecuador's public institutions are undergoing a transition process that seeks to overcome the consequences of the authoritarianism implemented under Rafael Correa's presidency and to dismantle repressive practices aimed at narrowing democratic space. The Office of the Special Rapporteur recognizes as significant progress the measures taken by the current administration of President Lenín Moreno to put a stop to these violations of the right to freedom of expression and reverse their effects. Similarly, it applauds the measures taken to ensure public acknowledgement of the importance of the work of the press and the defense of human rights in a democratic society, through statements by State authorities, public events, and the dialogue initiated with these sectors of society.

429. The following are the preliminary observations presented by Special Rapporteur Edison Lanza at the conclusion of his country visit at the press conference held on August 24. At that time, the Office of the Special Rapporteur presented its preliminary observations with respect to: 1) the stigmatization of critical journalists and dissidents; 2) the Communications Act (*Ley Orgánica de Comunicación*) (LOC) and its amendment process; 3) the right to freedom of expression and the use of criminal law; 4) Safety for journalists and impunity; 5) access to public information; 6) pluralism and diversity; 7) the Internet and freedom of expression; and 8) social protest and the criminalization of protestors and human rights defenders. These observations will be further developed in a Special Country Report to be published in 2019, in conjunction with the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

### A. TRANSITION FROM AUTHORITARIANISM TO AN AUTONOMOUS AND DEMOCRATIC CIVIC SPACE

430. Between 2007 and 2017, the Office of the Special Rapporteur on Freedom of Expression documented how the government of Ecuador, headed by President Rafael Correa, designed and implemented a systematic policy to discredit, stigmatize, constrain, and punish—through the use of criminal and administrative law—journalists, the media, human rights defenders, and political opponents. Journalists who investigated and disseminated information that the government considered to be false or contrary to its interests, social leaders, human rights defenders, and opponents who disseminated opinions and ideas contrary to the political movement it called the “citizen revolution” were particularly targeted for this coordinated action by the State apparatus.

431. The Office of the Special Rapporteur recognizes that there was a progressive and substantial turnaround in this situation with the arrival of the current President Lenín Moreno. The President acknowledged the systemic violation of fundamental rights and freedoms, and took on the task of dismantling this climate of repression in areas such as the press, the defense of environmental rights, the rights of indigenous peoples, and the political sphere. In its Annual Report for 2017, the Office of the Special Rapporteur explicitly acknowledged this change of position and stressed that the current president and a large part of his team, through public statements, public events, and dialogue, have recognized the role played by journalists, the media, indigenous peoples, human rights defenders, and the political opposition in a democratic society. The President and his administration have also taken the first steps to align the legal and institutional framework, as well as the State's communication policy, with international standards on freedom of expression. Thus, for example, the Special Rapporteur welcomes the introduction to the National Assembly of a bill to amend the Communications Act (LOC), which was enacted on December 18 of this year by the Plenary of the National Assembly, and will be sent to the Executive Branch for review before publication in the Official Register.

#### *i) Stigmatization of critical journalists and dissidents*

432. The years of former President Rafael Correa's administration were marked by a constant and systematic stigmatization of investigative journalists, critical columnists, and dissidents in general. Through

his Saturday program (“*Enlace Ciudadano*”), the former head of state regularly criticized and discredited journalists, media outlets, and civil society organizations that did not toe the government line.

433. In its Annual Reports, the Office of the Special Rapporteur has provided a detailed account of the death threats, personal assaults, and intimidation against various reporters, journalists, and Twitter users. Thus, the 2017 Annual Report detailed how Correa described the newspapers *Expreso* and *El Universo* and some columnists as the “corrupt press” and “ignorant,” accused them of acting in “bad faith,” and said he was “embarrassed for them.” In addition, among other similar acts, on January 21, 2016, had called the media into question for not giving sufficient coverage to the celebration of his government’s ten-year anniversary, and accused the newspapers *El Comercio* and *La Hora* of being “corrupt” and of engaging in “prior censorship” for not covering the ceremony as front page news. The Report also details how Correa repeatedly accused the organization *Fundamedios* of being part of a plan to destabilize his government and of trying to tarnish the country’s image.

434. On several occasions, former President Correa called on his Twitter followers to find out and expose the identity and personal details of people who insult and criticize him on social media.

435. According to monitoring by civil society organizations, the sharp decline in the government’s confrontation with the media has had a positive impact on the safety of journalists and media personnel in the performance of their work. During the official visit, journalists, media directors, indigenous leaders, and human rights defenders acknowledged that the new administration has shown “greater openness” and “tolerance” toward journalistic work, which has led to a decrease in attacks on freedom of expression. Civil society reports that the elimination of the *Enlace Ciudadano* program and changes in the editorial line of the state-owned media—which had been used to attack and wage campaigns to disparage those who thought differently—are positive signs from the current government.

436. 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.”

437. The Rapporteur has also repeatedly stated that constant disparagement and stigmatization create a climate that prevents reasonable and pluralistic deliberation on all public issues and that it is the responsibility of States to contribute to a climate of greater tolerance and respect for the ideas of others, even when such ideas are offensive or disturbing.

#### ***ii) Organic Law on Communication and its amendment process***

438. The Office of the Special Rapporteur for Freedom of Expression expressed its serious concern about this law prior to its enactment, through communications sent to the State, press releases, and during the hearings convened by the IACHR to address the situation in Ecuador. In particular, this Office noted the departure from international standards in areas such as: the creation of vague and ambiguous concepts such as so-called “media lynching”; the inadequate regulation of the right of reply; the imposition of prerequisites for truthfulness; the imposition of information as “prior censorship”; the compulsory membership of journalists in a professional association; the prohibition against disseminating information of public interest related to judicial proceedings; the lack of independence of the enforcement body; and the disproportionate punitive sanctions regime it established.

439. Nevertheless, in 2013, neither the Executive Branch nor the National Assembly accepted the recommendations of the Office of the Special Rapporteur; the Organic Law on Communication was enacted and, as mentioned above, was accompanied by institutions and enormous resources dedicated to penalizing the media and journalists. In the meetings held during the official visit with public, private, and community media outlets, journalists, and civil society organizations, as well as with dozens of State officials, there was a consensus that the law was used as an instrument of persecution and restriction of the right to freedom of expression, which seriously affected the functioning of the media and journalism in Ecuador.

440. In addition, some provisions that did meet international standards, such as recognition of the community sector, the strengthening of public media, and the reduction of media concentration, were not fully observed; also, many of these provisions were not applied when it came to related media. Community

and indigenous media highlighted this aspect of the law, but complained that over the past decade they had been compelled to align themselves with the government through their media outlets.

441. During the first three years of its operation, the Superintendency of Information and Communication (SUPERCOM) opened a total of 1,190 proceedings at the national level, according to figures provided by the State. In 705 of these cases, penalties were imposed; 148 cases were dismissed; and 314 were shelved. According to SUPERCOM's current controller, 21 proceedings are still pending. The fines imposed amount to approximately US\$3 million, although US\$879,000 has been collected to date. At one point, there were 350 staff members working at SUPERCOM, and media monitoring software was installed to alert them to any breaches of the law.

442. Several of these cases were emblematic and exemplify the discretion and arbitrariness seen in the sanctioning of critical, humorous, or informative speech. For example, in 2014 the newspaper *El Universo* paid a fine of US\$90,000 for the publication of a cartoon by the cartoonist Bonil; and in 2017 fines of nearly US\$4000 were assessed against seven independent media outlets (*Ecuavisa*, *Teleamazonas*, *Telecentro*, *El Universo*, *El Comercio*, *Diario La Hora* and *Diario Expreso*) based on Article 18 of the LOC, which describes as "prior censorship" the "failure to publish information of public relevance or general interest." This was done after the Argentine daily newspaper *El Universo* published information concerning assets held in tax havens by former opposition presidential candidate Guillermo Lasso. It was also common for the State to impose information by way of a right of reply to various written and television media for their allusions to public officials, in conjunction with the imposition of considerable fines.

443. During the early months of 2017, the Ecuadorian Government continued with the practice of ordering the publication or broadcasting of its official opinion on various matters in the private media, when the information disseminated by journalists did not coincide with the interpretations or assessments of State entities. Thus, during Rafael Correa's term in office, the government often ordered the mandatory broadcasting of official programming on television and radio stations to refute news and opinions, and to question journalists and organizations that had broadcast information critical of the government's performance. Refusal to publish the State's replies was punishable by fines.

444. The mandatory broadcasting and publication of content ordered by the Secretariat of Communication (SECOM) was extensive during the first half of 2017. Affected media outlets included *Ecuavisa*, *La Hora*, *Exa-Democracia*, and *Radio Visión*, *Teleamazonas*, radio stations in the Amazon region of Sucumbíos and Pastaza, *Gama Tv*, and *El Universo*.

445. The daily newspaper *El Universo* had to publish a correction on its front page imposed by the National Institute of Statistics and Censuses (INEC), after having disseminated news about unemployment in Ecuador that the agency considered to reflect an "incorrect reading" and a "biased interpretation" of the employment figures. The daily *La Hora* was also required to publish replies on the front pages of its January 22 and 29, 2017 editions to articles it had published on unemployment figures. On February 5, 2017, *La Hora* had to once again run a front page reply from the Superintendency of Information and Communication (SUPERCOM), which questioned the outlet for not having contacted them in time to cross-check a report on press freedom and the indexes published by the international organization Freedom House. The mandatory reply took up a four-column space in the middle of the front page.

446. The Office of the Special Rapporteur would like to point out that when the law was being enforced, the media and civil society organizations such as *Fundamedios* documented and condemned the fact that it had a chilling effect on journalism, and since then have been calling for the amendment of this and other legal provisions and for the elimination of the Secretariat of Communication.

447. The Office of the Special Rapporteur welcomes the initiative of the Presidency of the Republic of Ecuador to introduce before the National Assembly the draft Organic Law to Amend the Organic Law on Communication (hereinafter "LOC"). This Office notes that the bill's Statement of Legislative Intent mentions the willingness to enact the necessary reforms to ensure that the regulatory framework on these freedoms and the functioning of the media is in line with international standards. Similarly, we note that the amendment addresses several concerns expressed by this Special Rapporteur regarding the LOC.

448. The Statement of Legislative Intent additionally recognizes that the LOC grants excessive powers in regulating the operation of the media. The Executive Branch also calls for the law in any field to be interpreted under the provisions of the Constitution of the Republic of Ecuador, international treaties, and the

case law of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”).

449. On 25 July, at the invitation of the National Assembly, the Office of the Special Rapporteur presented a document analyzing the draft amendment. While acknowledging the progress made in relation to the current LOC, the Rapporteur also made a number of recommendations to amend several articles that could affect freedom of expression.

450. Among others, the recommendations include:

- Revise restrictions on the circulation of different types of information derived from criminal proceedings or about personal data, since they do not meet the requirement of necessity in the context of a democratic society.
- Bear in mind that journalists and the media are not covered by a duty of confidentiality on the protection of judicial investigations when it comes to the publication of information of public interest.
- Strengthen the legal framework in order to effectively guarantee the right of journalists and the media to protect their sources and to ensure that any restrictions meet the strictest standards in accordance with relevant international norms.
- Revise the provision referring to the illegal interception of communications, as this restriction is not appropriate for a law on freedom of expression and audiovisual media services.
- Revise the text of draft Article 15 of the bill, which would potentially allow the media to be held liable for the dissemination of information whose author is not properly identified.
- Guarantee that the right to freedom of expression is not subject to prior censorship but rather to subsequent liability, in accordance with Article 13.2 of the American Convention.
- Delegate the drafting of the content of the codes of ethics to a Press or Media Council for discussion, to include the participation of representatives of the media, academia, civil society organizations, and the public.
- Replace the minimum quota of 33% spectrum allocation to public media with a system of direct allocation to public media, provided that the needs, objectives, and mandates of public media justify the creation of new media.
- Meet the urgent need to reserve radio spectrum space for community media and ensure that the competitive bidding processes are differentiated from those established for the private sector.
- Consider that the National Assembly be more specific in its enactment of the legislation that will enable a process for reviewing the use of penalties under the LOC in recent years.

451. In this regard, the Office of the Special Rapporteur urges the Legislative Branch to take these recommendations into account in order to adapt all the provisions of the future LOC to international principles on freedom of expression. The Executive Branch should also take these recommendations and standards into account when validating the text adopted by the National Assembly.

452. The Office of the Special Rapporteur notes that on December 18 the Plenary of the National Assembly passed the package of amendments to the LOC. According to the information available, the document was approved with 75 votes in favor, 25 against, and 7 abstentions. Changes include the elimination of the Superintendency of Information and Communication (SUPERCOM) within 180 days, as well as the elimination of concepts such as media lynching. Before publication in the Official Register, the document will be sent to the Executive Branch for review.<sup>619</sup> The amendments to the Communications Act will be examined in relation to inter-American standards in the final report of this visit.

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<sup>619</sup> Ecuavisa. December 18, 2018. [Asamblea aprueba reformas a Ley de Comunicación](#); El Comercio. December 18, 2018. [Asamblea Nacional aprueba reforma a Ley Orgánica de Comunicación](#); Fundamedios. December 19, 2018. [Los asambleístas de Revolución Ciudadana votaron en contra de las reformas a la LOC](#).

## **B. RIGHT TO FREEDOM OF EXPRESSION AND THE USE OF CRIMINAL LAW**

### ***i) Use of criminal law against the media, journalists, human rights defenders, and political leaders***

453. During the last decade, the government of Rafael Correa used criminal law to prosecute and impose example-setting penalties against journalists, columnists, social leaders, and opponents. The Regional Human Rights Advisory Foundation (INREDH) systematized thirteen cases that illustrate the strategy developed by public officials through investigations or opinions related to their actions.

454. The case of journalist Emilio Palacio and the directors of the newspaper *El Universo* is one of the most emblematic. Palacio was the subject of several criminal complaints, one of them brought by former President Rafael Correa himself, who accused Palacio and the directors of *El Universo*, Carlos, César, and Nicolás Pérez Barriga of criminal defamation [*injurias calumniosas*] and sought US\$80 million in damages. The complaint originated with an opinion column published in *El Universo*, in which Palacio stated that the president could be investigated for crimes against humanity based on the orders he gave during what he considered a police-led *coup d'état*. On February 16, 2012, in proceedings in which various irregularities were reported, the Criminal Division of the National Court of Justice upheld the conviction of three years in prison and the payment of \$40 million against the directors and former editorial writer of *El Universo* for having insulted Rafael Correa. Correa subsequently announced “the pardon of the accused.” The cases of Fernando Villavicencio and Marco Tapia, obtained by the Office of the Special Rapporteur, are also paradigmatic.

455. Fernando Villavicencio, an Ecuadorian journalist, was subjected to continuous legal persecution after denouncing numerous cases of corruption. In April 2013, the Criminal Chamber of the National Court of Justice sentenced Villavicencio to a term of imprisonment and ordered him to pay a heavy fine and issue a public apology. On January 30, 2014, Mr. Villavicencio filed a petition with the Inter-American Commission on Human Rights against the State of Ecuador. In his petition, Villavicencio requested precautionary measures from the IACHR, which were granted on March 24, 2014. However, the Attorney General’s Office opened new criminal proceedings against him for the alleged disclosure of confidential information contained in emails sent by the Attorney General to President Correa and the Advisor to the President of the Republic. In October 2016, he was ordered held in pretrial detention. This prompted the request for new precautionary measures before the Inter-American Commission on Human Rights. After Correa’s departure from power, Villavicencio returned to the country, his pretrial detention was replaced by another measure that invaded his privacy (the use of an electronic ankle monitor). His case was ultimately closed.

456. In addition, on September 25, 2008, Freddy Aponte, a journalist with Radio Luz y Vida, was sentenced to six months in prison after being accused of criminal defamation [*injurias calumniosas*] against former Loja mayor Bolívar Castillo. The convictions are still affecting Aponte, who continues to be subject to judicial harassment by Castillo. Similarly, on November 11, 2015, Twitter user and deputy national director of the Unidad Popular movement, Sebastián Cevallos, was sentenced by a court in Cuenca to 15 days in prison for a fourth-class violation of Article 396 of the Comprehensive Organic Criminal Code, relating to honor and good name. Cevallos did not go to jail because his sentence was pardoned by the complainant.

457. Finally, during the official visit, the Office of the Special Rapporteur observed that, since the time Lenín Moreno took office, the Judicial Branch, the Public Ministry, and the Executive Branch had made positive decisions to protect the right to freedom of expression in the context of criminal proceedings against journalists, activists, and social leaders. Some administrative penalties imposed against the media or political representatives on the basis of information or opinions disseminated were also lifted. In this regard, the Office of the Special Rapporteur welcomes the decision of the Constitutional Court, which on August 1, 2018, repealed a package of constitutional charter amendments proposed by then-President Correa, and supported by his bloc in the Assembly. With this decision, communication ceased to be a public service in Ecuador.

### ***ii) Criminal provisions restricting freedom of expression***

458. In this context of the use of the criminal law to penalize the disclosure of information of public interest, the Office of the Special Rapporteur recognizes as a significant step forward the decriminalization of “insult crimes” [*desacato*] that came about when the new Comprehensive Organic Criminal Code (COIP) was enacted in 2014. The Office of the Special Rapporteur further notes that, despite the elimination of the criminal offense of slander [*injuria*], the COIP retains the criminalization of calumny [*calumnia*], with a formulation that is incompatible with human rights. Similarly, Article 396 of the Code still contains an offense used to punish speech against the honor of individuals. After the adoption of these criminal offense

definitions, several journalists and political opponents were convicted under them.

459. This Office reiterates the importance of criminal provisions being designed and drafted in such a way as to ensure their compatibility with international human rights law, including the principles and standards governing the imposition of restrictions on freedom of expression. In accordance with Article 13.2 of the American Convention, this type of restriction must be provided for by law, pursue legitimate objectives, and respect the principles of necessity and proportionality. When it comes to limitations on freedom of expression imposed by criminal law, the Inter-American Court has held that the requirements of the principle of strict legality must be met. This is expressed in the need to “use precise and unambiguous language that narrowly defines the criminal offense,” which means “a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offences or are punishable but not with imprisonment.”

460. The Office of the Special Rapporteur considers that the provisions contained in Articles 182 and 396 of the COIP do not meet these requirements and are extremely onerous with respect to freedom of expression.

461. Article 182 defines as “calumny” [*calumnia*] the conduct of any person who “by any means, falsely accuses another of a crime,” and provides for “a custodial sentence ranging from six months to two years.” Although it provides that “statements made before authorities, judges, and courts do not constitute calumny if the accusations have been made as a defense in the case,” and if the person responsible “proves the veracity of the accusations,” it establishes that “in no case shall evidence be admitted regarding the accusation of an offense that has been the subject of a judgment of acquittal, or dismissal, or closure of proceedings.” This rule does not meet the requirement of necessity, i.e. the assumption that least restricts the protected right. By excluding evidence of the veracity of claims in cases where a final decision has already been rendered by the criminal justice system, the rule establishes a radical and excessive limitation on the right to freedom of expression in the protection of the right to honor. It is tantamount to an absolute prohibition on referring to certain facts and persons in cases where there is a final judgment of dismissal, which is incompatible with the principles of a democratic system, especially in the case of public officials or those who aspire to be public officials.

462. Article 396, in turn, punishes “with a term of imprisonment of fifteen to thirty days” anyone who “by any means, utters speech that discredits or dishonors another.” This provision is extremely vague and ambiguous, and therefore has an undeniable discouraging and inhibiting effect on speech.

463. 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. 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.”

464. In a similar vein, the Human Rights Committee stated in its General Comment No. 34 that “States parties should consider the decriminalization of defamation, and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”

465. The Office of the Special Rapporteur recommends that the Ecuadorian State decriminalize these offenses and convert offenses against honor and reputation into civil actions, in accordance with international standards and best practices. This will be especially relevant to protect critical speech about public officials, public figures or, in general, matters of public interest. It also recommends that the State strengthen legal guarantees to ensure that journalists are not subjected to judicial or other forms of legal harassment in retaliation for their work, establishing differentiated standards for assessing subsequent civil liability, including the standard of actual malice and the strict proportionality and reasonableness of subsequent civil penalties.

466. Finally, the Office of the Special Rapporteur notes that laws on other matters also contain provisions punishing speech that may be lawful. Some of them are included in the finance law, others in the Telecommunications Act, the Citizen Participation Act, and the Democracy Code. These will be examined in relation to the inter-American standards in the final report on this visit.

### C. SAFETY OF JOURNALISTS AND IMPUNITY

467. In the regional context, Ecuador was not among the countries where journalists faced the highest risk of experiencing attacks on their lives and safety in the practice of their profession. However, the stigmatizing and demeaning speech against the press by former President Correa and his administration, as well as the absence of protection policies and the impunity with which numerous attacks have been carried out, exposed journalists and the media to a greater risk of attack.

468. This Office of the Special Rapporteur recalls that, under certain circumstances, even when official speech does not expressly authorize, instigate, order, instruct, or promote acts of violence against certain citizens, its repetition and content may increase the “relative vulnerability” of these groups and thus the risk they face.

469. In April 2018, the kidnapping and subsequent murder of *El Comercio* journalists Javier Ortega Reyes, Paúl Rivas Bravo, and Efraín Segarra on the northern border of Ecuador and Colombia, was the most serious attack on the lives of journalists by organized crime. The group that claimed responsibility for the murder had entered into negotiations with the Ecuadorian government for a prisoner exchange, but ultimately cut off communication. The bodies were found in Colombia weeks later.

470. The Inter-American Commission on Human Rights issued precautionary measures to protect the journalists’ safety during the kidnapping and called on the States involved to exhaust all measures at their disposal to secure their release. Ecuador and Colombia have now accepted the establishment of an IACHR Special Monitoring Team, which was installed on July 25 and has been in operation ever since. To meet its objectives, especially that of providing technical advice and monitoring the progress of the investigation and punishment of those responsible for the kidnapping and murder of journalists Javier Ortega and Paul Rivas Bravo, as well as worker Efraín Segarra, the Special Monitoring Team has reviewed the respective proceedings being conducted separately in Ecuador and Colombia. The Office of the Special Rapporteur acknowledges the capture and prosecution by the Colombian State of at least three of the co-perpetrators of these heinous crimes; and recalls that, according to the inter-American standards, it is crucial that the States meet their obligation to investigate in order to find all the direct perpetrators and masterminds of these crimes, obtain justice in the specific case, prevent their repetition, and prevent the chilling effect that violence can have on journalists.

471. The murders also caused major shock in the journalistic profession and garnered the support of most of society, leading many to demonstrate in the streets to express their outrage. The path to rebuilding a free and independent press in Ecuador also requires the State to rebuild the trust lost during so many years of alienation and attack.

472. Faced with this situation, the Government must take significant measures to strengthen the functioning and safety of the press, even in high-risk areas such as the Colombian border, and put in place effective protection mechanisms with the involvement of civil society, journalists, the media, and experts in the field.

473. The Office of the Special Rapporteur takes note of and welcomes the announcement made during the official visit by the Secretary of Communication, Andrés Michelena, of the forthcoming establishment of an Inter-institutional Committee for the Protection of Journalistic Work, which will coordinate the efforts of various institutions and civil society to provide protection in situations of risk and to establish a violence prevention policy.

474. The Office of the Special Rapporteur recommends that the Government ensure that all staff members of every department involved in this Committee be trained on how to meet 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 for this program to ensure effective coordination between all the authorities and also to enable it to operate sustainably in the different regions of the country.

475. It is also essential to strengthen coordination with the Office of the Attorney General of Ecuador in order for it to fulfill its responsibility to identify and investigate the risks faced by journalists who are the targets of attacks and threats. The investigation of attacks on the press should be seen as a crucial aspect of any protection program.

476. It is also vitally important for risk assessment methodologies to include a differentiated approach that takes account of the specific risks faced by certain groups of journalists, including women journalists and community and indigenous journalists.

#### **D. ACCESS TO PUBLIC INFORMATION**

477. This Office was informed that challenges remain in the country in relation to overcoming the culture of secrecy and having greater access to information, statistics, figures and data held by the State. Several journalists and media outlets indicated that mechanisms for access to information remain ineffective for the practice of journalism in Ecuador.

478. At the same time, women's rights organizations reported that in cases of sex crimes, femicide, abortion, hate crimes, and others, there is a lack of access to statistics that are properly disaggregated by age, sex, gender expression and identity, and sexual orientation. Likewise, it was reported that the information provided in response to such requests for information is inconsistent, and that the State in some cases responds incompletely to requests, or alleges that the information does not exist.

479. It was additionally reported that, despite Ecuadorian law establishing the confidentiality of information as an exception to the principle of openness and maximum disclosure, there is a measure of discretion on the part of the institutions. Moreover, many of these institutions do not have the legal authority to declare that the information they handle, produce, or hold is confidential. Under the MLotaip - Entidades system, agencies that would report the classified information index listing are reportedly diverse in nature, and given their scope of competence, most would not necessarily handle information concerning national security.

480. With regard to the right of access to public information, the Office of the Special Rapporteur notes that the Secretary General of the Presidency announced the forthcoming adoption of a resolution issuing general guidelines for dealing with requests for access to public information in regulated entities. The Office of the Special Rapporteur also views positively the 2018 implementation of an active transparency monitoring mechanism through which the Office of the Ombudsman reviews and assesses, on a random basis, the entities required to comply with the standards set forth in Article 7 of the Organic Law on Transparency and Access to Public Information (LOTAIP).

481. Finally, the Office of the Special Rapporteur takes note of and welcomes the proposal for a data protection law. However, the Office is concerned that, according to reports, there has been no active involvement of civil society in its drafting process.

482. The Office of the Special Rapporteur recalls that the right of access to information, as a constituent element of freedom of expression, is subject to a limited number of exceptions according to inter-American standards. Such limitations must strictly adhere to the requirements of Article 13(2) of the American Convention, that is: exceptional conditions, legal establishment, legitimate objectives, necessity, and proportionality.

483. In this exact regard, Principle 4 of the Statement of Principles provides that, "Access to information [...] allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

#### **E. PLURALISM AND DIVERSITY**

484. In its 2016 Annual Report, the Office of the Special Rapporteur discussed the competitive bidding process for the award of 1,472 radio and television frequencies by the Telecommunications Regulation and Oversight Agency (ARCOTEL) and the Council for Regulation and Development of Information and Communication (CORDICOM), of which 846 were for frequency modulation (FM) radio stations, 148 for amplitude modulation (AM) stations, and 478 for UHF (ultra-high frequency) channels. In this regard, the State reported that "all the information on the Public Request for Bids for the awarding of Radio and Television Frequencies is published on ARCOTEL's web page: [www.arcotel.gob.ec](http://www.arcotel.gob.ec). All resolutions granting licenses have been published."

485. In the joint letter sent on October 14, 2016, the Special Rapporteur for Freedom of Expression of the IACHR and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression voiced their concern about the alleged lack of inclusion and transparency in the bidding process for the allocation of radio and television frequencies. In addition, in its 2016 Annual Report, the Office of the Special Rapporteur reported allegations of corruption by a former CORDICOM official.

486. Finally, in June 2018, the Office of the Comptroller General of the State issued a binding opinion instructing the bodies in charge of the bidding process to suspend it. At the time of the suspension, the frequency allocation processes had been completed for 268 frequencies, while another 800 frequencies were still pending examination and decision by CORDICOM and ARCOTEL. The Ecuadorian government reported that “The Executive Directorate of ARCOTEL, by means of Resolution No. 0788 of September 14, 2018, resolves, in accordance with the current legal system, to open the administrative proceeding to comply with Recommendation No. 4 of Report DNA4-0025-2018 of the Office of the Comptroller General of the State. It also states that due process shall be respected.”

487. Without prejudice to the fact that different communication stakeholders agree that there were irregularities in some of the bids examined and in different aspects of the bidding process, the suspension has given rise to concern and legal uncertainty in the private media as well as in the community sector. Some of these actors, who participated in the competition in good faith, met their obligations and in some cases have already obtained licenses to operate; others have incurred the necessary expenses and understand that the State is responsible for the suspension of the bidding process.

488. In turn, the discussion of amendments to the LOC may also lead to changes in the overall picture of spectrum allocation, such as the elimination of a 33% quota for public media. The State pointed to “Title VI, Radio Spectrum, Art. 105” of the current LOC, and stated that it does not refer to “a minimum or maximum threshold for the allocation of the radio spectrum. The concession of frequencies for public media applicants in Ecuador is direct, in compliance with the established licensing requirements.”

489. In view of the foregoing, the Office of the Special Rapporteur recommends that the State establish an advisory council or forum for all the stakeholders involved (public, private, commercial, and community media), in order to engage in a dialogue on the general framework for spectrum allocation, a case-by-case review of the rights already granted to beneficiaries in good faith, and the establishment of new allocation processes. The Office of the Special Rapporteur offers its follow-up and technical advice to the State in handling this process.

490. The Office of the Special Rapporteur reiterates that the allocation of radio and television licenses should be guided by democratic criteria and pre-established, public, and transparent procedures that serve as a check on the possible arbitrariness of the State and guarantee equal opportunities for all persons and sectors concerned. In this regard, Principle 12 of the Declaration of Principles has underscored that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

491. The Office also reiterates the need to maintain the spectrum reserve for the community and indigenous peoples’ sector, with the incorporation into the law of a strict definition of community media—that is, media at the service of a given community—as well as fair conditions of access to licenses that differentiate between private and non-commercial media. The State reported that the Telecommunications Act (*Ley Orgánica de Telecomunicaciones*) (LOT) created the Telecommunications Regulation and Oversight Agency (ARCOTEL), as the “entity responsible for the administration, regulation, and oversight of telecommunications and radio spectrum and their management, as well as the technical aspects of managing social media that use radio spectrum frequencies or that install and operate networks.” Similarly, it stated that, “the equitable distribution of frequencies does not refer to a minimum threshold. Article 106 of the current Communications Act provides for the following equitable distribution of frequencies: Article 106.- The radio spectrum frequencies for the operation of open-signal radio and television stations will be distributed equally in three parts, with 33% of these frequencies reserved 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.”

## **F. INTERNET AND FREEDOM OF EXPRESSION**

492. During the last decade, the Internet in Ecuador was a space in which the government of former President Correa also fought a battle against journalists and critics. Some of the strategies were systematic, such as hiring a company to request that the main platforms take down politically critical accounts and content based on the DMCA [Digital Millennium Copyright Act] of the United States; the denial of service, and attempts to reveal the identity of anonymous users. The former president also created a network to expose and register social media users critical of his government, and the state reportedly procured malware from the Hacking Team company during this period.

493. The attack and blocking of accounts was reported to have decreased during 2017. However, during the official visit to Ecuador, civil society organizations, journalists, and media outlets reported several cases of limitations on freedom of expression on the Internet, including the suspension or blocking of Twitter accounts, as well as the denial of services (DDoS) to opinion or investigative journalism portals, following political publications and in the context of existing polarization. Among the most recently reported cases were those of Fernando Villavicencio and Crudo Ecuador, whose Twitter accounts were suspended on several occasions.

494. Moreover, the Office of the Special Rapporteur appreciates the fact that no action has been taken on the draft laws presented to the National Assembly in recent years with the aim of exercising government control over social networks. However, the Office is concerned that the Draft Law Regulating Acts of Hate and Discrimination on Social Networks and the Internet, introduced by former President Correa the day before his departure from office, has not been definitively shelved to date.

495. Finally, civil society organizations reported an increase in attacks on vulnerable groups based on xenophobia, homophobia, and misogyny on social networks. These organizations consider that in some cases violence is being incited for discriminatory reasons.

#### **G. SOCIAL PROTEST AND THE CRIMINALIZATION OF DEMONSTRATIONS, HUMAN RIGHTS DEFENDERS**

496. In the last 10 years, there were several reported cases of human rights defenders being criminalized in the context of protests in Ecuador because of the content of their criticism of the government and the forms of protest they used. According to the Office of the Ombudsperson of Ecuador, between 2007 and 2017, 841 people were criminalized in 98 documented protests. Ninety per cent of these cases were brought by the Ecuadorian State.

497. During the official visit to Ecuador, the Office of the Special Rapporteur was informed that there has been a marked decrease in the number of cases of criminalization of social protest since the new government took office; however, the organizations stated that there had been excessive use of force by the security forces against demonstrators in specific cases. In this regard, they mentioned that there was police repression against Alianza País activists sympathetic to former President Correa, and assaults against demonstrators during a sit-in outside the Judicial Unit of Cuenca where a hearing was being held to seek protection against extractive activity in indigenous territory.

498. With regard to indigenous peoples, the Office was informed of the murder of Héctor Aguavil Calazacón, of the Tsáchila indigenous community. He was killed in the city of Santo Domingo de los Colorados at his natural medicine clinic on February 16, 2018. President Lenín Moreno condemned the act and attributed it to hired assassins. It was also reported that on the 28<sup>th</sup> of the same month, Jorge Washington Acosta, coordinator of the Trade Union Association of Agricultural, Banana, and Peasant Workers, was threatened over denunciations he made as a union leader.

499. Until the entry into force of the current Comprehensive Organic Criminal Code (COIP) in 2014, several criminal offenses whose statutory definitions were drafted in a manner inconsistent with the principle of strict legality were reportedly being used to criminalize social protest. These included the crimes of illegally obstructing roadways, sabotage, advocating crime, terrorism, promotion of unauthorized parades or public demonstrations, conspiracy against the security of the State, and offenses against public officials, among other crimes.

500. The Special Rapporteur is concerned that, while the current COIP eliminates certain offenses that contributed to greater criminalization, new punitive provisions have been incorporated to include crimes such as conspiracy, attack or resistance, incitement to public discord, and the blocking of public services, which have allowed for the continued repression of social protest in Ecuador.

501. During the visit, the Office of the Special Rapporteur also gathered information on the request for a new amnesty proposal for advocates criminally prosecuted for mobilizing, protesting, or resisting during the government of former President Rafael Correa. The advocates acknowledged that President Lenín Moreno had granted seven pardons, but noted that the National Assembly seemed unable to make progress in granting amnesties to all those affected.

502. According to the Confederation of Indigenous Nationalities of Ecuador (CONAIE), there are 177 individuals who have been targeted for criminal prosecution in the context of mobilization, protest, or

resistance in Ecuador. This information was reported by CONAIE through a request made in June 2018 to the Office of the Ombudsperson and the Office of the Public Defender to continue with the amnesty process in the legislature.

503. The Office of the Special Rapporteur notes that, in response to this request by CONAIE, a technical committee was set up to process applications for amnesty. It also notes that, in order to expedite the granting of such applications, "Regulations for the admission and processing of applications for amnesties submitted to the National Assembly in cases of the criminalization of human rights defenders" have been drawn up and are currently under review by the National Assembly.

504. The Office of the Special Rapporteur has repeatedly stated 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. Similarly, the Inter-American Commission has pointed out that the criminalization of social mobilization and protest, either through the direct repression of demonstrators, or through the arbitrary detention and criminal prosecution of demonstrators, is incompatible with a democratic society in which people have the right to express their opinions peacefully.

505. In this regard, security operations must be carefully planned under clear protocols of action that guarantee the appropriate, gradual, and proportional use of less-lethal weapons and encourage dialogue. Police action in these contexts should be aimed at facilitating the exercise of the rights to freedom of expression and assembly, as well as protecting the lives and safety of demonstrators and others present rather than containing or confronting demonstrators. The fact that some groups or individuals use violence at a demonstration does not, per se, make the entire protest violent, nor does it authorize security forces to break up the protest through the use of force or carry out mass arrests.

506. The State also has a duty to ensure that journalists and media professionals who are covering public demonstrations are not arrested, threatened, assaulted, or otherwise deprived of their rights because they are practicing their profession. Attacks on journalists and the destruction or seizure of reporters' equipment violate freedom of expression, in both its individual and collective dimensions.

## 15. EL SALVADOR

507. Throughout 2018, attacks and threats against journalists by public officials continued in El Salvador. In some cases, threatening with legal action. In turn, there were cases of limitation to the exercise of journalism and to access to information during electoral and judicial processes of high relevance. The Office of the Special Rapporteur notes that civil society continued to work on promoting adequate mechanisms for the protection of journalists, security forces were trained, and a law to guarantee the safety of journalists was drafted. On the other hand, the dismissal of dozens of media workers and job insecurity in the journalistic sector has generated concern in journalists' organizations and in the Ministry of Labor. A diagnosis by the Attorney General's Office for the Defense of Human Rights revealed that poor working conditions are aggravated for women in journalism, who in their majority stated that they were exposed to verbal violence and sexual harassment during the performance of their tasks.

### A. Progress

508. The Administrative Contentious Chamber of the Supreme Court of Justice [*Corte Suprema de Justicia*] (CSJ) would have ratified in May a fine imposed to the municipal council of Ilobasco, in the department of Cabañas, for violating the Law on Access to Public Information. The Institute of Access to Public Information [*Instituto de Acceso a la Información Pública*] had imposed a fine of 4,482 Salvadoran pesos on the municipal council on June 11, 2013, because it would have not comply with appointing an information officer, as would required by law<sup>620</sup>.

509. The two alleged perpetrators of the death of *Canal 21* cameraman Samuel Rivas, who was murdered on November 16, 2017 in Ilopango, were reportedly sent to trial in November, as determined by the Ilopango Court of Instruction<sup>621</sup>.

510. On March 13, *Fundación Comunicándonos* and the Salvadoran Association for Human Rights [*Asociación Salvadoreña para los Derechos Humanos*] organizations filed a criminal complaint against Colonel Mario Reyes Mena, former commander of the Fourth Infantry Brigade, and Francisco Morán, former director of the former Treasury Police, as alleged intellectual authors of the murder of four Dutch journalists in El Salvador, in 1982. They also called for an investigation into the generals José Guillermo García, former Minister of Defense, and Rafael Flores Lima, both prosecuted for the massacre of some 1,000 farmers in El Mozote in 1981. The complaint was filed on behalf of the next of kin of the victims, after the Constitutional Chamber declared the Amnesty Act of 1993 unconstitutional and, in this way, allowed investigations into crimes that occurred during the armed conflict period. Following the complaint, the investigation would have been resumed by the Crimes of the Past Unit of the Prosecutor's Office [*Unidad de Crímenes del Pasado de la Fiscalía*], which would have requested information about the case from the court that heard the case in 1982.<sup>622</sup>

### B. Attacks, Threats, and Intimidation of Journalists and the Media

511. In 2018, the Office of the Special Rapporteur received information on intimidation and threats to the press or journalists by public officials. For example, on February 15, the mayor of Tacuba, Joel Ernesto Ramírez, would have accused the community radio station, *La Voz de Mi Gente*, of defaming him and of carrying out partisan political propaganda, and warned them that he would initiate legal action if they did not stop these practices<sup>623</sup>. Carlos Amaya, a journalist with *RTV Izcana*, would have been threatened by the mayor of Nueva Granada, Usulután, Aquilino Rendón, who reportedly accused him of running a Facebook page in which offensive publications against him would be made<sup>624</sup>. Journalist Gabriel Labrador, of the digital

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<sup>620</sup> El Mundo. May 15, 2018. [Sala ratifica multa contra alcaldía por violar la LAIP.](#)

<sup>621</sup> Arpas. November 29, 2018. [A juicio responsables de muerte de camarógrafo Samuel Rivas](#); Diario Libre. November 28, 2018. [Envían a juicio a los acusados de asesinar al camarógrafo de Grupo Megavisión, Samuel Rivas](#); El Salvador. November 28, 2018. [Juez determinará si envía a juicio a los acusados del homicidio del camarógrafo de canal 21.](#)

<sup>622</sup> El Salvador. March 13, 2018. [Piden reabrir caso de asesinato de cuatro periodistas holandeses durante conflicto armado](#); La Prensa Gráfica. April 8, 2018. [Recuerdan a los 4 periodistas holandeses asesinados por orden de un coronel salvadoreño](#); El Mundo. September 4, 2018. [Investigación por crimen de periodistas holandeses en la mira de ONU y CIDH](#); El Faro. September 25, 2018. [Investigación vincula a militares salvadoreños y estadounidenses con el asesinato de periodistas holandeses.](#)

<sup>623</sup> Asociación de Periodistas de El Salvador. March 6, 2018. [Alcalde amenaza a medio comunitario.](#)

<sup>624</sup> Asociación de Periodistas del Salvador. March 4, 2018. [Periodista es amenazado por funcionario público.](#)

media *El Faro*, was allegedly insulted and threatened via WhatsApp messages and Twitter posts by former Secretary of Youth Carlos Aleman, following an investigation into the sums he had received while working for the government<sup>625</sup>. Three journalists from the *Prensa Gráfica*, *TVO* and *TVM* media outlets were reportedly assaulted and intimidated by agents of the Jaguares Division of the National Police in Moncagua, San Miguel, on June 5, when they were carrying out their work<sup>626</sup>. On August 22, the candidate for vice-presidency for the Great Alliance for National Unity [*Gran Alianza por la Unidad Nacional*] (GANU), Félix Ulloa, would have attacked Karen Fernández through social networks, who is the hostess of the program *Focos Tv*, of *Canal 33*, after having been interviewed by her, which would have caused several social media users to insult the reporter<sup>627</sup>.

512. In August, communicators of *Televisión Sonsonateca* would have been threatened and intimidated at a police checkpoint<sup>628</sup>. Also, in August, journalist Alba Belén Ordoñez, from *Taxis Online Informativo*, reported being a victim of harassment by relatives of the mayor of Texistepeque, as a result of the citizen complaints that the media reports on regarding problems in the management of the municipality<sup>629</sup>.

513. The community radio station *Radio Güija*, of Metapán, Santa Ana, and *Radio Bálsamo*, located in Zaragoza, La Libertad, would have been attacked by unknown individuals; Those responsible for the stations attributed the attacks to their reports on environmental damage caused by private companies<sup>630</sup>.

514. According to the monitoring of the Association of Journalists of El Salvador [*Asociación de Periodistas de El Salvador*], in the period between January and November of 2018, 21 attacks against press workers were committed<sup>631</sup>.

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

### C. Social Protest

516. On June 14, a protest by students of the University of El Salvador [*Universidad de El Salvador*] (UES) against the general water law draft that was being discussed in the Legislative Assembly, generated clashes with the Police when the protesters wanted to enter the premises. The congressional security agents would have used pepper spray against the students, who in turn would have thrown sticks and stones at the building. A cameraperson from the *Gentevé* channel covering the protest was injured and would have receive medical care<sup>632</sup>.

517. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"<sup>633</sup>

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<sup>625</sup> El Faro. May 22, 2018. [Ocho exfuncionarios de Arena admitieron a la Fiscalía que recibieron sobresueldos](#); Asociación de Periodistas de El Salvador. May 23, 2018. [Político y exfuncionario amenaza a periodista](#).

<sup>626</sup> Asociación de Periodistas de El Salvador. June 6, 2018. [Agentes de PNC agreden a periodistas en oriente](#).

<sup>627</sup> El Diario de Hoy. August 23, 2018. [Periodista denuncia ciber acoso tras entrevista al candidato a vicepresidente por GANA, Félix Ulloa](#); El Mundo. August 23, 2018. [Reporteros Sin Frontera denuncia ataque a periodista salvadoreña](#).

<sup>628</sup> Asociación de Periodistas de El Salvador. August 5, 2018. [Camarógrafo y periodista de la zona occidental fueron agredidos al cubrir retén policial](#).

<sup>629</sup> Asociación de Periodistas de El Salvador. August 9, 2018. [Periodista de Taxis Online Informativo es acosada por activistas del PCN](#).

<sup>630</sup> Asociación de Periodistas de El Salvador. September 17, 2018. [Atentan contra dos radios comunitarias de ARPAS](#).

<sup>631</sup> Asociación de Periodistas de El Salvador. [Alertas](#).

<sup>632</sup> El Mundo. June 15, 2018. [Protesta deja un periodista herido y daños en Asamblea](#); El Faro. June 15, 2018. ["Dales con todo lo que sea necesario, ¡que no entren!"](#); Asociación de Periodistas de El Salvador. June 14, 2018. [Agreden a Camarógrafo de Gentevé](#).

<sup>633</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197

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>634</sup>

518. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>635</sup>

#### D. Protection mechanisms

519. On December 11, 2017, with the participation of the Association of Journalists of El Salvador [*Asociación de Periodistas de El Salvador*] (APES), Internews, the Office of the Ombudsman of Human Rights of El Salvador [*Oficina del Ombudsman de los Derechos Humanos de El Salvador*] (PDDH), the Central American University [*Universidad Centroamericana*] (UCA), the University of El Salvador [*Universidad de El Salvador*] (UES), the Social Initiative for Democracy [*Iniciativa Social para la Democracia*] (ISD), the Foundation for Studies for the Application of the Law [*Fundación de Estudios para la Aplicación de la Ley*] (FESPAD) and the Association of Independent Journalists of El Salvador [*Asociación de Periodistas Independientes de El Salvador*] (ASPIES), the Protection Roundtable for Journalists and Information Media Workers [*Mesa de Protección a Periodistas y Trabajadores de Medios Relacionados con la Información*] was created. The Roundtable was created to guarantee the safety of journalists and the compliance to fundamental rights, as well as to advance legal frameworks and public policies as protection mechanisms that guarantee the rights of journalists and social communicators, and the promotion of awareness-raising processes directed towards public officials and society in general<sup>636</sup>.

520. In this line of work, on May 1, the Association of Journalists of El Salvador (APES) and the Roundtable for the Protection of Journalists and Information Media Workers, with the support of Internews, reported on the holding of consultation workshops in order to collect inputs for the preparation of a comprehensive law proposal to protect journalists<sup>637</sup>. Likewise, the Democracy Transparency Justice Foundation [*Fundación Democracia Transparencia Justicia*] (DTJ), with the support of the Grand Duchy of Luxembourg, is also in the process of drafting a bill for the protection of journalists and human rights defenders<sup>638</sup>.

521. Between May and June, the Association of Journalists of El Salvador (APES) developed, with the support of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), the project “Security for journalists in El Salvador”, which consisted in providing training workshops to members of the Salvadoran security forces with the aim of instructing them on freedom of expression, human rights, and respect for the work of journalists, adopting adequate prevention mechanisms to prevent violence against communicators<sup>639</sup>.

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<sup>634</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>635</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>636</sup> Internews. January 16, 2018. [First Steps in the Fight for Journalist Rights in El Salvador](#); Asociación de Periodistas de El Salvador. February 21, 2018. [Primeros pasos en la lucha por los derechos de los periodistas en El Salvador](#); Asociación de Periodistas de El Salvador. December 11, 2017. [Constituyen “Mesa para la protección de Periodistas y Trabajadores de Medios Relacionados a la Información](#).

<sup>637</sup> Asociación de Periodistas de El Salvador. May 1, 2018. [APES realiza talleres de consulta a periodistas para elaboración de Ley](#).

<sup>638</sup> Fundación Democracia Transparencia Justicia (DTJ). [Anteproyecto de Ley para la protección de periodistas y defensores de Derechos Humanos](#). No date.

<sup>639</sup> Asociación de Periodistas de El Salvador. May 26, 2018. [APES y UNESCO fortalecen la libertad de expresión y seguridad del gremio periodístico en segundo taller para miembros de Fuerzas de Seguridad pública](#); Asociación de Periodistas de El Salvador. May 25, 2018.

522. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for protective mechanisms to be effective. For example, the Office of the Special Rapporteur has recommended placing emphasis on: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and procurement of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society and beneficiaries in the implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism's operation.<sup>640</sup>

### E. Legal Reforms

523. On October 1, the Ministry of the Interior sent a bill to Congress on Public Performances, Cinematography, Media, and Advertising [*Ley de Espectáculos Públicos, Cinematografía, Medios de Comunicación y Publicidad*], with the object to "regulate the content transmitted in public performances, radio, television, the film industry, and advertising, in order to protect moral integrity and human dignity". The government intends with the project to raise awareness of respect for the rights of persons with disabilities, senior citizens, indigenous peoples, children and adolescents, and women. In this sense, it seeks that the media, "as main generators of public opinion, contribute to the dissemination of thought with responsibility, respect and objectivity (...) being then the responsibility of the State to ensure that the media and public shows formalize and promote a culture of social peace, through the evaluation and monitoring of television, radio, and film content; preventing and guiding about the problems of appeasing a loss of values or promoting a climate of violence"<sup>641</sup>.

524. The bill received criticism from the fields of communication, advertising, and politics, which warned of the impact it would have on freedom of expression. The Inter-American Press Association questioned that the law "would make radio and television media submit their programs and contents to the censorship of a governmental advisory council, in contravention of constitutional principles"<sup>642</sup>. Given the adverse reactions, the Secretary of Communications of the Presidency, Roberto Lorenzana, said that if necessary, the project would be modified or amended. In the Legislation Commission of the Legislative Assembly where the initiative is being studied, the Salvadoran Association of Advertising Agencies [*Asociación Salvadoreña de Agencias de Publicidad*], the Salvadoran Association of Broadcasters [*Asociación Salvadoreña de Radiodifusores*], and the Participatory Broadcasting Association of El Salvador [*Asociación de Radiodifusión Participativa de El Salvador*] presented observations to the project<sup>643</sup>. For his part, the Minister of the Interior, Aristides Valencia, said in the Commission that the proposal does not seek to restrict freedom of expression<sup>644</sup>.

### F. Censorship of journalistic material / Prior censorship / Direct and indirect censorship

525. On April 9, the Supreme Electoral Court [*Tribunal Supremo Electoral*] (TSE) issued a resolution related to the publicity of the presidential candidates in the process of internal primaries of the parties, which would order television channels, advertising companies, radio, and communication companies to

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[Proyecto Seguridad de periodista continúa sus capacitaciones](#); Asociación de Periodistas de El Salvador. June 7, 2018. [Personal de PNC y FAES de la zona central del país serán capacitados](#).

<sup>640</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>641</sup> Ministerio de Gobernación y Desarrollo Territorial. [Ley de Espectáculos Públicos, Cinematografía, Medios de Comunicación y Publicidad](#). October 1, 2018.

<sup>642</sup> Inter American Press Association (IAPA). Report to the 74th General Assembly. October 19 - 22, 2018. [El Salvador](#).

<sup>643</sup> La Prensa Gráfica. November 20, 2018. [Rechazan ley que busca regular publicidad y medios](#); El Diario de Hoy. October 2, 2018. [Gobierno busca regular más contenidos en TV, radio y cable](#); El Mundo. October 2, 2018. [Lorenzana: Gobierno dispuesto a dialogar sobre ley para regular contenidos](#); Observacom. October 9, 2018. [Gobierno de El Salvador presenta proyecto de ley para regular contenidos en radio, TV, espectáculos públicos, cine, publicidad e Internet](#).

<sup>644</sup> República de El Salvador. November 19, 2018. [Propuesta de ley de espectáculos públicos, cinematografía, medios de comunicación y publicidad no busca coartar la libertad de expresión](#).

"immediately suspend the transmission of any spot or television program or digital page, radio spots, or print or digital press publication in which any citizen who intends to aspire to the office of President and Vice President of the Republic appears" and to inform the Court about it<sup>645</sup>. According to media and advertising organizations, the order contains ambiguities that could lead to limitations on freedom of expression and information and would lead to "applying prior censorship and self-censorship." Also, representatives of the political parties would have questioned the resolution for affecting the internal campaign of the presidential precandidates<sup>646</sup>.

526. The Office of the Special Rapporteur recalls that article 13.3 of the American Convention establishes that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

527. According to Principle 5 of the IACHR's Declaration of Principles "[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

528. Several journalistic organizations and organizations for the defense of the freedom of expression and information expressed concern about the ruling of the Constitutional Chamber of October 23, 2017<sup>647</sup>, which established additional criteria to those foreseen by the law of access to public information to deny applications of access to information. The judges Belarmino Jaime, Rodolfo González, Florentín Meléndez, and Sidney Blanco supported that public entities deny information when it "relates to superfluous aspects associated to the activity of an official or a particular institution and that does not reasonably denote a public interest", when its "collection and systematization reasonably denote a deliberate interest in neutralizing or hindering the normal development of the functions of the institution to which it is required", or when the requests are about information from previous administrations<sup>648</sup>. In turn, the Secretariat of Participation, Transparency, and Anticorruption of the Presidency [*Secretaría de Participación, Transparencia y Anticorrupción de la Presidencia*] (SPTA) would have sustained that the new grounds for denying information required to the State represent a limitation to the right of citizens to access public information as they grant excessive discretion to the officials who must comply with the provisions of the law on access to public information<sup>649</sup>.

529. The Fourth Court of Instruction of San Salvador in April would have prevented the entrance of journalists into the courtroom where the judicial proceeding against the former president of El Salvador, Elías Antonio Saca, accused of the crimes of embezzlement and money laundering, would be carried out. The decision would have been made despite the fact that the case was not declared confidential. The Roundtable for the Protection of Journalists and Information Media Workers issued a statement expressing concern over the decision, which they consider to be arbitrary and that limits to citizens' right to access information<sup>650</sup>. In

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<sup>645</sup> Tribunal Supremo Electoral. PSE-E2019-01-2018. Supuestos actos de propaganda electoral anticipada realizados por varios candidatos a Presidente de la República. April 9, 2018. Available at: <https://static.elmundo.sv/wp-content/uploads/2018/04/PSE-E2019-01-2018-propaganda-anticipada1.pdf>

<sup>646</sup> Inter American Press Association (IAPA). April 12, 2018. [Comunicado de Prensa La Vicepresidencia Regional de la Comisión de Libertad de Prensa e Información de la Sociedad Interamericana de Prensa para El Salvador](#); El Diario de Hoy. April 10, 2018. [Partidos dicen que fallo del TSE limita proceso interno](#).

<sup>647</sup> Sala de lo Constitucional de la Corte Suprema de Justicia. [Sentencia 713-2015](#). Amparo. October 23, 2017.

<sup>648</sup> Agencia de Prensa Salvadoreña. May 11, 2018. [Ley de Acceso a la Información Pública: parálisis y retrocesos](#); Agencia de Prensa Salvadoreña. November 7, 2017. [Sala de lo Constitucional debe revertir resolución violatoria del derecho de acceso a la información pública: REDCO](#); Asociación de Periodistas de El Salvador. [Informe de Libertad de Prensa. El Salvador](#). May 3, 2018.

<sup>649</sup> Verdad Digital. November 1, 2017. [Sentencia de Sala Constitucional restringe derecho al acceso de información pública](#).

<sup>650</sup> Asociación de Periodistas de El Salvador. April 26, 2018. [Questionan restricción de juez a proceso contra expresidente Saca](#); Asociación de Periodistas de El Salvador. April 25, 2018. [Periodistas denuncian restricción a audiencia contra expresidente](#).

August, the Second Sentencing Court of San Salvador would have banned reporters from entering with cameras, tape recorders, and cell phones to the hearing against the former president<sup>651</sup>.

530. In the framework of the legislative and municipal elections held on March 4, the Center for Monitoring of Attacks against Journalists [*Centro de Monitoreo de Agresiones contra Periodistas*] of the Roundtable for the Protection of Journalists recorded about 25 cases of limitations or attacks against reporters' work<sup>652</sup>, in its majority linked to the blocking of access to polling stations<sup>653</sup>. Also, physical and verbal attacks by public officials were reported and, to a lesser extent, cases of intimidation against members of the press<sup>654</sup>.

531. On May 14, the Secretary of Participation, Transparency, and Anticorruption of the Presidency stated, in an opinion column published in the newspaper *La Página*, that access to public information is an achievement that "should not regress", and that it has to move towards fiscal transparency, "which includes knowing who are the taxpayers who do not pay taxes and making the financing of political parties more transparent"<sup>655</sup>.

## H. Broadcasting

532. Former President Antonio Saca, who governed El Salvador between 2004 and 2009 with the Arena party, would have confessed, within the framework of a criminal proceeding into the diversion of \$301 million of public funds to his benefit and that of third parties, that during his mandate a corruption network operated to divert money to personal accounts and radio stations owned by him. Saca admitted that he laundered money through three advertising agencies (*América publicidad*, *ANLE publicidad*, and *Funes & Asociados*) to which he paid US\$100,000 monthly to "send the correct messages to the public through advertising spots," he said. Of that figure, 80% was transferred to his broadcasting companies. Saca also confessed that he created ghost companies through front men who allegedly provided publicity services to the government so that the money could reach his personal accounts, and that he elaborated a presidential regulation to declare as "state secret" all government advertising expenses<sup>656</sup>.

533. The former president was prosecuted for embezzlement and money laundering, after which the Attorney General's Office began the process of seizing properties and vehicles owned by him, as well as 86 frequencies, licenses or media permits. The companies that were halted because they would have received illicit money are Promotora de Comunicaciones S.A. de C.V., Grupo Samix S.A. de C.V., Radio difusión El

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<sup>651</sup> Asociación de Periodistas de El Salvador. August 13, 2018. [Tribunal Segundo de Sentencia limita el ingreso de equipo periodístico a la audiencia contra expresidente Saca](#); Inter American Press Association (IAPA). Report to the 74th General Assembly. October 19 - 22, 2018. [El Salvador](#).

<sup>652</sup> Asociación de la Periodistas de El Salvador. March 9, 2018. [Centro de Monitoreo de Agresiones contra Periodistas registra 25 casos](#).

<sup>653</sup> In the Voting Center at Simón Bolívar school in Chalchuapa, journalist Mauricio Cáceres was reportedly prevented from entering to cover the vote. Press access to the Voting Center in the "Centro Juvenil Zacamil" was also denied. Members of the Municipal Electoral Board reportedly prevented entry to the Voting Center in "Centro Escolar Ranulfo Castro", in Chalchuapa, to *Canal 33* reporter, Ricardo Cardoza. An official of the Municipal Electoral Board (JEM) ordered journalist Carlos Alfredo Soriano, from community radio *La Voz de Mi Gente*, to withdraw from Voting Center "Caserío El Molino", in the municipality of Tacuba. Also, the Supreme Electoral Tribunal (TSE) denied, in an apparently arbitrary manner, credentials to cover the elections to a reporting team for *Cadena Mi Gente* radio. Asociación de Periodistas de El Salvador. March 6, 2018. [Restricción a un centro de votación](#); Asociación de Periodistas de El Salvador. March 6, 2018. [Restricción a prensa nacional](#); Asociación de Periodistas de El Salvador. March 6, 2018. [JEM obstaculizó a periodista](#); Asociación de Periodistas de El Salvador. March 6, 2018. [Periodista fue excluido de Centro de Votación](#); Asociación de Periodistas de El Salvador. March 6, 2018. [TSE negó credenciales a periodistas](#).

<sup>654</sup> Among the most serious cases, it was reported that a journalist from *Televisión de Oriente (TVO)*, was physically assaulted by the electoral prosecutor assigned to the National Institute "Francisco Gavidia" of San Miguel, while broadcasting live; and a correspondent of *La Prensa Gráfica* was reportedly forced out with threats by members of the Municipal Electoral Board in La Unión. Asociación de Periodistas de El Salvador. March 10, 2018. [Resultado final del Centro de Monitoreo de Agresiones contra Periodistas](#).

<sup>655</sup> *La Página*. May 14, 2018. [Opinión: El acceso a la información, un logro que no puede retroceder](#).

<sup>656</sup> *El Faro*. August 10, 2018. [Saca resumió en una hora los cinco años de corrupción de su gobierno](#); *El Salvador Times*. August 14, 2018. [Esta es la confesión de Tony Saca, palabra por palabra](#); *El Herald*. August 7, 2018. [Expresidente salvadoreño Tony Saca acepta confesar delitos](#).

Salvador, Radio Difusión Usuluteca, ABC S.A. de C.V., and Stereo 94.1 S.A. de C.V. Among the six companies, the family controlled 16 radio stations<sup>657</sup>.

534. Vice Minister of Security, Raúl López, said that the frequencies will be administered by the State, through the National Council of Property Administration [*Consejo Nacional de Administración de Bienes*] (Conab). The Citizen Board for the Human Right to Communication [*Junta Ciudadana por el Derecho Humano a la Comunicación*] will ask the judges of the case that the frequencies owned by the Samix Group can be administered by the General Superintendence of Electricity and Telecommunications [*Superintendencia General de Electricidad y Telecomunicaciones*] (SIGET), and that they should be declared in reserve for the community broadcasting movement. For its part, the Association of Radios and Participatory Programs of El Salvador [*Asociación de Radios y Programas Participativos de El Salvador*] (ARPAS) and the Network for the Right to Communication [*Red por el Derecho a la Comunicación*] (ReDco), asked the Prosecutor's Office to terminate the concessions and return them to the State for the SIGET to reassign them to new public, private, and community operators<sup>658</sup>.

### I. Other relevant situations

535. The Office of the Special Rapporteur received information on dozens of dismissals of journalists and media workers in 2018<sup>659</sup>. In this framework, on May 18, the Ministry of Labor and Social Security [*Ministerio de Trabajo y Previsión Social*] (MTPS) announced the start of a Special Inspection Plan in the media to verify compliance with labor and occupational safety regulations. The inspection plan emerged as part of an agreement signed between the Ministry and the Association of Journalists of El Salvador, an organization that has expressed great concern about job insecurity in the journalistic sector, due to poor working conditions, delayed payment of salaries, non-payment of holidays and overtime, disciplinary suspensions, non-compliance with the minimum wage, and mass layoffs, which between January 2017 and April 2018 amounted to 150 cases<sup>660</sup>.

536. In January, the Attorney General's Office for the Defense of Human Rights presented the first Diagnosis on the Working Environment of Female Journalists and Social Communicators in El Salvador. The document reveals that 35% of women in journalism receive a payment lower than the minimum wage and 8% only received a per diem for their work. Likewise, 75% said they received a lower salary compared to their male colleagues, for the same tasks. On the other hand, 90% of the respondents acknowledged the existence of practices that discriminate against female journalists, 88% said they suffered expressions of verbal violence from their co-workers, 96% acknowledged that there are problems of sexual harassment towards female journalists and communicators within their work, and 100% said that women in journalism suffer expressions of sexual harassment during their field work, of which 65.39% come from their sources<sup>661</sup>.

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<sup>657</sup> La Nación/AFP. August 10, 2018. [Fiscalía de El Salvador decomisa propiedades de expresidente Elías Antonio Saca](#); La Prensa/AP. August 11, 2018. [Embarcan 35 propiedades, tras la confesión de Tony Saca](#); El Salvador. August 13, 2018. [Peritos ratifican desvío de dinero en el gobierno de Antonio Saca](#); El Mundo. August 11, 2018. [Incautan 16 radios de Grupo Samix](#).

<sup>658</sup> El Diario de Hoy. August 14, 2018. [Carta al ministro de Seguridad: ¿Quién controlará las radios de Tony Saca?](#); Observacom. August 14, 2018. [Ex Presidente Tony Saca de El Salvador admitió desvío de fondos públicos por más de US\\$300 millones usando sus emisoras de radio](#); El Mundo. March 3, 2018. [Piden extinguir frecuencias de expresidente Antonio Saca](#).

<sup>659</sup> Asociación de Periodistas de El Salvador. June 11, 2018. [Despiden a periodista de WOW TV](#); Asociación de Periodistas del Salvador. May 3, 2018. [Despidos en La Prensa Gráfica](#); Asociación de Periodistas del Salvador. May 2, 2018. [Despidos en GENTEVEÉ](#); Asociación de Periodistas del Salvador. May 2, 2018. [Despidos de periodistas y otros trabajadores en TCS](#).

<sup>660</sup> Ministerio de Trabajo y Previsión Social. May 18, 2018. [Ministerio de Trabajo lanzará plan especial de inspecciones en favor de periodistas y comunicadores](#); Asociación de Periodistas de El Salvador. May 19, 2018. [Ministerio de Trabajo lanza Plan Especial de Inspecciones en medios de comunicación](#); Agencia de Prensa Salvadoreña. May 3, 2018. [La Libertad de Prensa en El Salvador](#); Asociación de Periodistas de El Salvador. [Informe de Libertad de Prensa. El Salvador](#). May 3, 2018.

<sup>661</sup> Procuraduría para la Defensa de los Derechos Humanos. [Diagnóstico sobre el Entorno de Trabajo de las Mujeres Periodistas y Comunicadoras Sociales en El Salvador](#). 2018; Asociación de Periodistas de El Salvador. [Informe de Libertad de Prensa. El Salvador](#). May 3, 2018.

## 16. UNITED STATES

537. In the United States there is a climate of hostility toward the practice of journalism and the free operation of the media. The constant disparaging statements by President Donald Trump against the press, which he considers “dishonest,” “corrupt,” and “the opposition,” which spreads “fake news,” undermines the role of the press. Within this context, there have been several instances of threats against journalists in connection with their work, and some of these incidents have involved government supporters. Journalists have also been killed and subjected to acts of violence in the course of their work. In addition, the Office of the Special Rapporteur observes that the Espionage Act is still being used, and that there are cases in which journalists have been required by law to reveal their sources or to appear as witnesses in connection with events they have reported or investigated. The Office of the Special Rapporteur highlights the progress in the area of justice, with judicial decisions as well as decisions issued by the legislative branch of the federal and state levels favorable to freedom of expression.

### A. Progress

538. A number of measures and initiatives by the federal legislature have aimed to establish greater legal protection for press freedom and the ability of journalists to work without constraints. In this context, on December 20, 2017, the United States Senate passed a resolution recognizing press freedom and reaffirming it as a government priority for strengthening democracy.<sup>662</sup> Likewise, on August 16, 2018, the Senate passed a resolution reaffirming, *inter alia*, that “the press is not the enemy of the people,” condemning “the attacks on the institution of the free press,” and warning about “efforts to systematically undermine the credibility of the press as an attack on the democratic institutions of the United States.”<sup>663</sup> On the other hand, a draft resolution has been introduced condemning President Trump’s and the White House’s decision to ban members of the press from White House events for asking critical questions of the president;<sup>664</sup> and other bills have been introduced to protect journalistic work.<sup>665</sup>

539. In the judicial sphere, there are some noteworthy federal court rulings that have upheld the right of access to public information and freedom of expression. The court cases that this Office has noted include, in particular, the favorable ruling<sup>666</sup> in the lawsuit filed on January 24 by the Reporters Committee for Freedom of the Press against Customs and Border Protection and the Department of Homeland Security for failure to provide public information on records relating to a summons the agencies issued to Twitter in 2017.<sup>667</sup> In *Knight Institute v. Trump*, the United States Southern District Court of New York ruled on May 23 that the blocking by the administrators of President Trump’s official Twitter account (@realDonaldTrump) of seven followers of that account was unconstitutional.<sup>668</sup> The Court found that the blocking of those users impeded political speech protected by the First Amendment. In addition, it held that both the president and the

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<sup>662</sup> United States. Senate. [S.Res.150](#). December 20, 2017. A similar bill was introduced in the Senate on May 7, 2018. See: United States. Congress. [S.Res.501](#). May 7, 2018. Also, another draft resolution was introduced in the House of Representatives on May 17 that intended to protect freedom of expression and condemns any form of criminal behavior, threats or violence for religious reasons or of thought, among others. See: United States. Congress. [H.Res.903](#). May 17, 2018.

<sup>663</sup> United States. Congress. [S.Res.607](#). August 16, 2018.

<sup>664</sup> United States. Congress. [S.Res.601](#). August 1, 2018.

<sup>665</sup> United States. Congress. [H.R.4935 - Journalist Protection Act](#). February 5, 2018; United States. Congress. [S.2967 - Journalist Protection Act](#). May 24, 2018. Both include as a federal offense minor or serious bodily injury committed against journalists because of their profession, while taking part in newsgathering or during professional work, or when there is an intention to intimidate or impede their work. This Office recognizes the importance of these bills, and urges the State to put in track a comprehensive law for the protection of journalists. On October 11, a bill was introduced in the Senate that seeks to “strengthen the participation of elected national legislators in the activities of the Organization of American States” and also reaffirms the support to the OAS in human rights initiatives and anti-corruption policies, and that the country “should take all necessary steps to support and strengthen the role of the Inter-American Commission on Human Rights and its work in the Americas.” See: United States. Congress. [S.3607](#). October 11, 2018.

<sup>666</sup> Reporters Committee for Freedom of the Press. April 30, 2018. [Following Reporters Committee’s FOIA Lawsuit, CBP Releases Records That Shed Light on Attempt to “Unmask” Anonymous Twitter Account.](#)

<sup>667</sup> The agencies’ summons to Twitter would have had the purpose of obtaining information about the identity of the user behind the anonymous account @ALT\_uscis, which has more than 200,000 followers and often criticizes Trump’s immigration policies. See: Reporters Committee for Freedom of the Press. January 24, 2018. [Reporters Committee Files Suit Against DHS, CBP, Demanding Compliance With FOIA](#). See the suit at: [https://www.rcfp.org/sites/default/files/litigation/2018-01-24\\_complaint.pdf](https://www.rcfp.org/sites/default/files/litigation/2018-01-24_complaint.pdf)

<sup>668</sup> By being blocked, users were prevented from seeing tweets from President Trump’s account and sending direct replies. See: Global Freedom of Expression. [Columbia University. Knight First Amendment Institute v. Donald J. Trump.](#)

account administrator “exert governmental control over certain aspects of the @realDonaldTrump account, including the interactive space of the tweets sent from the account. That interactive space is susceptible to analysis under the Supreme Court’s forum doctrines, and is properly characterized as a designated public forum.”<sup>669</sup> The government, however, appealed the decision.<sup>670</sup>

540. Finally, on June 14, in *Minnesota Voters Alliance v. Mansky*, the Supreme Court of the United States ruled unconstitutional a Minnesota state law prohibiting individuals and voters from wearing “political insignia” inside the polling place on election day.<sup>671</sup>

## B. Murders

541. On May 30, independent journalist Zachary Stoner was murdered in Chicago, Illinois. According to available information, the journalist had been publishing videos on his YouTube channel zacktv1, focusing on community life and hip hop artists in the city of Chicago. The journalist reportedly received threats in 2017 in connection with posts and coverage about the death of a teenage girl. The murder of the journalist is being investigated by the Chicago Police Department.<sup>672</sup>

542. On June 28, there was a mass shooting inside the newsroom of the *Capital Gazette* newspaper in Annapolis, the state capital of Maryland. The attack resulted in the death of editors Rob Hiaasen, Wendi Winters, and Gerald Fischman, reporter John McNamara, and advertising assistant Rebecca Smith.<sup>673</sup> According to media reports, the alleged perpetrator had previously sued the newspaper for defamation based on a 2011 article about him. Following the dismissal of the complaint, the perpetrator reportedly made threats against the newspaper on social media on several occasions. The Office of the Special Rapporteur issued a press release condemning these acts and urging the State to investigate the crime and punish the perpetrators.<sup>674</sup>

543. The torture and murder of Saudi journalist Jamal Khashoggi at the Saudi Arabian consulate in Istanbul, Turkey, drew international condemnation. Although the event took place outside the United States, Khashoggi was a journalist and opinion columnist for the US newspaper *The Washington Post*.<sup>675</sup> According to available information, he reportedly went into exile in the United States in 2017<sup>676</sup> and was writing articles critical of the Saudi government.<sup>677</sup> After his disappearance on October 2 at the Saudi consulate in Istanbul, and after he had been missing for several days, the Saudi government admitted that the journalist had been murdered at that consulate.<sup>678</sup> According to the information available, he was tortured, beheaded, and subsequently dismembered.<sup>679</sup> In reaction to this case, bills have been introduced in the United States Congress to prohibit “security assistance”<sup>680</sup> and “military aid” to the Saudi government.<sup>681</sup> For his part, Vice

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<sup>669</sup> Global Freedom of Expression. *Columbia University. Knight First Amendment Institute v. Donald J. Trump*.

<sup>670</sup> NPR. June 5, 2018. [White House Appeals Ruling That President Can't Block Twitter Followers](#); The Washington Post. June 5, 2018. [DOJ will appeal ruling that Trump can't block people on Twitter](#).

<sup>671</sup> United States. Supreme Court of Justice. *MINNESOTA VOTERS ALLIANCE ET AL. v. MANSKY ET AL.* June 14, 2018.

<sup>672</sup> Committee to Protect Journalists (CPJ). June 4, 2018. [Independent music journalist Zachary Stoner killed in Chicago](#); WGNTV. May 30, 2018. [Popular Chicago vlogger fatally shot while driving, crashes car in South Loop](#).

<sup>673</sup> Inter American Press Association (IAPA). 74th General Assembly Report. Salta, Argentina. October 19 - 22, 2018. [United States](#).

<sup>674</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 2, 2018. [Press Release R143/18 Office of the Special Rapporteur of the IACHR expresses alarm and condemns mass shooting inside Capital Gazette newsroom in the United States](#).

<sup>675</sup> The Washington Post. No date. Available at: [https://www.washingtonpost.com/people/jamal-khashoggi/?utm\\_term=.5623153aec5a](https://www.washingtonpost.com/people/jamal-khashoggi/?utm_term=.5623153aec5a)

<sup>676</sup> Huffpost. November 13, 2018. [Uno de los sospechosos del 'caso Khashoggi': "Díselo a tu jefe, está hecho"](#); Rtv. October 22, 2018. [Las incógnitas del asesinato de Jamal Khashoggi](#).

<sup>677</sup> The Washington Post. No date. Available at: [https://www.washingtonpost.com/people/jamal-khashoggi/?utm\\_term=.5623153aec5a](https://www.washingtonpost.com/people/jamal-khashoggi/?utm_term=.5623153aec5a)

<sup>678</sup> Telemundo. October 19, 2018. [Arabia Saudita admite que Jamal Khashoggi fue asesinado en su embajada en Estambul](#); BBC News Mundo. October 22, 2018. [Jamal Khashoggi: Arabia Saudita dice que el periodista murió debido a un "error enorme" en el consulado durante una "pelea"](#).

<sup>679</sup> BBC News Mundo. October 20, 2018. [Jamal Khashoggi: 4 preguntas para entender el caso del periodista cuya muerte tiene en la mira a Arabia Saudita](#); El País. October 18, 2018. [El relato turco de un descuartizamiento salvaje](#).

<sup>680</sup> United States. Congress. [H.R.7082](#). October 23, 2018.

<sup>681</sup> United States. Congress. [S.3590](#). October 11, 2018.

Presidente Mike Pence stated in a White House interview that the murder was an attack on press freedom, and said his administration would use all means at its disposal to “get to the bottom” of the case.<sup>682</sup> United Nations Special Rapporteur David Kaye urged the governments to investigate the murder in a serious and timely manner<sup>683</sup> and to create an independent body to that end.

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

### C. Attacks, threats and intimidation of journalists and the media

545. According to information published by civil society organizations, during the year there were a number of attacks on journalists for reasons related to their work. These include cases of direct threats while providing news coverage, social media threats, physical assaults during attempted reporting, and verbal abuse by political partisans, as well as alleged arbitrary arrests for covering issues of public interest. These episodes occurred in different parts of the country and on different occasions. According to published reports, at least 42 journalists were assaulted during the year, and 11 journalists were arrested.<sup>684</sup> According to a CPJ publication, several reporters from *HuffPost* received death threats, and they and their relatives are victims of harassment and have received threats in social media.<sup>685</sup> In addition, reporter April Ryan, a White House correspondent for *American Urban Radio Networks*, reported publicly that she had received threats after White House Press Secretary Sarah Sanders described a question she asked as “ridiculous” during a press conference.<sup>686</sup>

546. On August 5, *CNN* reporter Don Lemon and his colleague Brian Stelter received a death threat via a live call received during the live broadcast of a C-SPAN program. The caller said those journalists had “started” a war by allegedly calling people who voted for Donald Trump “racists,” and that he would “shoot them” if he saw them.<sup>687</sup> In addition, *New York Times* journalist Kenneth Vogel reported that on August 20 he received a voice mail recording containing statements such as, “You are the enemy of the people,” and “Although the pen might be mightier than the sword, the pen is not mightier than the AK-47. And just remember Ken, there’s nothing civil about a civil war.”<sup>688</sup>

547. Within this context of threats against journalists, supporters of President Trump are hostile towards the media that he publicly disparages. For example, on July 31, during a rally at a venue in Tampa, Florida, Presidente Trump supporters began shouting “CNN sucks!” while journalist Jim Acosta was covering the event.<sup>689</sup> On October 24, an explosive device was mailed to *CNN*’s New York offices, resulting in the evacuation of all personnel. In the wake of this incident, President Trump reportedly stated that it was a terrorist act and that a federal investigation would be conducted.<sup>690</sup> On another occasion, on December 6, *CNN*’s facilities had to be evacuated again after a bomb threat was received via telephone.<sup>691</sup>

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<sup>682</sup> United States. White House. October 23, 2018. [Interview of Vice President Pence by Robert Costa at the Washington Post’s Space Summit “Transformers: Space”](#).

<sup>683</sup> UN News. October 23, 2018. [UN expert calls for international investigation into ‘evident murder’ of Jamal Khashoggi](#).

<sup>684</sup> U.S. Press Freedom Tracker. No date. Available at: <https://pressfreedomtracker.us/>

<sup>685</sup> Committee to Protect Journalists (CPJ). June 12, 2018. [HuffPost journalist and colleagues receive online threats](#).

<sup>686</sup> CNN. April 11, 2018. [April Ryan: I’ve been getting death threats - CNN Video - CNN.com](#); The Root. April 14, 2018. [April Ryan Receives Fresh Death Threats After Asking if Trump Will ‘Step Down’](#).

<sup>687</sup> CNN/YouTube account. August 5, 2018. [Hear the death threat made to Don Lemon and Brian Stelter](#); Newsweek. August 5, 2018. [C-SPAN caller threatens to shoot CNN’s Don Lemon, Brian Stelter for allegedly calling trump supporters ‘racists’](#).

<sup>688</sup> Infobae. August 21, 2018. [La amenaza de muerte que recibió un periodista del New York Times: “Eres el enemigo del pueblo, la pluma no es más fuerte que una AK-47”](#); Bustle. August 21, 2018. [Recording Of A ‘New York Times’ Reporter Getting Threatened Over The Phone With A Gun Is Terrifying](#).

<sup>689</sup> The New York Times. August 1, 2018. [Crowds, Stoked by Trump’s Rhetoric, Increase Their Ire Toward the Press](#); CNN/YouTube account. [August 1, 2018. Trump supporters flip CNN the bird](#). [9:39].

<sup>690</sup> Committee to Protect Journalists (CPJ). October 24, 2018. [CNN mail bomb is latest case of attacks and threats against US news romos](#); Politico. October 24, 2018. [FBI investigating potential explosives sent to CNN and famous Democrats](#).

<sup>691</sup> CNN. December 6, 2018. [Desactivan alerta tras evacuación de oficinas de CNN en Nueva York por amenaza de bomba](#).

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

#### D. Social protest

549. In 2018, this Office took note of a federal bill introduced on 8 June in the House of Representatives,<sup>692</sup> called the *Unmasking Antifa Act of 2018*. The bill states that any person wearing a disguise or mask, "whether or not acting under color of law [...] injures, oppresses, threatens, or intimidates any person in any State [...] in the free exercise or enjoyment of any right or privilege secured to him by the Constitution [...] shall be fined under this title, imprisoned not more than 15 years, or both."<sup>693</sup> It additionally states that "no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States."<sup>694</sup>

550. Additionally, according to information published by civil society organizations, there were a series of attacks on journalists at different marches and protests, committed while the journalists were covering the events. Attacks on journalists were documented at extreme right-wing protests held at different times of the year in Oregon, Illinois, Virginia, Washington DC, and Louisiana. In several of the incidents, the police were said to be the aggressors. Reported attacks include journalists being pushed, pepper sprayed in one case, physically assaulted, fired on with foam bullets, having their cameras confiscated, and having their transmission equipment cables cut.<sup>695</sup> Journalists were also arrested during the coverage of protests. According to available information, independent photojournalist Michael Nigro was arrested while covering a protest in Missouri on June 11.<sup>696</sup>

551. The Office of the Special Rapporteur observes with concern the case of Manuel Durán, a Salvadoran national. On April 3, he was arrested while covering a protest in Memphis, Tennessee, on charges of "disorderly conduct" and "obstructing a highway or passageway." The charges were subsequently dropped; however, he was reportedly brought before the Department of Homeland Security, Immigration and Customs Enforcement (ICE) and placed in deportation proceedings, which are still pending at this time.<sup>697</sup> In November, the United States Court of Appeals for the Eleventh Circuit granted the journalist an indefinite suspension of deportation. However, Duran would still be detained by ICE.<sup>698</sup>

552. In another context, because of the current political polarization in the country, a number of social demonstrations have been held in different parts of the country and on different occasions. According to published information, hundreds of people were arrested at various protests, such as the June 28 protest in the Senate against immigration policies,<sup>699</sup> and the arrest of hundreds of activists protesting the October 4 nomination of Judge Brett Kavanaugh to the Supreme Court.<sup>700</sup>

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<sup>692</sup> United States. Congress. [Unmasking Antifa Act of 2018](#). June 8, 2018.

<sup>693</sup> "(a) IN GENERAL.—Whoever, whether or not acting under color of law, while in disguise, including while wearing a mask, injures, oppresses, threatens, or intimidates any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, shall be fined under this title, imprisoned not more than 15 years, or both."

<sup>694</sup> Estados Unidos. Congreso. [Unmasking Antifa Act of 2018](#). 8 de junio de 2018.

<sup>695</sup> U.S. Press Freedom Tracker. No date. Available at: <https://pressfreedomtracker.us/>

<sup>696</sup> Kansascity. June 11, 2018. [Missouri Poor People's Campaign rallies in state capital after KC warmup: 76 arrested](#); Truthdig. June 11, 2018. [Truthdig Correspondent Michael Nigro Arrested While Covering Poor People's Campaign in Missouri](#).

<sup>697</sup> News Channel 3. April 5, 2018. [Memphis journalist in federal custody after immigration protest arrest](#); The Commercial Appeal. April 5, 2018. [Memphis reporter Manuel Duran now in Louisiana immigration detention center, lawyer says](#).

<sup>698</sup> La Opinión. November 29, 2018. [Corte de apelaciones impide la deportación del periodista Manuel Duran](#); Centro Knight para el Periodismo en las Américas. December 4, 2018. [Periodista que huyó de El Salvador no será deportado de EE.UU. por ahora pero sigue detenido por ICE](#).

<sup>699</sup> El Tiempo. June 28, 2018. [Protestas contra Trump dejan casi 600 detenidos en Washington](#); Notimerica. June 29, 2018. [Detenidos cerca de 600 manifestantes en una protesta en Washington contra la política de inmigración de Trump](#).

<sup>700</sup> El País. October 7, 2018. [Cientos de detenidos por protestar contra Kavanaugh en el Capitolio](#); CNN en español. October 4, 2018. [Arrestan a 302 personas durante protestas contra nominación de Kavanaugh](#).

553. In Puerto Rico, according to information sent by the organization *Kilómetro Cero* to the Office of the Special Rapporteur, a large number of social protest events and various violent and repressive acts in the context of these protests were reported during 2018. According to reports, “The State’s response has been the same: criminalization and brute force. Police tactics that violated human rights continued and even worsened during 2018.” For instance, according to the report, on May 1, “Dozens of civic organizations, feminists, teachers, professionals, trade unions, and university students called for demonstrations. Police abuses were not long in coming. Early on they tried to control and limit the exercise of free expression by blocking the path of peaceful marches through public spaces, as happened with the women’s march and the university march. The police indiscriminately used tear gas against citizens, used brute force against demonstrators, made illegal arrests, and chased young people to their residences in order to arrest them.” The report also describes a set of measures reportedly taken by the government, including the disproportionate presence of police officers, the blocking of demonstrators’ routes, the abusive use of tear gas, the excessive use of force, the warrantless invasion of private property to carry out arrests, detentions, and the filing of criminal charges.<sup>701</sup>

554. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>702</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>703</sup>

555. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>704</sup>

### **E. Stigmatizing statements**

556. During 2018, President Donald Trump’s tendency to make stigmatizing statements towards various media at official events, political rallies, and on social media continued. For example, on May 9, he suggested stripping credentials from media correspondents that he considers to be “corrupt;”<sup>705</sup> on July 7, he posted a tweet saying that two of the most important media outlets in the country “will be out of business in 7 years.”<sup>706</sup> In addition, different media outlets that present information critical of his administration continue to be accused of spreading “fake news.”<sup>707</sup> As a result of this marked confrontation, at least two hundred U.S.

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<sup>701</sup> Report by Kilómetro Cero sent in November 2018 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>702</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

<sup>703</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>704</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>705</sup> CNN Media. May 9, 2018. [Trump's latest shot at the press corps: 'Take away credentials?'](#); “The Fake News is working overtime. Just reported that, despite the tremendous success we are having with the economy & all things else, 91% of the Network News about me is negative (Fake). Why do we work so hard in working with the media when it is corrupt? Take away credentials?”. Twitter account of Donald J. Trump @realDonaldTrump. [May 9, 2018](#).

<sup>706</sup> El Nuevo Herald. July 7, 2018. [Trump dice que el New York Times y el Washington Post cerrarán en 7 años](#); “Twitter is getting rid of fake accounts at a record pace. Will that include the Failing New York Times and propaganda machine for Amazon, the Washington Post, who constantly quote anonymous sources that, in my opinion, don't exist - They will both be out of business in 7 years!”. Twitter account of Donald J. Trump @realDonaldTrump. [July 7, 2018](#).

<sup>707</sup> Real Clear Politics. July 13, 2018. [Trump Refuses Question From CNN's Jim Acosta: 'CNN Is Fake News'](#);

media outlets came together to form a “common front” through editorials to defend themselves against the president’s sustained rhetoric and to express the value of press freedom.<sup>708</sup>

557. Earlier this year, President Trump publicly stated that he intended to revamp defamation laws “so that when somebody says something that is false and defamatory about a person, that person will have meaningful recourse in [the] courts”<sup>709</sup> This statement was apparently made in connection with the publication of the book *Fire and Fury*, an exposé of his administration.<sup>710</sup> As an intimidation strategy, he also stated via Twitter: “Isn’t it a shame that someone can write an article or book, totally make up stories and form a picture of a person that is literally the exact opposite of the fact, and get away with it without retribution or cost. Don’t know why Washington politicians don’t change libel laws?”<sup>711</sup>

558. At a public event in Montana on October 19, President Trump praised a state politician who had been convicted of assaulting a British journalist from *The Guardian* in 2017. This drew sharp criticism from various quarters and was described by the White House Correspondents’ Association as a way of encouraging violence against the media.<sup>712</sup> He has also directed verbal attacks against certain journalists, including Chuck Todd of *NBC News*; Cecilia Vega of *ABC News*; and Bob Woodward, the author of *Fear*, a book about the Trump administration.<sup>713</sup>

559. According to the available information, President Donald Trump put out a Tweet expressing his intention to sue the program “Saturday Night Live.” The program has performed parody sketches about the president and political issues that are currently garnering considerable public interest.<sup>714</sup>

560. In a joint statement, the UN and IACHR Special Rapporteurs “[have] urged [the President] and his administration to cease efforts to undermine the media’s role of holding government accountable, honest and transparent”, stating that “[t]hese attacks run counter to the country’s obligations to respect press freedom and international human rights law.”<sup>715</sup>

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

561. According to a study conducted by the Center for Human Rights of Washington University on the situation of human rights defenders of migrants in the United States,<sup>716</sup> there are “secrecy and disinformation patterns” in relation to the information disseminated by the Immigration and Customs Enforcement (ICE) and the Customs and Border Protection (CBP) about immigration acts’ enforcement.

562. Based on a context of discussion and policies on immigration in the United States, since 2017, the Center for Human Rights has allegedly submitted 189 requests for public information regarding immigration control activities carried out by the federal government. According to what was published, in most cases, there were insufficient answers or obstacles in order to access information. On September 21, 2018, the said

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<sup>708</sup> Excelsior/EFE, AFP y AP. August 14, 2018. [Prensa se une contra Trump en Estados Unidos](#); The New York Times. August 15, 2018. [A Free Press Needs You](#).

<sup>709</sup> NBC News/Canal oficial de You Tube. 10 de enero de 2018. [President Donald Trump Vows To ‘Take A Strong Look’ At Libel Laws | NBC News](#). Variety. January 10, 2018. [Trump Vows ‘to Take a Strong Look’ at Libel Laws in Wake of ‘Fire and Fury’ Release](#); Economía hoy/AFP. January 10, 2018. [Trump desea cambiar leyes sobre difamación a causa de un libro](#).

<sup>710</sup> Channel 4 News/YouTube channel. January 5, 2018. [Fire and fury: Trump wants to ban book about his Presidency by Michael Wolff](#).

<sup>711</sup> “Isn’t it a shame that someone can write an article or book, totally make up stories and form a picture of a person that is literally the exact opposite of the fact, and get away with it without retribution or cost. Don’t know why Washington politicians don’t change libel laws?”. Twitter account of Donald J. Trump @realDonaldTrump. [September 5, 2018](#).

<sup>712</sup> Huffpost. October 19, 2018. [Trump elogia a un legislador republicano que hizo una plancha contra un periodista](#); White House Correspondents’ Association. October 19, 2018. [Statement on President’s remarks in Montana](#).

<sup>713</sup> Inter American Press Association (IAPA). 74th General Assembly Report. Salta, Argentina. October 19 - 22, 2018. [United States](#). October 17, 2018.

<sup>714</sup> Pulzo. December 17, 2018. [Trump amenaza con demandar a programa Saturday Night Live por parodiarlo](#); La Prensa. December 16, 2018. [Trump amenaza con llevar a SNL a los tribunales](#).

<sup>715</sup> IACHR. August 2, 2018. [Joint Press Release R170/18. Trump attacks on the media violate basic norms of press freedom, human rights experts say](#).

<sup>716</sup> Washington University. Center for Human Rights. December 5, 2018. [Secret Police: Access to Information about Immigration Enforcement in the United States](#). This study was presented to the IACHR in the framework of the 170 Period of Sessions on December 5, 2018.

institution allegedly filed a complaint against the Department of Homeland Security to access information, based on Freedom of Information Act.

563. According to what is indicated, “[b]oth ICE and CBP routinely seek to conceal knowledge of their operations from the public. Their anti-transparency practices are not limited to stonewalling FOIA requests: the agencies have been shown to provide false information to the media and elected government officials; to structure institutional relationships in ways that inhibit access to information; and to retaliate against those who expose their lies. For all of these reasons, we believe they are effectively operating as a secret police.”<sup>717</sup>

564. The study is about “Misleading proactive disclosures by ICE and CBP”, “Inadequate responses to FOIA requests”, “Specific institutional arrangements thwart access to information”, “Impact of secrecy on the work of human rights defenders”. Finally, it mentions a series of conclusions and recommendations.<sup>718</sup>

565. Furthermore, according to the document sent to the Office of the Special Rapporteur regarding access to information on matters related to immigration acts’ enforcement, there are instances of unfulfillment regarding maximum advertising and proactive information obligations, lack of response to public information requests, and cases of unfulfillment as regards judicial decisions ordering the supply of information.<sup>719</sup>

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

### **G. Subsequent liability**

567. The Office of the Special Rapporteur has received information about the prison sentences, imposed pursuant to the Espionage Act, of five years and three months against former National Security Agency (NSA) contractor Reality Winner,<sup>720</sup> and four years against former FBI agent Terry Albury.<sup>721</sup> Both reportedly pleaded guilty to leaking classified information.<sup>722</sup>

568. In a joint Declaration of 2010, the UN and IACHR Special Rapporteurs expressed 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

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<sup>717</sup> Washington University. Center for Human Rights. 5 de diciembre de 2018. [Secret Police: Access to Information about Immigration Enforcement in the United States](#). This study was presented to the IACHR in the framework of the 170 Period of Sessions on December 5, 2018.

<sup>718</sup> Washington University. Center for Human Rights. 5 de diciembre de 2018. [Secret Police: Access to Information about Immigration Enforcement in the United States](#). This study was presented to the IACHR in the framework of the 170 Period of Sessions on December 5, 2018.

<sup>719</sup> University of Washington. *Surveil, Target & Deport: Defenders Under Attack*. Submission For The Inter-American Commission On Human Rights Hearing: Situation Of Human Rights Defenders. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>720</sup> Reporters Without Borders (RSF). August 27, 2018. [ALERT - US: Whistleblower Reality Winner sentenced to 63 months in prison](#). In 2017, former contractor of the National Security Agency (NSA), Reality Winner, was arrested and charged with “intentionally holding and transmitting National Defense information to a person not entitled to receive it.” The document supposedly sent to the media outlet *The Intercept* would have been used as the basis for an article on cyber attacks carried out by the State of Russia against VR Systems, a US company responsible for the electronic voting machines in several states of the United States in 2016 (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, paras. 596 - 597).

<sup>721</sup> The Intercept. March 28, 2018. [Department of Justice Charges FBI Whistleblower under Espionage Act](#); StarTribune. March 29, 2018. [Justice Dept. charges Minnesota FBI agent for leaking secret document to news outlet](#).

<sup>722</sup> The Washington Post. October 18, 2018. [Former FBI agent gets four years in prison for leaking classified documents](#); Clarín/EFE. October 19, 2018. [Condenan a 4 años de prisión a un ex agente del FBI por filtrarle información a la prensa](#).

previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal”.

#### H. Confidentiality of sources

569. According to information published by civil society, journalists in several cases were subpoenaed to testify as witnesses. In some cases, the subpoenas were later dismissed or set aside, and in others, motions were filed to quash them.<sup>723</sup> One case publicized in the media concerns *New York Times* journalist Ali Watkins. The US Department of Justice reportedly notified her that her telephone records and emails had been seized. The records obtained reportedly contained details of the calls, text messages, and emails she had sent since 2014. This seizure was made in connection with an investigation into alleged leaks of classified information by former Senate Intelligence Committee security director James Wolfe to the journalist,<sup>724</sup> with whom he apparently had a romantic relationship.

570. The Office of the Special Rapporteur expresses its concern over these situations, and recalls that any measure to seize journalistic material, that requires revealing sources or subpoenaing journalists to appear 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, "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

#### I. Censorship and the withdrawal of credentials

571. On July 25, CNN White House correspondent Kaitlan Collins was barred from entering an event at the White House that was ostensibly open to the press.<sup>725</sup> The reason for the impediment—according to the reporter herself—was that she asked “inappropriate” questions.<sup>726</sup> In view of this situation, a draft resolution was introduced in the Senate on August 1, condemning the decision to ban members of the media from White House events for asking critical questions of the President.<sup>727</sup> In a separate incident, in November, the White House suspended the press pass of CNN reporter Jim Acosta. During a White House press conference, Acosta had posed a series of questions to President Trump related to the “migrant caravan,” which sparked a brief debate between the journalist and the President. President Trump said, “honestly, I think you should let me run the country. You run CNN.” Next, while Acosta was asking a follow-up question, President Trump replied, “that’s enough,” and an assistant approached the journalist to snatch the microphone, causing a minor struggle between her and Acosta. The journalist then attempted to ask another question and President Trump, following a brief reply, repeated “that is enough,” adding, “put down the mic.” Finally, when another journalist asked a question, President Trump said to Acosta, “CNN should be ashamed of itself, having you working for them. You are a rude, terrible person. You shouldn’t be working for CNN”. The President also rebuked Acosta for the way he treated the assistant and “other people.”<sup>728</sup> This incident reportedly served as the basis for the suspension of Acosta’s press pass. In this case, following a lawsuit filed by CNN, a federal judge ordered the temporary reinstatement of his credential because the measure violated the right to freedom of the press.<sup>729</sup>

572. Principle 5 of the Declaration states that “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” Principle 13, in turn, affirms that “The [media] have the right to

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<sup>723</sup> U.S. Press Freedom Tracker. No date. Available at: [https://pressfreedomtracker.us/subpoena/?date\\_lower=2017-12-15&date\\_upper=2018-08-15](https://pressfreedomtracker.us/subpoena/?date_lower=2017-12-15&date_upper=2018-08-15)

<sup>724</sup> The New York Times. June 7, 2018. [Ex-Senate Aide Charged in Leak Case Where Times Reporter's Records Were Seized](#); Inter American Press Association (IAPA). June 12, 2018. [IAPA criticizes violation of confidentiality of new sources](#).

<sup>725</sup> Inter American Press Association (IAPA). July 26, 2018. [Restraint of journalist is inappropriate and serious for exercise of press freedom in the United States](#); CNN media. July 25, 2018. [The White House took retaliatory action against Kaitlan Collins, a White House reporter for CNN, after Collins asked President Trump questions at an Oval Office photo op on Wednesday](#).

<sup>726</sup> CNN/YouTube channel. July 25, 2018. [White House bans CNN reporter from event for 'inappropriate' questions](#).

<sup>727</sup> United States. Congress Federal. [S.Res.601](#). August 1, 2018.

<sup>728</sup> CNN. November 7, 2018. [White House pulls CNN reporter Jim Acosta's pass after contentious news conference](#); The Guardian. November 7, 2018. [After midterm distraction Trump gets back to business: attacking the media](#); CNN/YouTube channel. November 7, 2018. [Trump clashes with Jim Acosta in testy exchange](#). [07:58].

<sup>729</sup> CNN en Español. November 16, 2018. [Juez ordena a la Casa Blanca restituir el pase de prensa de Jim Acosta de CNN](#); El Nuevo Herald. November 16, 2018. [Juez ordena a la Casa Blanca devolver acreditación a periodista de CNN Jim Acosta](#).

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.”

573. In addition, the Inter-American Court indicates that “[w]ith respect to the accreditations or authorizations necessary for the media to participate in official events, which imply a possible restriction to the exercise of the freedom to seek, receive and impart information and any kind of ideas, it is essential to prove that their application is legal and legitimate and necessary and proportionate to the goal in question in a democratic society. The relevant criteria for the accreditation scheme should be specific, fair and reasonable, and their application should be transparent. It corresponds to the State to show that it has complied with the above requirements when establishing restrictions to the access to the information it holds.”<sup>730</sup>

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

574. On April 11, Facebook founder and CEO Mark Zuckerberg appeared before the US Congress, having been asked to testify after it came to light that there had been a massive breach of personal data that affected more than eighty million Facebook users and was said to have been used for electoral purposes in 2016 by an English consulting firm. During the hearing, the founder of the social network had to answer a hundred questions. Afterwards, he also reportedly stated that the regulation of the social network was “inevitable.”<sup>731</sup>

575. On May 16, the US Senate voted to restore net neutrality protections.<sup>732</sup> In 2017, the Federal Communications Commission (FCC) voted to repeal the net neutrality rules adopted in 2015.<sup>733</sup> While this decision is an important step, the legislative approval process is still pending. Against this backdrop, several states have reportedly promoted bills to preserve the net neutrality rules.<sup>734</sup>

576. The Office of the Special Rapporteur has maintained that “net neutrality is a necessary condition for the exercise of freedom of expression[...].The purpose of this principle is to ensure that free access and user choice to use, send, receive or offer any lawful content, application or service through the Internet is not subject to conditions, or directed or restricted, such as blocking, filtering or interference.”<sup>735</sup>

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<sup>730</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 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 vs. Venezuela*. Judgment of January 28, 2009. Serie C No. 195, para. 346.

<sup>731</sup> CNN en Español. April 11, 2018. [Mark Zuckerberg revela que su información también se compartió en la filtración de datos](#); El Tiempo. April 15, 2018. [Zuckerberg dio la cara ante el Congreso de EE. UU. pero no convenció](#).

<sup>732</sup> United States. Congress Federal. [S.J.Res.52](#). May 16, 2018.

<sup>733</sup> 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. Para. 612.

<sup>734</sup> CNN Tech. January 5, 2018. [States propose bills to preserve net neutrality](#); National Conference of State Legislatures. [Net Neutrality legislation in States](#). July 18, 2018.

<sup>735</sup> 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. Para. 22.

## 17. GRENADA

### A. Freedom of expression in electoral contexts

577. On March 13, general elections took place to elect a new government. In this context, the New National Party (NNP) was re-elected for a second consecutive term and obtained all the seats in the House of Representatives<sup>736</sup>. According to the preliminary report of the Caricom electoral mission, on the day of the elections there “there was adequate security presence which was neither oppressive nor intimidatory and in the main contributed to the electors exercising their franchise in a peaceful environment and in an orderly manner.”<sup>737</sup>

578. On political campaign financing issues, the preliminary report of the OAS electoral mission indicates that “[i]n Grenada, there is no specific legislation and no regulations that directly address the issue of campaign financing. There is no public funding for political parties or candidates, so that electoral campaigns must be privately funded. The origin of private funds is not regulated and there are no prohibitions on foreign and anonymous sources. Grenada has established no limits on campaign spending and political parties are not required to disclose their finances.”<sup>738</sup>

579. The Office of the Special Rapporteur recalls that “[e]lections 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>739</sup>

580. Likewise, according to Resolution 1/18 of the IACHR, on “Corruption and Human Rights”, States must “[s]trengthen 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”<sup>740</sup>.

### B. Other relevant situations

581. According to the information available, following a complaint by the country’s airport authority about alleged interference with its air traffic control frequency, and after an investigation carried out by officials of the regulatory agency for communications, two radio stations would have been intervened for alleged violation of license agreements. The affected radios would have been Chime FM, which would belong to the Gran Communications business group, and True Blue community radio. According to the news story, both radio stations generated 500 watts more than what was allowed according to their license. After the regulatory authority found the cause of interference, the True Blue radio station would have reverted the frequencies exceeded, while Chime FM reported that the measures were politically motivated with the intention of affecting the right to freedom of the press. These measures would have been taken days before the elections<sup>741</sup>.

582. According to information published by a government agency, Prime Minister Mitchel denied that the measures adopted by the port authority were politically motivated<sup>742</sup>.

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<sup>736</sup> Caribbeans Elections. Grenada General Election Results. March 13, 2018 Available at: [http://www.caribbeanelections.com/gd/elections/gd\\_results\\_2018.asp](http://www.caribbeanelections.com/gd/elections/gd_results_2018.asp)

<sup>737</sup> Caricom. Preliminary Statement of Observations and Findings of the Caricom Election Observation Mission (CEOM) To the General Elections of Grenada. March 31, 2018. Available at: [http://www.caribbeanelections.com/eDocs/election\\_reports/gd/GD\\_CARICOM\\_2018\\_prelim.pdf](http://www.caribbeanelections.com/eDocs/election_reports/gd/GD_CARICOM_2018_prelim.pdf)

<sup>738</sup> OAS. Electoral Mission. Preliminary Report of the Electoral Experts Mission of The Organization Of American States In Grenada. March 14, 2018. Available at: [http://www.caribbeanelections.com/eDocs/election\\_reports/gd/GD\\_OAS\\_2018\\_prelim.pdf](http://www.caribbeanelections.com/eDocs/election_reports/gd/GD_OAS_2018_prelim.pdf)

<sup>739</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>740</sup> IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018.

<sup>741</sup> Now Grenada. March 7, 2018. [Radio stations go off air as part of probe](#).

<sup>742</sup> The Official Website of the Government of Grenada. March 6, 2018. [No Political interference: Radio Stations found violating agreement](#).

583. The IACHR and the Office of the Special Rapporteur have recognized that community media perform an essential function in our hemisphere for different sectors of society to exercise their rights to freedom of expression and access to information. In those declarations they have established that it is necessary for States to legally recognize community media, for spectrum to be reserved for these types of media, and for there to be equal access to licenses that recognize the distinct nature of private noncommercial media. Given the existing conditions of exclusion, the States must take positive measures to include the non-commercial sectors in the communications media. These measures include ensuring broadcast spectrum frequencies for the different types of media, and providing specifically for certain frequencies to be reserved for the use of community broadcasters, especially when they are not equitably represented in the spectrum. On this note, the Office of the Special Rapporteur has insisted upon the need for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.

584. According to Principle 13 of the Declaration of Principles on Freedom of Expression, “[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.”

## 18. GUATEMALA

585. In its report “Human Rights Situation in Guatemala” of 2017, the IACHR highlighted journalism’s essential role in the context of the country by means of reporting abuse of power and following up investigations on corruption cases. In this sense, it expressed that journalists and social communicators are still, across Guatemala, the main source of information and discussion on the serious problems regarding human rights, institutional crisis, and corruption that affect the country. Likewise, the Commission mentioned the violence context against journalists, which it acknowledged during its visit *on-site* and was characterized by murders, threats, and a stigmatizing speech toward media and journalists committed to fighting against corruption and abuse of power. Additionally, it indicated that in the country there were still structural problems preventing citizens from receiving information from different sources, such as high levels of concentration in the ownership and control of radio stations and open television, and subscribers. Moreover, there are still serious obstacles regarding access to radioelectrical spectrum and public resources for sustainability on the part of indigenous peoples’ community media.

586. During 2018, the IACHR observes that Guatemala has been marked by the catastrophic eruption of Volcán de Fuego in June, which has left a balance of several people dead, injured and displaced. In the wake of this situation, different communicators reported harassment on the part of the State while covering the emerged crisis. President Jimmy Morales publicly questioned the press’ work and accused it of causing panic and terror for broadcasting what he considered as false information. Furthermore, the State’s decision of not renewing the mandate of the Director of the International Commission Against Impunity in Guatemala (CICIG) and the declaration of its Director, Iván Velázquez, *persona non grata* have caused an institutional crisis, which has been considered as a negative fact by the international community. In this context, several communicators reported having been harassed, threatened, and assaulted for informing on the events that made the Government decide on the non-renewal of CICIG’s mandate. Moreover, it was registered that three journalists were killed for reasons allegedly related to their work.

### A. Murders

587. In 2018, the IACHR and its Office of the Special Rapporteur received information on the murders of three communicators in Guatemala. In this sense, on February 1, at a reedbed in Bolivia community, the corpses of Castillo Cifuentes —who was a correspondent for “Nuestro Diario” in Coatepeque— and León Miranda —who was the publicist of a local radio station— were found. The corpses were shot in the head and were tied hand and foot. Both communicators were jointly working for the publication of a feature on the Mazatec carnival.<sup>743</sup>

588. Additionally, on April 9, Journalist José Daniel Rodríguez allegedly disappeared. On the next day, at Guatemala city’s area 9, his corpse was located wrapped in sheets on the street, showing signs of violence. The National Institute of Forensic Science allegedly informed that the death cause was asphyxia by suffocation. Mr. Rodríguez was the columnist on the economy, justice, and politics of digital media República.gt. Additionally, he was a Twitter influencer and was popular in social media for his posts on national current affairs.<sup>744</sup>

589. In spite of the said situation, the IACHR agrees with the progress made in Journalist Manuel Salvador Villagrán’s murder case, which took place in January 2017. According to the information available, the Unit of Crimes against Journalists of the Public Ministry’s Human Rights Prosecutor conducted an investigation before the Court for Criminal Activities, Drug Activities and Crimes against the Environment of Zacapa department. In this sense, in August 2018, this Court decided to initiate a trial against Marcos Oswaldo Azurdia Chávez, who was accused of the said murder.<sup>745</sup> Moreover, it agrees with the progress in the case regarding the murders of Journalists Danilo López and Federico Salazar, committed in March 2015. According to what was informed, in January, Congressman Julio Antonio Juárez Ramírez was arrested in Mazatenango,

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<sup>743</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 5, 2018. [Press Release R19/18 Office of the Special Rapporteur Condemns Murder of Two Journalists in Guatemala. Urges State to Investigate Fully and Implement Protection Mechanism.](#)

<sup>744</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 4, 2018. [Press Release R95/18 Office of the Special Rapporteur condemns murder of journalist in Guatemala and urges to investigate the relation to his journalistic activity.](#)

<sup>745</sup> Publinews. July 22, 2018. [Envían a juicio a responsable de asesinar a periodista](#); Ministerio Público de Guatemala. July 20, 2018. [Zacapa: MP presentó investigación por la que se envía a debate a hombre por asesinato de periodista.](#)

Suchitepéquez, after the Court for High-Risk Cases, Department B had allegedly authorized the arrest warrant for the crimes of murder, attempted murder, and unlawful assembly.<sup>746</sup> According to the investigation conducted by the Public Ministry through the Special Prosecutor against Impunity together with the International Commission against Impunity in Guatemala (CICIG), the congressman is the alleged perpetrator of both murders.<sup>747</sup>

590. In its observations regarding the report “Human Rights Situation in Guatemala, 2017,” the State indicated that in Guatemala, the Public Ministry, through the Human Rights Prosecutor, integrates seven Prosecution Units “which aim at providing the corresponding guidance and diligence for each specific case according to profession, especially respecting freedom of expression.”<sup>748</sup> In this sense, one of the seven Prosecution Units is the Unit of Crimes against Journalists. Moreover, regarding journalists’ early warning and rapid response, it informed that this Unit allegedly has five assistant prosecutors that had 24-hour shifts, “with a mobile phone on duty, including weekends and holidays, which will be available for the reception of reports or queries, and in the case of threats, action will be immediate in the carrying out of diligences and specially official letters to the Governmental Ministry, with the aim of providing perimeter security to journalists and the risk analysis request with the Department of People’s Protection and Security (DPPS) of the National Civil Police, with the aim of providing customized security to journalists, if required.”<sup>749</sup>

591. Furthermore, the State informed that, together with UNESCO and the Citizen Foundation, the Judicial Studies School has developed training modules addressed to magistrates and judges, regarding freedom of expression and security for journalists. The foregoing has the aim of “providing updated and pertinent information to those in charge of making justice.”

592. The IACHR recalls that Principle 9 of its 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.” States should ensure that crimes against freedom of expression are subject to independent, prompt, and effective investigations and judicial proceedings. In addition to criminal investigations, disciplinary procedures should be put in place when there is evidence that public officials have committed violations of freedom of expression during their professional work. As has been pointed out on other occasions, the lack of sanctions against material and intellectual perpetrators of homicides, assaults, threats, and attacks related to the exercise of journalistic activity leads to new crimes and generates a notorious effect of self-censorship that seriously undermines the possibilities of a true open, free, and democratic debate.

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

593. In the report “Human Rights Situation in Guatemala, 2017,” the IACHR informed that during the visit *in loco*, there were complaints filed for the increase in threats and stigmatization through social media, assault by the public force, and a strong economic and social polarization atmosphere that infused the exercise of journalism in the country, especially opinion journalism.

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<sup>746</sup> El Periódico. January 13, 2018. [Diputado Julio Juárez es capturado señalado del asesinato de dos periodistas](#); Soy502. January 13, 2018. [Así trasladan al diputado Julio Juárez agentes de la PNC](#).

<sup>747</sup> “Investigation of MP together with @CICIGgt enabled today the capture of deputy Julio Juárez Ramírez accused of murder, attempted murder and illicit association. He is allegedly involved in the deaths of two journalists”. Twitter account of Ministerio Público de Guatemala @MPguatemala. [January 13, 2018](#); “Juárez Ramírez is the alleged mastermind behind the murders of journalists Danilo Zapón López and Federico Salazar. He was arrested in a sector of Mazatenango”. Twitter account of Ministerio Público de Guatemala @MPguatemala. [January 13, 2018](#); Ministerio Público de Guatemala. January 13, 2018. [Capturado diputado Julio Juárez Ramírez quien estaría involucrado en el asesinato de dos periodistas](#); Reuters. January 13, 2018. [Guatemala congressman arrested, accused in murders of two journalists](#); Committee to Protect Journalists (CPJ). January 16, 2018. [Guatemala arrests lawmaker accused of plotting 2 journalists’ murders](#).

<sup>748</sup> República de Guatemala. Observations of the State of Guatemala on the Report of the Inter-American Commission on Human Rights “Situation of Human Rights in Guatemala, 2017”. Ref. P-888-2018/JLBR/WR/cr. October 25, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>749</sup> República de Guatemala. Observations of the State of Guatemala on the Report of the Inter-American Commission on Human Rights “Situation of Human Rights in Guatemala, 2017”. Ref. P-888-2018/JLBR/WR/cr. October 25, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

594. This year, the IACHR and its Office of the Special Rapporteur observed that, even though the information stating that the number of attacks against the press decreased in comparison with previous periods, the civil society reported that the insecurity context regarding journalists and social communicators is still worrying in Guatemala.<sup>750</sup> In this sense, there were cases of death threats, attacks, and intimidation against journalists in the country due to their work.<sup>751</sup> Likewise, the Office of the Special Rapporteur received information from the Guatemalan Human Rights Ombudsman's Office (PDH) expressing the political situation in the country and "the acts carried out to restrict freedom of press in this context."<sup>752</sup> According to the PDH, the attacks against independent journalists and media allegedly aim at restricting their work.<sup>753</sup>

595. Among the attacks against independent press, the PDH registered the cyber-attacks addressed to the websites of "Guatevisión," "Plaza Pública," "Soy502," "Nómada," and "El Periódico."<sup>754</sup> Likewise, there were attacks against "Guatevisión" journalists, who were deprived of their working equipment, according to the Ombudsman's Office. According to the complaint, the common factor among the attacks against journalists is that they conduct investigations on corruption. Likewise, it refers to the information stating that "complaints were even used as mechanisms to intimidate social communicators and dissuade them from their work,"<sup>755</sup> and that "El Periódico" "has been the object of intimidation and surveillance at its headquarters."<sup>756</sup>

596. Furthermore, among the documented cases, there were the ones about Columnist Víctor García and Journalist Henry Bin. According to the information available, in April, Víctor García, columnist from digital newspaper "Soy502," reported that he has been harassed for months on social media and that he was also threatened with death by a municipal official.<sup>757</sup>

597. In August, Indigenous Journalist Rolanda de Jesús García, a collaborator from "TeleSur" network and "Centro de Medios Independientes," was allegedly intimidated by the workers of a hydroelectric plant in Cahabón municipality while she was covering the deforestation situation and the potential overflowing of Cahabón River due to the plant's operation. According to the information available, when they asked her to leave the area, an individual threatened her with rape if she ever returned. During her way back, six men carrying machetes retained her until she had deleted the pictures and the video she had recorded.<sup>758</sup> In a communication, the Guatemalan Journalists' Association (APG), besides condemning the facts, indicated that

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<sup>750</sup>Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial](#). November 30, 2018.

<sup>751</sup> Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial](#). November 30, 2018; Publinews. November 6, 2018. [APG rechaza amenazas de muerte hacia comunicadores](#); Centro de Reporteros Informativos sobre Guatemala (Cerigua). April 16, 2018. [Un columnista asesinado y otro amenazado de muerte, denuncia CERIGUA](#).

<sup>752</sup> Communication from the Human Rights Ombudsman's Office (PDH) to the Office of the Special Rapporteur for Freedom of Expression on "Attacks against the Media in the Context of the Political Situation in Guatemala" received on September 4, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>753</sup> Communication from the Human Rights Ombudsman's Office (PDH) to the Office of the Special Rapporteur for Freedom of Expression on "Attacks against the Media in the Context of the Political Situation in Guatemala" received on September 4, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>754</sup> Communication from the Human Rights Ombudsman's Office (PDH) to the Office of the Special Rapporteur for Freedom of Expression on "Attacks against the Media in the Context of the Political Situation in Guatemala" received on September 4, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Inter American Press Association (IAPA). August 30, 2018. [IAPA protests cyber attack on Guatemala's elPeriódico](#).

<sup>755</sup> Communication from the Human Rights Ombudsman's Office (PDH) to the Office of the Special Rapporteur for Freedom of Expression on "Attacks against the Media in the Context of the Political Situation in Guatemala" received on September 4, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>756</sup> Communication from the Human Rights Ombudsman's Office (PDH) to the Office of the Special Rapporteur for Freedom of Expression on "Attacks against the Media in the Context of the Political Situation in Guatemala" received on September 4, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>757</sup> Centro de Reporteros Informativos sobre Guatemala (Cerigua). April 16, 2018. [Un columnista asesinado y otro amenazado de muerte, denuncia CERIGUA](#); Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial](#). November 30, 2018.

<sup>758</sup> Publinews. August 23, 2018. [APG condena retención y amenazas a periodista en Cahabón](#); Prensa Libre. August 21, 2018. [Preocupan incidentes en hidroeléctricas, sectores llaman al diálogo y evitar la violencia](#); Asociación de Periodistas de Guatemala (APG). August 23, 2018. [Comunicado No. 30-8-2018](#).

this attack “highlights the censorship and self-censorship that journalists experience in the remotest areas of the country. It also shows gender discrimination and violence toward female journalists.”<sup>759</sup>

598. Moreover, in August, members of the army allegedly attempted to prevent journalists from entering the so-called “ground zero,” the epicenter of the tragedy of Volcán de Fuego.<sup>760</sup> In addition, officers of the National Civil Police (PNC) allegedly obstructed the journalistic work of Radio Announcer César Armando Bejar Pacay, as he was not allowed to document through his mobile phone the way in which a group of prisoners were being transferred by foot to the prison located near Cobán’s central park.<sup>761</sup>

599. Furthermore, on September 7, the Governmental Ministry, by means of a message disseminated on social media, informed that “categorically speaking, regarding an alleged list of names of people accused of insurrection, it is absolutely false.” Likewise, Alfredo Brito, Secretary of Communications for the Presidency, allegedly denied there was a list of people to be reported. The Procurator-General of the Nation also assured he was not aware of the existence of such list. These statements by the Government were allegedly made after they became aware of the information on the alleged existence of a list of names of journalists and human rights activists that might be accused of insurrection, due to their opinions against President Jimmy Morales’ decisions.<sup>762</sup>

600. According to public knowledge information, on September 16, officers of the National Civil Police allegedly intimidated journalists from different media during their coverage across the Constitutionality Court’s (CC) headquarters, on the alleged resolution of the constitutional court regarding the prohibition of the entry of Commissioner Iván Velázquez in Guatemala, Director of the International Commission against Impunity in Guatemala (CICIG).<sup>763</sup>

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

### C. Social protest

602. On August 31, President Jimmy Morales announced the non-renewal of the International Commission against Impunity in Guatemala’s (CICIG) mandate, which expires in September 2019. Additionally, four days after, a communication, through which Migration was ordered to impede Iván Velázquez Gómez’s entry to Guatemala (CICIG’s Director), was made public.<sup>764</sup> After these measures, several groups allegedly reported there were protests against corruption, President Jimmy Morales’ administration, and CICIG’s renewal.<sup>765</sup>

603. In view of this announcement, Human Rights Ombudsman from Guatemala Jordán Rodas filed for a writ of amparo before the country’s Constitutionality Court (CC) “so that the Guatemalan citizens’ rights to freedom of expression, freedom of movement, right to assembly and protest are respected and

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<sup>759</sup> Asociación de Periodistas de Guatemala (APG). August 23, 2018. [Comunicado No. 30-8-2018](#).

<sup>760</sup> Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial](#). November 30, 2018.

<sup>761</sup> Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial](#). November 30, 2018; Noticias La Esfinge. August 22, 2018. [Intentan despojar de equipo de trabajo a periodista en Cahabón A.V.](#)

<sup>762</sup> Prensa Libre. September 7, 2018. [Gobierno niega que exista persecución a periodistas](#); Impacto. September 8, 2018. [Gobierno no va tras de periodistas, aseguran que es un falso rumor](#); “Categorically as to an alleged list that contains names of people who would be accused of sedition, which is totally false. The population is urged not to be surprised by complaints made through social networks, likewise, it emphasizes that the role of the National Civil Police is to provide security and guarantees to all citizens”. Twitter account of Ministerio de Gobernación de Guatemala @mingobguate. [September 7, 2018](#).

<sup>763</sup> Asociación de Periodistas de Guatemala (APG). September 17, 2018. [Comunicado No. 34-9-18](#).

<sup>764</sup> Prensa Libre. September 4, 2018. [Gobierno prohíbe a Iván Velázquez entrar al país](#); CNN español. September 4, 2018. [Gobierno de Guatemala prohíbe entrada al país de Iván Velázquez](#).

<sup>765</sup> La Prensa. September 20, 2018. [Guatemala: Exigen renuncia de Jimmy Morales en masivas protestas](#); Forbes Centroamérica. September 10, 2018. [Protestas en Guatemala para renovar CICIG](#); Prensa Libre. September 12, 2018. [Manifestaciones contra Jimmy Morales se concentran en la capital](#); Prensa Libre. September 11, 2018. [Pobladores de Totonicapán liberan ruta Interamericana luego de nueve horas de manifestación](#).

guaranteed.”<sup>766</sup> On September 10, the CC’s plenary decided to provisionally grant the said writ of amparo and ordered President Morales to guarantee the right to protest during the summoned demonstrations.<sup>767</sup>

604. On September 12, in the framework of the protests carried out in Guatemala, thousands of military soldiers and police officers allegedly prevented thousands of demonstrators from entering the historical center of the City of Guatemala. According to what was informed, while they were marching toward the city’s downtown, on the third consecutive day of protesting, indigenous people, farmers, and university students encountered more than 2,000 police officers, together with military soldiers carrying long guns, cordoning the city’s downtown, impeding the carrying out of the protest against President Jimmy Morales.<sup>768</sup>

605. In its observations to the report “Human Rights Situation in Guatemala, 2017,” the State indicated that, in compliance with Peace Treaties from 1996 and in the framework of the Plan of the Alliance for Prosperity, the Implementation Plan for the gradual retreat of the Guatemalan Army as regards Public Security activities was allegedly initiated in April 2017. In this sense, up to now, “the Ministry of Defense has retreated its troops in 22 military detachments located in different municipalities of the country, so a transition process was initiated so that the National Civil Police take their place, regarding both the detachment’s facility and their functions.”<sup>769</sup>

#### **D. Protection mechanisms**

606. The IACHR and its Office of the Special Rapporteur take cognizance of the communication dated February 21, through which the Secretary of Social Communications for the Presidency, Mr. José Alfredo Brito Ralón, sent the preliminary document of the proposal of Governmental Agreement on the Journalists’ Protection Program to the Office of the Special Rapporteur, and requested the technical assistance of this Office. In accordance with this request, on March 7, the Office of the Special Rapporteur sent a technical note on the matter to the State. In spite of the abovementioned, the recommendations to the State of Guatemala, in accordance with the visit *on-site* made in 2017 by the IACHR and President Jimmy Morales’ announcement on the creation of a Protection Program for Journalists and Social Communicators in the country, the Office of the Special Rapporteur observes that, until now and at the close of this report’s editing, there has been no concrete progress in the matter.

607. Regarding this, the State informed that in 2016, the President of the Republic launched the creation of the Governmental Agreement, through which the aforementioned Journalists’ Protection Program would be created “as a Public Social draft, with the aim of guaranteeing the Right to Freedom of Expression, and related Human Rights, whose activities aim at solving the need for Journalists’ Security and the Impunity Matter.” In this sense, it indicated that such Project is currently at the Communication Secretariat of the Presidency of the Republic in order to consider the legal and administrative requirements that the Governmental Ministry estimates that shall be fulfilled for its issuance.<sup>770</sup>

608. On several occasions, the IACHR and its Office of the Special Rapporteur for Freedom of Expression, UNESCO, and the United Nations High Commissioner for Human Rights have recommended the creation of a

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<sup>766</sup> “@PDHgt @JordanRodas filed an amparo action before the @CC\_Guatemala for the respect and guarantee of the rights of freedom of expression, freedom of movement, the right of assembly and demonstration of the Guatemalan population”. Twitter account of Procuraduría de los Derechos Humanos @PDHgt. [September 9, 2018](#); El Periódico. September 9, 2018. [PDH presente amparo ante la CC para garantizar seguridad en manifestaciones](#).

<sup>767</sup> El Diario/EFE. September 11, 2018. [La Corte Constitucional de Guatemala ordena al presidente Morales garantizar las protestas](#); Prensa Latina. September 11, 2018. [Más bloqueos de carreteras en protesta contra gobierno guatemalteco](#); Prensa Libre. September 10, 2018. [CC ordena a Jimmy Morales garantizar protestas](#); EFE. September 16, 2018.

<sup>768</sup> Reuters. September 12, 2018. [Miles de efectivos en Guatemala impiden avance de protesta contra Morales](#).

<sup>769</sup> Communication from the Human Rights Ombudsman’s Office (PDH) to the Office of the Special Rapporteur for Freedom of Expression on “Attacks against the Media in the Context of the Political Situation in Guatemala” received on September 4, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>770</sup> República de Guatemala. Observations of the State of Guatemala on the Report of the Inter-American Commission on Human Rights “Situation of Human Rights in Guatemala, 2017”. Ref. P-888-2018/JLBR/WR/cr. October 25, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

protection program for journalists and media workers in Guatemala, due to the violent situation and attacks journalists and communicators have been facing for more than a decade in that country.<sup>771</sup>

609. Due to the foregoing, the IACHR and its Office of the Special Rapporteur remind the Guatemalan State of some of the developed guidelines, which have to be considered in the journalists' protection programs' drafting and functioning, among which there are i) the State's political commitment shall include: an appropriate legal framework; sufficient trained and educated human resources, who inspire confidence in the beneficiaries of the program; budgeting resources necessary to cover the investment stemming from the personnel working in the program, as well as the investment related to protection measures; the adoption of regulations that clearly restrict the competences and responsibilities of the authorities intervening in the implementation and monitoring of protection measures; ii) the incorporation of an appropriate definition of the potential beneficiaries and foundations by virtue of which the potential beneficiary is able to get protection; iii) that an adequate risk analysis is carried out, with a gender perspective and allowing the State to determine the most effective way of complying with its protection obligation, taking into account the specific circumstances typical of the context, and including the participant's active participation; iv) the supply of protection measures that are suitable and effective so as to protect the beneficiaries' life and integrity and correspond to the working needs of journalists and allow for the continuation of their work; v) clear criteria and procedures to monitor the danger faced by the beneficiary and to monitor the effectiveness of the chosen measures and, in case they are not effective, to adjust them so as to address the concrete situation the beneficiary is going through; vi) carry out a risk assessment to decide on the removal of the protection measure and that the said decision has the participation of the beneficiaries, with the aim of expressing their opinion on the matter, and vii) the material protection measures shall be accompanied by exhaustive and independent investigations conducted by competent bodies, so as to prevent and reduce risk sources.<sup>772</sup>

#### **E. Stigmatizing statements**

610. According to the information available, high State authorities allegedly had confrontation rhetoric against the press, and they sought to criminalize opinions on social media.<sup>773</sup> On January 28, the then-Mayor of the City of Guatemala, Álvaro Arzú, who died in April 2018, while at an event in the presence of military soldiers and President Jimmy Morales, allegedly protested against independent press, based on the fact that those informative media "defame" the people of Guatemala. Likewise, he allegedly said that they should "step over the authorities of the negative media."<sup>774</sup>

611. According to public knowledge information, in the framework of a press conference given by President Jimmy Morales on Volcán de Fuego's eruption in June 2018, he raised a book titled "Fake News," as an indication that the media publish "fake news." At the event, while citing paragraphs of the book, he said that "there are at least seven types of fake news: Parody news, deceitful news, deceiving news, fabricated news, falsely connected news, fake context news, tampered news. I recommend you to read this book, it is quite good." He indicated that, since he considered that there were media that misinformed the people and caused panic. "Besides this serious situation and emergency, there is the tampering of fake news. And most people got deceived, outraged, and frightened," the President indicated.<sup>775</sup>

612. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the

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<sup>771</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 5, 2018. [Press Release R19/18 Office of the Special Rapporteur Condemns Murder of Two Journalists in Guatemala, Urges State to Investigate Fully and Implement Protection Mechanism.](#)

<sup>772</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. Párrs. 81-84; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas.](#) OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Paras. 487-531.

<sup>773</sup> Centro de Reporteros Informativos sobre Guatemala (Cerigua). May 3, 2018. [La situación de la prensa guatemalteca está lejos de presentar mejorías.](#)

<sup>774</sup> Prensa Libre. January 28, 2018. [Alcalde Arzú habla de combatir a cualquier enemigo, en discurso a reservistas;](#) El Periódico. January 30, 2018. [Periodistas responsabilizan alcalde de Guatemala de posibles ataques a prensa;](#) Guatevisión. January 28, 2018. [VIDEO: Arzú amenaza a medios de comunicación en bélico discurso.](#)

<sup>775</sup> El Periódico. August 21, 2018. [Presidente habla de "fake news" con un dato falso;](#) Soy502/ YouTube channel. June 20, 2018. [Jimmy Morales culpa a las fake news de sembrar el pánico en Escuintla.](#) [05:05].

expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”<sup>776</sup>

#### **F. Legal reforms**

613. According to the information available, the Congress of the Republic of Guatemala is addressing Initiative 5239, which aims at passing an act against terrorist attacks. Before being known and voted by the Parliament’s plenary, the draft, which was approved by the Regular Governmental Commission, allegedly has provisions that might be incompatible with the American Convention on Human Rights and might restrict the right to freedom of expression, a crucial element of democracy.<sup>777</sup> On March 15, this Office requested information from the Guatemalan State on the said bill.

614. Regarding the foregoing, the Commission and the Inter-American Court recalled that in a democratic society, punitive power is only exercised when it is strictly necessary so as to protect the fundamental legal assets from the most serious attacks that might damage or risk them. In this sense, the Inter-American Court stated that if the restriction or limitation to the right of freedom of expression “stems from criminal law, it is accurate to observe the strict requirements typical of criminalization to comply with the lawfulness principle in this area. In this way, they shall be formulated in an explicit, accurate, limited, and previous manner. The legal framework shall provide legal security to the citizen.”

615. The Office of the Special Rapporteur is concerned about the fact that Initiative 5239 contains criminal offenses under excessively broad and open definitions, which do not exceed the minimum standards required by the strict lawfulness principle of the criminal regulations. The foregoing leaves the interpretation of the articles at the judges’ discretion, and might be useful to establish improper restrictions on the citizens’ exercise of the rights of freedom of expression and assembly.

616. Furthermore, according to the information available, the Legislative Initiative No. 5272, relative to “Life and Family Protection,” allegedly foresees, among others, criminal, civil and administrative duties of dignitaries and public officials who have roles or commitments expressed or acquired in violation of principles and regulations established in the Guatemalan Constitution and in this Legislative Initiative. Likewise, the wording of Article 18 might favor a conducive atmosphere to the development of discriminatory speech and attitudes in relation to the LGBTI community.

617. Additionally, in October, five representatives allegedly submitted a bill adding two paragraphs to Article 407 of the Criminal Code and including the crimes of political harassment and violence. According to what was informed, through these crimes, it might be possible to arrest those who voice criticism against public officials. The Guatemalan Journalists’ Association (APG) and the Guatemalan Journalism Chamber allegedly indicated the unconstitutionality of the said bill.<sup>778</sup>

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

618. On September 26, the Guatemalan Congress passed Resolution Point 5-2018 with 87 positive votes and 13 negative votes. The said Point refuses and prohibits the entry of Swedish rock band Black Metal Marduk to the country, as well as of any other person related to this group. According to the information available, the group was allegedly classified as “satanic and blasphemous” and it had a concert scheduled for October 11 in the country.<sup>779</sup> On October 11, the spokesperson of the Directorate-General for Migration

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<sup>776</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>777</sup> Prensa Libre. February 22, 2018. [Dos proyectos de ley podrían usarse para limitar protestas ciudadanas y la libertad de expresión](#); El Diario. February 20, 2018. [Cámara de Periodistas de Guatemala rechaza iniciativa de “ley mordaza”](#); La Hora. February 15, 2018. [PDH expone preocupación a Relator por ley que pretende limitar libertad de expresión](#).

<sup>778</sup> Prensa Libre. October 31, 2018. [Gremiales de prensa rechazan proyecto de ley que castiga críticas contra funcionarios](#); Publinews. October 30, 2018. [Proponen cárcel para críticos de los políticos](#); República. October 30, 2018. [Diputados quieren crear delito de acoso político](#); Guatevisión. October 30, 2018. [Diputados no quieren críticas y proponen prisión para sus detractores](#).

<sup>779</sup> Impacto. September 26, 2018. [Congreso prohíbe ingreso de banda de rock Marduk](#); El Comercio/EFE. October 12, 2018. [El Gobierno de Guatemala niega el ingreso a la banda sueca Marduk](#).

confirmed that the entry of the members of this group was rejected, pursuant to the resolution decree of Congress.<sup>780</sup>

619. In accordance with Principle 5 of the IACHR's Declaration of Principles, "[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. Access to public information**

620. According to the information available, the Guatemalan Human Rights Ombudsman's Office (PDH) allegedly stated that there is "secrecy" in the country regarding the information in the State's power; however, it also stated that the three State branches made progress in facilitating access to public information.<sup>781</sup>

621. Additionally, according to the information available, two women were allegedly threatened and mistreated by teachers and the principal of the women's children's school, in the wake of the information requests addressed to local authorities on the constant absences of teachers in the educational center. In reprisal, the minors received less food from the school and the women were allegedly summoned by officials of the Youth Municipal Office of the said municipality, with the aim of intimidating them and making them terminate their requests. Furthermore, a Congress directive, which restricts information that might be considered as public, was allegedly passed on August 20. The Governing Council of Congress allegedly approved through minutes the exclusive power over the restriction of information to the provided to the people as well as to its addressees.<sup>782</sup>

622. In its observations to the report "Human Rights Situation in Guatemala, 2017," the State indicated that "through the Secretariat of Social Communications and Protocol and the institution's Spokesperson, they provide customized assistance to journalists and different media, supporting them and insuring that they have access to different information sources and providing them with the required information (as long as its disclosure is pursuant to law), with the aim of complying with the Institutional policy of Transparency and Accountability." Furthermore, it observed that, in order for journalists to have direct access to primary sources of information, the Institutional Security Directorate together with the Secretariat of Social Communications and Protocol guarantee "journalists' and different media's access to the facilities of the Judicial Body (mostly Hearing Rooms) (...) insuring their safety and physical integrity within the facilities of the said State power."<sup>783</sup>

623. Due to the foregoing, the Inter-American Commission recalls that Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression 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." Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

#### **I. Communications surveillance**

624. According to the information available, the State of Guatemala allegedly acquired software and technical equipment that are able to block mobile phones, as well as social media. In this context, this technology was allegedly used with this aim of blocking the mobile phones and social media of politicians,

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<sup>780</sup> El Comercio/EFE. October 12, 2018. [El Gobierno de Guatemala niega el ingreso a la banda sueca Marduk](#).

<sup>781</sup> El nuevo diario. May 16, 2018. [Procuraduría dice que en Guatemala persiste secretismo en información pública](#);

<sup>782</sup> Soy502. September 3, 2018. [Directiva del Congreso restringe acceso a la información pública](#).

<sup>783</sup> Communication from the Human Rights Ombudsman's Office (PDH) to the Office of the Special Rapporteur for Freedom of Expression on "Attacks against the Media in the Context of the Political Situation in Guatemala" received on September 4, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

journalists, diplomats, and social leaders, and surveillance mechanisms were implemented toward certain people. According to public knowledge information, this equipment was allegedly acquired by means of funds from General Directorate of Civil Intelligence (Digici), which organically depends on the Governmental Ministry. Moreover, blocking activities were allegedly carried out at Digici. Further equipment was allegedly acquired with funds from the National Civil Police (PNC) and the Intelligence Secretariat of the State. According to the information available, technological equipment, such as "Circles," and programs, such as "Pegasus," "Pen-Link," "Laguna," "Citer 360," among others, were allegedly acquired. These technologies are able to block calls, decrypt messages, and extract data from calls, among other abilities. Likewise, in order to acquire these programs, contracts were drafted, whose technical specifications state general descriptions, such as "State security".<sup>784</sup>

625. According to what was informed, the Governmental Minister, Enrique Degenhart, allegedly indicated that there are no ways of blocking e-mails and calls<sup>785</sup> and that these tools were acquired by previous governments and then confiscated through a judicial order from the Public Ministry and the International Commission against Impunity, so they were aware of the current use of the said tools.<sup>786</sup>

626. Likewise, the Guatemalan Human Rights Ombudsman's Office (PDH) allegedly launched a file on its own motion, due to the potential spying activities carried out by the government toward companies, politicians, journalists, diplomats, and social leaders.<sup>787</sup>

627. The IACHR and its Office of the Special Rapporteur indicated that it is the State's duty to guarantee the people's right to access public information on surveillance or spying programs, their scope, and existing control. This duty includes the information on its regulatory framework, the acquisition contracts of these programs, protocols and procedures of authorization, objectives selection and data management, as well as information on the use and control of these techniques. This duty shall be complied with notwithstanding the right to access justice and the right to privacy of those who have been affected or have suffered because of these kinds of programs.<sup>788</sup>

628. In this regard, the IACHR and its Office of the Special Rapporteur have indicated on several occasions that the use of any surveillance program or system in private communications should be clearly and precisely established by law, genuinely exceptional and selective, must be strictly limited to the needs to meet compelling objectives such as the investigation of serious crime as defined by legislation, and have prior judicial control. The surveillance of communications and the interference of privacy which exceed what is stipulated by law and are oriented to aims that differ from those which the law permits or are carried out clandestinely must be harshly punished. Such illegitimate interference includes actions carried out for political reasons against human rights defenders, journalists and the media for political purposes as well as to uncover their sources.<sup>789</sup>

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<sup>784</sup> Nómada GT. August 6, 2018. [Espionaje ilegal del Gobierno: Aquí está la investigación de Nuestro Diario \(Parte I\)](#) (authorized reproduction of article from "Nuestro Diario").

<sup>785</sup> Soy502. August 6, 2018. [Investigación revela cómo el Gobierno espía a los guatemaltecos](#); "Degenhart says he did not read the article on espionage published today by @NuestroDiario. "I have no knowledge, the @mingobguate does not have the capacity to make illegal eavesdropping nor to intercept emails... it is only done through a judge's order@NuestroDiario." @soy\_502". Twitter account of Roberto Caubilla @RobertoCSOy502. [August 6, 2018](#); El Nuevo Herald. August 6, 2018. [Gobierno de Guatemala niega espionaje informático](#).

<sup>786</sup> La Hora. August 6, 2018. [Reportaje de ND denuncia escuchas ilegales del Estado: Degenhart lo niega y encima acusa](#).

<sup>787</sup> Publisnews. August 6, 2018. [PDH abre expediente por las denuncias de espionaje del gobierno](#); Impacto. August 6, 2018. [PDH abre de oficio expediente por posible espionaje del Gobierno](#); "@PDHgt opened a file ex officio, given the seriousness of the possible acts of espionage by the @GuatemalaGob revealed in an investigation published by @NuestroDiario". Twitter account of Procuraduría de los Derechos Humanos de Guatemala @PGHgt. [August 6, 2018](#).

<sup>788</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 12, 2017. [Press Release R96/17 Office of the Special Rapporteur expresses concern over alleged spying targeting journalists and human rights defenders in Mexico and urges the State to conduct a thorough and independent investigation](#).

<sup>789</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 12, 2017. [Press Release R96/17 Office of the Special Rapporteur expresses concern over alleged spying targeting journalists and human rights defenders in Mexico and urges the State to conduct a thorough and independent investigation](#).

## J. Situation of broadcasting

### ***Community broadcasting***

629. In 2018, the IACHR and its Office of the Special Rapporteur do not observe progress in the obligation assumed on multiple occasions by the Guatemalan State in order to legally acknowledge the community broadcasting sector and implement the effective allocation of permits regarding this sector's use of frequencies. In the report "Human Rights Situation in Guatemala, 2017," the Inter-American Commission reported that, during its visit *on-site* to the country, it verified the lack of progress and "confirmed that while the lack of a legal framework of policies to carry out indigenous peoples' effective incorporation to broadcasting remains in the country, the so-called "illegal" radio stations will be still persecuted, which in some cases are stations that provide services for the communities."<sup>790</sup>

630. Regarding this, in its observations to the report "Human Rights Situation in Guatemala, 2017," the State informed that the Initiative aiming at passing the Community Media Act —Legislative Initiative No. 4087<sup>791</sup>— allegedly had the favorable opinion of the Indigenous Peoples' Commission and had already been brought to the attention of the Plenary of the Congress of the Republic during its second debate in 2016. In this sense, it informed that "its third debate for the later approval of articles and final wording is still pending, and it is the Legislative's duty to carry out this activity."<sup>792</sup>

631. Regarding this, in 2000, the IACHR and its Office of the Special Rapporteur have made recommendations to the State of Guatemala on two particular aspects, i.e. the need for a legal framework that is fairer and more inclusive regarding broadcasting and the decriminalization of unauthorized broadcasting in the country. The utilization of criminal law to punish violations of the broadcasting regime might cause problems in the light of the American Convention on Human Rights, and the establishment of criminal penalties for commercial or community broadcasting, which they might face in the case of the inexistence or misuse of the license, might cause a disproportionate reaction. Likewise, Article 13.2 of the American Convention on Human Rights states that the exercise of the rights to freedom of thought and expression "shall not be subjected to previous censorship but to subsequent liabilities, which shall be explicitly established by law and shall be necessary to insure a. respect for people' rights and reputation or b. the protection of national security, public order, or public health or morals." Additionally, the Inter-American jurisprudence has highlighted that the States are obliged to "adopt positive measures (legislative, administrative, or any other nature) to revert or change existing discriminatory situations that might compromise the full possession and effective exercise of the right to freedom of expression of certain groups, under equality and non-discriminatory conditions."<sup>793</sup>

### ***Improper concentration of media ownership***

632. In 2018, the IACHR and its Office of the Special Rapporteur do not observe progress in Guatemala regarding excessive levels of audiovisual media ownership concentration and control, especially open television, which were verified during the visit *on-site* to the country carried out in 2017.<sup>794</sup>

633. In March, it was published that a special examination carried out by auditors from the General Government Accountability Office (CGC) of Guatemala allegedly determined that there were irregularities in the TV frequencies' allocation to Entrepreneur Ángel González. The Audit Report was allegedly concluded in December 2017 and it reportedly assessed the granting of usufruct title deeds of frequencies regulated by open television between October 17, 1996, and June 30, 2016. Regarding the allocation of TV frequencies to the "Group Albavisión" channels, it was identified that different files allegedly used the same documents and

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<sup>790</sup> IACHR. [Situation of Human Rights in Guatemala](#). OEA/Ser.L/V/II.Doc. Doc. 208/17 December 31, 2017. Para. 293.

<sup>791</sup> Congreso de la República de Guatemala. No. Iniciativa: 4087 – Iniciativa que dispone aprobar Ley de Medios de Comunicación Comunitaria. August 20, 2009. Available at: <https://www.congreso.gob.gt/iniciativa-de-ley-detalle/?id=2848>

<sup>792</sup> República de Guatemala. Observations of the State of Guatemala on the Report of the Inter-American Commission on Human Rights "Situation of Human Rights in Guatemala, 2017". Ref. P-888-2018/JLBR/WR/cr. October 25, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>793</sup> IACHR. [Situation of Human Rights in Guatemala](#). OEA/Ser.L/V/II.Doc. Doc. 208/17 December 31, 2017. Para. 300.

<sup>794</sup> IACHR. [Situation of Human Rights in Guatemala](#). OEA/Ser.L/V/II.Doc. Doc. 208/17 December 31, 2017. Para. 301.

their concession was carried out without public tender. Likewise, the fee for the consequent extension of those concessions was allegedly fixed at USD 42,000 and the entrepreneur allegedly paid USD 11,000.<sup>795</sup>

634. Furthermore, according to an investigation published on July 30 by “Plaza Pública,” Guatemala’s radio and TV broadcasting was allegedly dominated by five big media groups. Pursuant to the said investigation, the said groups, which are “mostly family trading centers, have included the radioelectrical spectrum and have crushed potential competition. That is why they have benefited from their relationship with political power. The groups “Albavisión,” “Emisoras Unidas,” “Radio Grupo Alius,” “Radio Corporación Nacional (RCN),” and “Nuevo Mundo” are beneficial owners of the 39.77% of the Frequency Modulation (FM) spectrum, according to data from the inventory of the radiofrequencies of the Superintendency of Telecommunications (SIT), updated on June 12, 2017. This percentage includes most radio and TV commercial frequencies of the country.”<sup>796</sup> Additionally, it was informed that “Albavisión” group, for example, owns 46.6% of the granted TV frequencies, and the usufruct title deeds of channel frequencies it has were allegedly renewed after the reformation of 2012, which extended them from 15 to 20 years.<sup>797</sup>

635. Regarding the radio stations’ situation, this investigation indicated that the concentration tendency was similar. In this sense, it observed that out of 726 registered radiofrequencies, 10.6% of them were beneficial owners of “Emisoras Unidas” group, 15.9% of FM was occupied by “Albavisión,” 3.8% by “Alius” group, 5.4% by “Nuevo Mundo” group, and 3.2% by “Radio Corporación Nacional” (RCN) group. In this way, it affirmed that, according to official data, these five groups dominated 38.9% of frequencies.<sup>798</sup>

636. Due to the foregoing, the IACHR recalls that the media ownership concentration in a few companies has a negative impact on democracy and freedom of expression, as it is explicitly established by Principle 12 of the IACHR’s Declaration of Principles on Freedom of Expression: “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information.” From its first ruling on the matter, the Inter-American Court indicated that the existence of monopolies regarding ownership and administration of means of communications is absolutely prohibited in any way, and acknowledged that the States shall actively intervene to impede ownership concentration in the media sector.<sup>799</sup> Additionally, pursuant to what the IACHR has previously indicated, “if the media are controlled by a small number of individuals or just one individual, this indeed creates a society in which a small number of people or just one person, exert control, in a direct or indirect manner, on the information and opinions that the rest of the people receive. This lack of plurality regarding information is a serious obstacle for the functioning of democracy. Democracy needs interplay of ideas, debate, and discussion. When there is no discussion or the latter is weakened, since the sources of information are limited, the fundamental principle of democratic functioning is attacked.”<sup>800</sup>

## **K. Other relevant situations**

637. Pursuant to an investigation published in February by “ConCriterio,” the so-called “netcenters” operating in Guatemala are at their peak, especially after the disclosure carried out by the International Commission against Impunity in Guatemala (CICIG) and the Public Ministry regarding the case “La Línea” and other corruption procedures in State institutions, in 2015. The clients of these “netcenters” are politicians, public officials, and entrepreneurs. Among the options provided to their clients, the most requested are “corrupt campaign” and “rumors, defamation, and slander” through hundreds of fake profiles. According to the investigation, a young woman, who was contacted by the News Director from a medium, in order to offer

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<sup>795</sup> Observacom. March 19, 2018. [Gobierno de Guatemala adjudicó frecuencias de TV a Ángel González de forma irregular, dice Contraloría](#); El Periódico. March 9, 2018. [Investigan denuncias por anómala adjudicación de frecuencias de TV](#).

<sup>796</sup> Plaza Pública. July 30, 2018. [Radio y TV en Guatemala: pocas manos concentran muchas frecuencias](#).

<sup>797</sup> Plaza Pública. July 30, 2018. [Radio y TV en Guatemala: pocas manos concentran muchas frecuencias](#).

<sup>798</sup> Plaza Pública. July 30, 2018. [Radio y TV en Guatemala: pocas manos concentran muchas frecuencias](#).

<sup>799</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. Serie A No. 5 para. 33-34; 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. 117

<sup>800</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. 419.

her a job at a netcenter safeguarding the public image of President Jimmy Morales, allegedly indicated that “[They told her] that there was a job opportunity to manage the social media of the Secretariat (Social Communication), but that the profiles were not precisely owned by that entity, so I had to manage some profiles to provide a good image of the government, since it was undergoing crisis. [She asked] if it was a netcenter and [they] said it was not, but everything indicated it actually was.” Regarding this, the Communication Secretary of the Presidency and the News Director of the open TV channels, who were allegedly accused by two people “of recruiting and organizing a netcenter for Jimmy Morales,” denied the said accusation and said they were not aware of those activities.<sup>801</sup> Likewise, in April, the civil society informed about the initiation of a social media campaign aiming at defaming Journalist Henry Bin from “ConCriterio,” who was in charge of the report.<sup>802</sup>

638. An investigation conducted by “*The Intercept*” and published in April indicated that “now, ‘netcenters’ seem to be against CICIG. Most people we have talked to, and who have taken a public stance on CICIG, could show us through their smartphones a series of defamatory posts against it. Student Activist Álvaro Montenegro, aged 29, who is also one of the co-founders of #JusticiaYa (a civil society coalition against corruption), said that he and his organizing partners were ‘systematically attacked’ via Twitter and other social media. There is a YouTube video accusing him of destabilizing the State. One of his teachers saw it and approached him, mocking him, but also genuinely worried for his well-being.”<sup>803</sup> According to the investigation, “netcenter” is a term used in Guatemala “to define anything from a troll in his/her laptop, to a whole campaign of professional public relations. But it mainly refers to the people who are paid to create and disseminate fake news, and create fake Facebook and Twitter profiles so as to attack enemies and disseminate false information.”<sup>804</sup>

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<sup>801</sup> ConCriterio. February 19, 2018. [Así operan los netcenters en Guatemala, en plena impunidad.](#)

<sup>802</sup> Centro de Reporteros Informativos sobre Guatemala (Cerigua). April 25, 2018. [Denuncian campaña de difamación contra periodista de ConCriterio](#); Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial.](#) November 30, 2018.

<sup>803</sup> The Intercept. April 7, 2018. [The rise of the net center - how an Army of Trolls Protects Guatemala's Corrupt Elite.](#)

<sup>804</sup> The Intercept. April 7, 2018. [The rise of the net center - how an Army of Trolls Protects Guatemala's Corrupt Elite.](#)

## 19. GUYANA

### A. Progress

639. According to the information available, on November 13 the Caribbean Court of Justice reported through a press release that it declared unconstitutional a law of Guyana that prohibits men from showing themselves in women's attire in public with "improper purposes". The court considered, among other things, that the law violates the right to freedom of expression<sup>805</sup>. According to the court's arguments, the Guyana Constitution "gives every Guyanese the right to hold and communicate ideas and opinions without interference". In this sense, the only reasonable limitations should be based, among others, on the interests of "defense", "public safety", "public order", "public morality", or "public health". The court emphasizes that in the present case it was not demonstrated that the limitation contained in the law affects one of those interests.

640. Likewise, the court considered freedom of expression "as the cornerstone of any democracy" and that any excessive restriction to this freedom produces "harm, not just to the individual whose expression is denied, but to society as a whole". "No one should have to live under the constant threat that, at any moment, for an unconventional form of expression that poses no risk to society, s/he may suffer such treatment". In addition, the court mentions that the vagueness of the provision "encourages the humiliation, hate crimes, and other forms of violence persons of the LGBTI community experience" which undermines the "values laid out in the Guyana Constitution".

641. The court also questioned the vagueness of the drafting of the law that criminalizes the "improper purpose" of dressing in female attire in public places. In this sense, the court mentions that a criminal prohibition in its formulation "must meet certain minimum objectives," "it must not be vaguely worded. It must define the criminal offence with sufficient clarity that ordinary people can understand what conduct is prohibited". "No details or examples of conduct that would fall under the umbrella of "improper purpose" are discernible, whether in the specific law itself or elsewhere<sup>806</sup>.

### Internet and freedom of expression

642. According to official public information, on July 20, parliament approved a controversial Cybercrime Bill<sup>807</sup>, based on a 2016 bill<sup>808</sup>. According to what was published, "covers a wide gamut of offences regarding the use of data, illegal devices, system interference, fraud, child pornography, sedition and using a computer system to coerce, harass, intimidate, humiliate, etc. a person."<sup>809</sup> Likewise, "[p]unishments range from multiple year jail sentences to fines up to \$20 million dollars for those found guilty."<sup>810</sup> The bill would have generated strong reactions from representatives of various sectors and would have particularly worried sections of the press about provisions that could criminalize the work of the media<sup>811</sup>. In this context, Reporters Without Borders, in a note addressed to the government, urged the parliament to amend some dispositions "which could have a damaging effect on press freedom."<sup>812</sup> According to the country report of this organization, the provisions of the original project "could penalize whistleblowers and media for

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<sup>805</sup> Caribbean 360. November 13, 2018. [CCJ Declares Guyana's Cross-Dressing Law Unconstitutional](#); Stabroek News. November 13, 2018. [CCJ rules in favour of Guyanese transgender women](#).

<sup>806</sup> Human Dignity Trust. No date. Available at: <http://humandignitytrust.org/uploaded/MC-EWAN-et-al-v-AG-OF-GUYANA-Copy.pdf>

<sup>807</sup> State of Guyana. Department of Public Information. July 20, 2018. [Cyber Crime Bill will offer shield of protection for nation's youths – AG Williams](#).

<sup>808</sup> State of Guyana. Parliament. Cybercrime Bill 2016. No date. Available at: [http://parliament.gov.gy/documents/bills/6033-cybercrime\\_bill\\_2016\\_-\\_no\\_17\\_of\\_2016.doc](http://parliament.gov.gy/documents/bills/6033-cybercrime_bill_2016_-_no_17_of_2016.doc)

<sup>809</sup> State of Guyana. Department of Public Information. July 20, 2018. [Cyber Crime Bill will offer shield of protection for nation's youths – AG Williams](#).

<sup>810</sup> State of Guyana. Department of Public Information. July 20, 2018. [Cyber Crime Bill will offer shield of protection for nation's youths – AG Williams](#).

<sup>811</sup> Inewsguyana; May 2, 2018. [GPA says sections in Cybercrime Bill 'criminalizing freedom of expression' must go](#); Kaiteur News. April 17, 2018. [Cybercrime Bill ready for Parliamentary passage – Attorney General](#); Kaiteur News. May 14, 2018. [Cyber Crime Bill creates criminal offence for emails that cause harm](#).

<sup>812</sup> Reporters Without Borders (RSF). June 7, 2018. [Guyana - RSF urges Guyanese Parliament to amend drafted Cybercrime Bill](#).

publishing information collected 'illegally'."<sup>813</sup> According to the information available, the law would have been approved with the amendments that affected the media and the controversial "sedition" clause would have been eliminated<sup>814</sup>. This Office notes that at the close of the edition of this report, the approved law is not available for consultation on the parliament's official website<sup>815</sup>.

643. The Office of the Special Rapporteur highlights that all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, the Office of the Special Rapporteur indicated that any legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect the free flow of information and legitimate websites and services.<sup>816</sup>

644. In the 2010 "Tenth anniversary joint declaration: ten key challenges to freedom of expression in the next decade," the UN, IACHR, OSCE and ACHPR special rapporteurs, stated that "[t]he retention of antiquated legal rules – such as sedition laws or rules against publishing false news – which criminalize criticism of government" constitute "illegitimate mechanisms of government control over the media."<sup>817</sup>

### **Censorship of journalistic material / Prior censorship / Direct and indirect censorship**

645. According to the information available, the state-owned Guyana Chronicle would have fired two columnists who maintained a critical position against the government. As a result of this measure, three members of the media's board of directors would have resigned<sup>818</sup>.

646. As the Office of the Special Rapporteur noted in its report on "Freedom of Expression Standards for Free and Inclusive Broadcasting," public media can (and should) play an essential part in ensuring the plurality and diversity of voices necessary in a democratic society. Its role is essential when providing high-quality content that is not necessarily commercial, and that reflects the informational, educational, and cultural needs of the people. However, for public media really to be able to perform their role, they must be independent of the executive branch; truly pluralistic; universally accessible; with funding adequate to the mandate provided for by law; and they must provide community participation and accountability mechanisms at the different levels of content production, distribution, and receipt.<sup>819</sup>

### **Legal initiatives to amend the criminal offense of defamation**

647. According to the information available, the government of Guyana would be advocating for a bill to reduce the penalties contemplated in terms of criminal defamation. The information on this measure would have been announced by the Minister of legal affairs. According to what was published, the proposals would include the decriminalization of some crimes contemplated in the criminal legislation, since the criminal legal framework of the country contains crimes that have already been decriminalized in other jurisdictions<sup>820</sup>.

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<sup>813</sup> Reporters Without Borders (RSF). Available at: <https://rsf.org/en/guyana>

<sup>814</sup> Kaiteur News. July 21, 2018. [Controversial sedition clause removed as amended Cybercrime Bill passed ...Opposition says not enough done to protect freedom of speech](#); Stabroek News. July 21, 2018. [Divisive Cybercrime bill passed](#).

<sup>815</sup> State of Guyana. Parliament. Available at: <http://parliament.gov.gy/publications/acts-of-parliament/>

<sup>816</sup> UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [Joint Declaration](#).

<sup>817</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. February 3, 2010. [Tenth anniversary joint declaration: ten key challenges to freedom of expression in the next decade](#).

<sup>818</sup> INews Guyana. March 14, 2018. [Press body "concerned" over decision to fire Hinds, Lewis as columnists](#) ; Demerara Waves. March 9, 2018. [State-owned Guyana Chronicle newspaper pulls columnists often critical of government](#); INews Guyana. March 28, 2018. [Chronicle Board members resign over firing of outspoken columnists](#).

<sup>819</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Serv.L/V/II CIDH/RELE/INF. 3/09 December 30, 2009, §83.

<sup>820</sup> Guyana Chronicle. October 10, 2018. [Gov't to remove jail time for criminal defamation](#).

648. Principle 10 of the IACHR Declaration of Principles on Freedom of Expression points out 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.”

649. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “*desacato* laws,” restrict freedom of expression and the right to information.” Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.<sup>821</sup>

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<sup>821</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.

## 20. HAITI

650. Haiti continues to be a country with a weak institutional framework to guarantee the right of journalists to exercise their work free of violence, threats, and other types of risk. This restrictive environment is exacerbated by the lack of policies, measures, and concrete actions, as well as barriers to access information in the hands of the State. The Office of the Special Rapporteur follows with concern the disappearance of photojournalist Vladjimir Legagneur. Also, this Office reiterates its concern regarding the abusive use of force by the security forces at the time of dispersing social protest events. A draft law against defamation that contained criminal penalties restricting freedom of expression would have been archived by the House of Representatives. Finally, this Office was informed of a case of death threats against journalist by security agents assigned to the Haitian parliament.

### A. Progress

651. According to the information published by the Inter-American Press Association (IAPA), a controversial defamation bill that was approved by the Senate in 2017<sup>822</sup>, with provisions would allow the criminalization of the legitimate exercise of freedom of expression, would have been archived by the House of Representatives<sup>823</sup>.

### B. Attacks, Threats, and Intimidation of Journalists and the Media

652. On March 14, photojournalist Vladjimir Legagneur would have disappeared in the Grand Ravine area, in the Martissant district. According to the information, he was working on an independent project with the objective of documenting the confrontations between the police and gangs in the Grand-Revaine neighborhood. On March 29, media reported that Haitian police conducted an intense search of the area and found remains of a body in a vacant lot in the town of Palema in Grand Ravine, site where the photojournalist went to. According to a police report, the agents recovered bones without a skull, which were transferred to the Scientific Police for a DNA test to determine their identity<sup>824</sup>. On June 1, the Office of the Special Rapporteur requested the State for information on the progress of the case, without receiving a response to date.

653. In August, the Office of the Special Rapporteur was informed of the assault, destruction of work equipment, and death threats against two journalists by security agents assigned to parliament. The assaults were reportedly carried out as a result of the coverage by the journalists of the summoning of other security agents linked to an alleged attack on the parliament compound on August 20. Security agents allegedly assaulted journalists to prevent their colleagues from being filmed. The victims of the attacks were the journalists Frantz Cinéus, of Radio Télé Pacific, and Jean Robert Delciné, of Radio Télé Galaxy<sup>825</sup>. In another case, journalist Jean N. Jeanty received a series of death threats over the phone by unidentified individuals. The press worker would have already been threatened in 2017 in the wake of a critical article against some aspects of the administration of Mayor Jean Gabriel Fortuné<sup>826</sup>.

654. 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

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<sup>822</sup> IACHR. [Annual Report 2017](#) Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II. Doc. 210/17. December 31, 2017. Para. 758.

<sup>823</sup> Inter American Press Association (IAPA). 74th General Assembly Report. Salta, Argentina. October 19 - 22, 2018. [Haiti](#). October 17, 2018.

<sup>824</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>825</sup> Haiti 24. August 28, 2018. [Victimes d'agressions, les journalistes Frantz Cinéus et Jean Robert Delciné portent plaintes au Parquet](#); Juno 7. August 22, 2018. [Violence contre des journalistes au parlement : des professionnels de la presse suspendent la couverture de toutes activités parlementaires](#); Le novvelliste. August 22, 2018. [Deux journalistes agressés au Parlement](#); Le novvelliste. August 20, 2018. [Mise en scène et scène de violence au Parlement](#).

<sup>826</sup> Loop. Haiti. May 3, 2018. [Menacé de mort, le journaliste Jean N. Jeanty fait appel à la justice](#); Rezo Nodwes. August 8, de 2017. [Menaces de mort : Le journaliste de Radio Caraïbes porte plainte contre le maire Fortuné.](#)

freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

### C. Social protest

655. On July 6, after the government announced the increase in the price of fuel, there was a series of social protests in the capital of the country. Various acts of violence have been reported, dozens of injured, and the death of at least nine people including two policemen, according to Police numbers. The organization National Network for the Defense of Human Rights [*Réseau National de défense des droits de l'Homme*] (RNDDH) reported at least 20 deaths<sup>827</sup>. On July 7, the government would have annulled the increase in the price of fuels after the recorded acts of violence<sup>828</sup>.

656. On October 17, the media reported that as a result of an anti-corruption campaign, due to alleged irregular handling of funds, which was initiated on social networks and ended in the streets, at least two people would have died, and several were injured by the actions of police officers<sup>829</sup>. In this same context of protests against corruption, on November 18, the media reported the death of at least six people in a social protest, including a security agent, and other people injured in clashes with police. According to the information available, the protesters blocked the streets and set fire to tires, which would have generated a strong reaction and repression by the police<sup>830</sup>.

657. In the context of the aforementioned social protests, which lasted until November 23, the Office of the Special Rapporteur notes with concern the reiterative use of excessive force by security forces. According to the information, it is estimated that 11 people died in the context of those protests.<sup>831</sup> Based on figures from the Center for Analysis and Research in Human Rights (CARDH, for its acronym in French), at least 40 people have died between October 17 and November 23 in the context of demonstrations.<sup>832</sup>

658. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>833</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>834</sup> Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the

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<sup>827</sup> Rnddh. [Emeutes des 6, 7 et 8 juillet 2018 : Le RNDDH présente un bilan des dégâts enregistrés](#). July 24, 2018; EFE. July 25, 2018. [ONG denuncia que al menos 20 personas murieron durante los disturbios en Haití](#); El Diario/EFE. July 27, 2018. [La policía de Haití revela que hubo 9 muertos en las violentas protestas por el alza de los carburantes](#);

<sup>828</sup> EFE. July 9, 2018. [La huelga paraliza Haití tras los violentos disturbios de los últimos tres días](#); Efecto Cocuyo. July 8, 2018. [En Haití suspenden aumento de la gasolina tras fuertes protestas](#).

<sup>829</sup> Miami Herald. October 17, 2018. [Thousands protest corruption in Haiti as president calls for unity and](#); BBC. November 19, 2018. [Haití: qué tienen que ver Venezuela y Petrocaribe con las protestas que dejaron 6 muertos en el país caribeño](#).

<sup>830</sup> Miami Herald. November 18, 2018. [Anti-corruption protest in Haiti turns into referendum on Haitian president](#); AlHazeera. November 19, 2018. [Haiti: Six killed in anti-corruption protests](#).

<sup>831</sup> International / EFE. November 24, 2018. [Aumentan a 11 los muertos por las violentas protestas en Haití](#); Nodal. November 20, 2018. [Haití: al menos 11 personas muertas durante las marchas contra el desfalco de Petrocaribe](#).

<sup>832</sup> Alter Presse. November 28, 2018. [Politique: Amnesty International met en garde le pouvoir contre le recours à la force excessive lors de manifestations en Haïti](#).

<sup>833</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

<sup>834</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.

demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>835</sup>

#### **D. Stigmatizing statements**

659. On May 9, the Minister of Justice, Jean Roudy Aly, would have issued a statement in which he would have referred to the importance of the media to fight crime. However, the statement would point out that the media should not allow criminals to speak in front of the cameras because they urge people to challenge the authorities and call for violence<sup>836</sup>.

660. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”<sup>837</sup>

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<sup>835</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>836</sup> Loop. May 10, 2018. [Ce Ministre menace les médias qui se font « complices » des bandits](#); Rezo Nodwes. May 10, 2018. [Le nouveau ministre de la Justice menace des journalistes!](#)

<sup>837</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.

## 21. HONDURAS

661. In 2018, the IACHR made a visit *on-site* from July 30 to August 3, with the participation of the Office of the Special Rapporteur for Freedom of Expression. The Office of the Special Rapporteur observed that, in the context of protests carried out due to the questioning of the electoral procedure, journalists and means of communication were threatened and assaulted by State officials and political activists in conflict. Likewise, it was informed that media directors and journalists were pressured with the aim of intervening during the elections' coverage and other public interest matters. This polarization extended to social media, in which stigmatizing speech against journalists' work prevailed. Moreover, this Office was concerned about the excessive use of force made by the State's security forces, which caused multiple deaths and people arrested and injured. Furthermore, the IACHR highlighted that the persistence of high violence levels against journalists and the impunity in most crimes still constitute a serious problem. In addition to this structural aspect, there is also the Legislative's decision of apparently keeping slander and defamation crimes, and other legal concepts affecting freedom of expression, in the recent integral reform of the Criminal Code and submitting a bill to regulate social media.

### A. Violence against journalists and impunity

662. Violence against journalists and impunity in these kinds of crimes continue seriously affecting the exercise of freedom of expression in Honduras. The reforms to the legislative and institutional framework regarding prevention, protection, and law enforcement of justice have been acknowledged by the IACHR and its Office of the Special Rapporteur for Freedom of Expression, as important steps toward fighting against this kind of violence.<sup>838</sup> However, the State's progress and efforts have not managed to effectively assure the journalists' right to carry out their duties without being the victims of violence; therefore, they violate the Honduran society's right to access public interest information.

663. According to official statistics, between 2003 and 2014, 50 media communicators and workers were killed in the country.<sup>839</sup> Since January 2015, the IACHR and the Office of the Special Rapporteur have registered 15 killings of journalists and media workers in the country<sup>840</sup> and have been notified of attacks, physical assault, threats, and intimidation against this group of people.<sup>841</sup> The brutal killings, occurred in 2017, of Honduran Journalist Igor Padilla, Correspondent for TV channel "Hable como habla" in the city of San Pedro Sula,<sup>842</sup> and Reporter Víctor Funes, known as "the people's journalist," from TV channel "45TV" of Ceiba city, department of Atlántida,<sup>843</sup> plus the attack against Journalists Jhonny Lagos and Yadira Cerrato from "El Libertador" in Tegucigalpa are all examples of the violence journalists face in the country.<sup>844</sup>

664. During its visit, the IACHR became aware of the elevated risk that journalists face of being the victims of violence, especially those investigating and covering cases on corruption, organized crime, social protests, and territorial claims. Likewise, it took many statements on how the political crisis after the presidential elections of November 28, 2017 increased the risk regarding the exercise of free and independent journalism

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<sup>838</sup> IACHR. Country report. [Situation of Human Rights in Honduras](#). OEA/Ser.L/V/II.Doc. Doc. 42/15 December 31, 2015. Para. 379.

<sup>839</sup> Comisionado Nacional de los Derechos Humanos (Conadeh). February 6, 2015. [11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas](#).

<sup>840</sup> Osmin Antonio España Chávez (October, 2017); Carlos William Flores (August, 2017); Víctor Fúnez (June, 2017); Igor Padilla (January, 2017); Dorian Hernández (June, 2016); Elmer Cruz (June, 2016); Henry Roberto Reyes Salazar (July, 2016); Joel Aquiles Torres Alvarenga (July, 2015); Deibi Adalí Rodríguez (June, 2015); Juan Carlos Cruz Andara (June, 2015); Carlos Fernández (February, 2015), Franklin Johan Dubón (May, 2015); Cristel Joctán López Bermúdez (April, 2015); Artemio Deras Orellana (April, 2015); Erick Arriaga (February, 2015).

<sup>841</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. Para. 751-756; 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. Paras. 705-723; 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. Doc. 210/17. December 31, 2017. Para. 772-780.

<sup>842</sup> C-Libre. January 17, 2017. [Asesinan a periodista en San Pedro Sula](#).

<sup>843</sup> C-Libre. June 15, 2017. [Asesinan a periodista que recibía amenazas a muerte](#); La Prensa. June 15, 2017. [Periodista hondureño es asesinado frente a su casa en La Ceiba](#).

<sup>844</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Information request. Article 41 of the American Convention on Human Rights. Ref. Attack against journalists of *El Libertador* newspaper. September 12, 2017.

in the country. Moreover, the IACHR was informed about inappropriate pressures exerted on the media so that they would carry out a favorable coverage for the pro-government candidate and not show images linked to police repression, even under the threat of losing official publicizing contracts.

665. The IACHR was concerned about the received information regarding attacks and inappropriate pressures against the media, threats and assault against journalists, as well as defamation campaigns against the press in this context. The IACHR became aware of the attack against Radio Progreso, which, after the elections, was sabotaged in its pylon and transmission antenna in Tegucigalpa; this caused the termination of its operations in this city. According to the received information:

On December 9, 2017, Radio Progreso's signal in Tegucigalpa started having transmission problems from 5 p.m. After three signal drops, the signal definitely stopped working in Tegucigalpa at 5:40 p.m. On Sunday, December 10, Radio Progreso's technical team went to the transmitter's location in Tegucigalpa and stated that the pylon and transmitter had been damaged. On Monday, December 11, the technician [...] verified that two of the four tensors had been loosened, so the wind made the pylon fall, and the transmitter lost stability and fell to the ground, according to the technician, only someone who knew about the pylon's location and structure could have carried out this action.<sup>845</sup>

666. Jesuit Priest Ismael Moreno, Director of Radio Progreso, has been the victim of stigmatization and defamation campaigns since the beginning of the post-electoral protests, in which they reported that pamphlets started circulating, blaming him for the violence in the country and for being involved in drug trafficking.<sup>846</sup> Journalist Cesar Obando Flores, Correspondent for Radio Progreso and TV Presenter in "Los Dueños de la Audiencia" program, was also the victim of threats.<sup>847</sup> Afterward, Sandra Maribel Sanchez, Director of "Más Que Dos" program and Radio Progreso, received a threatening call, after having reported, together with the President of the Honduran Doctors' Association (CMH), Suyapa Figueroa, the government's intention of privatizing the health system.<sup>848</sup> Radio Progreso is an emblematic community medium of the country, considered as opposed to the current government and beneficiary of precautionary measures granted by the IACHR.<sup>849</sup>

667. According to the information gathered by the Office of the High Commissioner for Human Rights in Honduras and Honduran civil society organizations, during the post-electoral crisis, several journalists were attacked by security officers while they were covering anti-government protests: the cameraperson David Matute from "Marte TV" of Comayagua municipality, was attacked by the Military Police; Journalist Bladimir Rivera from "Prensa Libre" channel in the country's southern region, was assaulted by the Military Police;<sup>850</sup> Cameraperson Kevin Castillo from TV channel "Televida," was beaten up and his equipment was destroyed by Honduran soldiers while he was covering a public protest in Choluteca, south of Honduras;<sup>851</sup> three journalists, two from "UNE TV" and one from "Univisión" were attacked by security officers nearby the Presidential House; Journalist Dassaev Aguilar Moncada, Correspondent in Honduras for the Iranian news program "Hispan TV," was injured in his left foot by a tear gas bomb thrown by the Military Police;<sup>852</sup> the correspondent for the French Press Agency was hit in the head by a tear gas bomb thrown by the Military Police.<sup>853</sup>

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<sup>845</sup> Ismael Moreno. Copy of a written complaint for an offense of damages against a media outlet. Interposed before the Public Ministry on December 13, 2017. Available at: Archives of the IACHR.

<sup>846</sup> OHCHR Honduras. [Informe Anual 2017](#). Para. 45; OHCHR Honduras. September 1, 2018. [OACNUDH preocupada por campaña de desprestigio contra el Padre Ismael Moreno](#).

<sup>847</sup> C-Libre. January 9, 2018. [Periodista recibe amenazas a muerte tras difundir información político partidaria](#)

<sup>848</sup> OHCHR Honduras. August 23, 2018. [Preocupación a OACNUDH amenazas en contra de la prensa](#); C-Libre. August 26, 2018. [Amenazas a periodista por informar sobre la "privatización del sistema de salud"](#).

<sup>849</sup> IACHR. PM 196/09 – [Precautionary Measures](#), Honduras. 2009.

<sup>850</sup> C-Libre. December 4, 2017. [Represión militar a la prensa durante cobertura de protestas sociales](#).

<sup>851</sup> C-Libre. January 5, 2018. [Militares le quiebran la cámara a camarógrafo cobertura de manifestantes](#).

<sup>852</sup> C-Libre. January 20, 2018. [Policía Militar le fractura la pierna a periodista con bomba lacrimógena](#); C-Libre. January 27, 2018. [Fotoperiodista de agencia internacional de noticias herido por militares durante manifestación ciudadana contra la dictadura](#).

<sup>853</sup> C-Libre. January 27, 2018. [Fotoperiodista de agencia internacional de noticias herido por militares durante manifestación ciudadana contra la dictadura](#)

668. The IACHR received information indicating that this kind of attacks against the press allegedly continued in 2018. For example, according to the information available, in May 2018, police and military forces intimidated and threatened Journalist Víctor Rodríguez, from “UNE TV,” when he was covering a protest summoned by the “Opposition Alliance against Dictatorship” in Honduras’ capital.<sup>854</sup> Likewise, there were threats and a new defamation campaign against different media’s journalists through social networks, before the national strike announced by the Opposition Alliance.<sup>855</sup>

669. The IACHR estimates that the electoral crisis caused a setback, when the State started implementing prevention and protection policies for journalists. According to the data provided by the State, 67 journalists and social communicators are currently being protected by the Protection Mechanism for Human Rights Defenders and Journalists. Out of this group, 22 journalists and social communicators received protection due to the risk faced in the post-electoral context. Likewise, the mechanism has assisted seven cases of journalists who were the victims of forced displacement. The IACHR recognizes the efforts of the State in order to strengthen this mechanism and assure the effective protection of journalists at risk. Moreover, it considers that the plan to establish a prevention and context analysis unit and the review of the mechanism’s risk-assessment matrix is positive. However, the Commission took statements and complaints on deficiencies in the design and development of physical protection measures, the lack of sufficient transparency and motivation of the adopted decisions, insufficient resources, and the lack of an integral and differentiated approach of the problem, going beyond journalists’ physical protection and including effective prevention and investigation measures. This translates into high distrust levels among journalists and media workers regarding the effectiveness of the protection program. Many journalists reported that they avoided presenting protection requests for fear of being exposed to more serious risks.

670. The IACHR reiterated that the States have the positive duty to prevent these facts, to protect journalists at risk because of their work, to conduct effective investigations when attacks take place, to punish perpetrators, and to provide reparations to the victims. The IACHR highlights the importance of strengthening the mechanism’s effectiveness, of having an integral prevention policy when dealing with the fundamental causes of violence against journalists, and of promoting an atmosphere favoring freedom of expression.

671. Stigmatization and criminalization campaigns against journalists and other people due to the exercise of their right to freedom of expression are particularly worrying. There is a stigmatizing and polarizing public speech against the press. On the one hand, journalists and the media are considered as “gangsters” or “terrorists” if they carry out coverage deemed as contrary to governmental or business interests. On the other hand, they are considered as “tariffed” or “bribed” when, from the other side of the spectrum, they are accused of not being critical of the government. The IACHR reiterates that the authorities shall not stigmatize or stereotype the press, avoiding the increase in the risk they face. On the contrary, the authorities shall take into consideration that public workers have a guarantor role regarding people’s fundamental rights; therefore, their statements cannot directly or indirectly interfere with the rights of those aiming at contributing to public deliberation through the expression and dissemination of information. This duty is particularly highlighted in situations of higher social divisiveness, public alterations, or social or political polarization, particularly because of the risks they might imply, since these labels become common use among followers in this digital era.

672. The impunity regarding the violent acts against journalists is still high and constitutes the main challenge of the State on this matter. Just as the Inter-American Court stated “the combination of violence against journalists and impunity has a highly negative impact; first, as regards the journalists themselves and their families, and second, because it has caused that many communities [...] do not receive information on matters affecting them, such as the armed conflict, organized crime, drug trafficking, and political corruption.”<sup>856</sup>

673. During the visit in the country, the State informed that the Prosecutor for Offenses against Life is conducting investigations on 66 homicides or murders of journalists that have been committed since 2013.

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<sup>854</sup> C-Libre. May 7, 2018. [Policías y militares hacen levantamiento de perfiles y agreden a periodista de UNE TV.](#)

<sup>855</sup> C-libre. January 19, 2018. [Periodistas víctimas de campañas de incitación al odio y al desprestigio a través de las redes sociales.](#)

<sup>856</sup> I/A Court H. R. *Case Carvajal Carvajal et al Vs. Colombia*. Merits, Reparations and Costs. Judgment of March 13, 2018. Para. 177.

Out of these cases, only 24 have been prosecuted and in only eight cases conviction judgments were passed, but none of them affected the perpetrators. The impunity rates of the cases regarding threats and attacks against journalists are allegedly higher. Victims and human rights organizations recurrently report that they do not have information on the status of their complaints of murders or violence against journalists. Impunity has caused fear and self-censorship among communicators, as well as deep distrust regarding the achievement of justice by public authorities.

674. The IACHR recognizes the measures adopted by the State in order to assure effective investigations and revert the impunity pattern; however, it observes that the recommendations that have been made since the last visit in 2014 have been partially implemented, so it is necessary that these efforts are doubled. It is urgent to adopt a specialized protocol assuring the adequate investigation of the crimes against journalists. The IACHR and its Office of the Special Rapporteur express their availability to provide technical assistance to the Public Ministry on this matter. Likewise, the creation of the Prosecutor for Human Rights Protection (FEPRODDHH), as part of the National System of Prevention and Protection, is an important achievement and shall have all the material, technical, and human resources to investigate complaints of threats and attacks against journalists and social communicators at risk.

#### **B. The use of criminal law to penalize the exercise of freedom of expression**

675. In Honduras, it is still frequent to use criminal law as a mechanism to inhibit and harass journalists. During the past two years, the IACHR expressed its concern for the idea of keeping or including the establishment of offenses incompatible with its international duties regarding freedom of expression.

676. The reforms in the crime of terrorism and the bill against hate and discrimination speeches on social media are worrying examples of restrictive legislative proposals that might lead to legal actions against journalists and human rights defenders. Regarding this, in May 2018, the IACHR's Special Rapporteur, Edison Lanza, together with the UN's Special Rapporteur, David Kaye, sent a communication to the Honduran State, in which they expressed their concern for the effects of the exercise of freedom of expression regarding the legal initiative on cyber-security and protection measures in view of hate and discrimination acts on the internet and social media.<sup>857</sup> This Office has highlighted that the States' response regarding cyber-security cannot compromise the internet's democratic virtues. Particularly, the Rapporteurs reminded the State of the fact that the authorities shall be aware of the potential impact that criminal measures might have on human rights' enforcement in the digital atmosphere. Moreover, they highlighted that any regulation or policy aiming at fighting against hate speech has to adjust to the requirements established in international treaties on human rights.

677. In the same way, according to the information received during the visit, the new Criminal Code, which by the date of this report has not entered into force, keeps the crimes of slander and defamation to protect public workers' reputation, even though it only establishes a fine. In this regard, the IACHR reiterates that the utilization of criminal mechanisms to punish expressions on matters of public interest or about public workers, political candidates or public roles candidates violates Article 13 of the American Convention, since there is no imperative social interest justifying it, it is unnecessary and disproportionate, and it can constitute a means of indirect censorship given its frightening and inhibiting effect regarding the debate on public interest matters.<sup>858</sup> In effect, the IACHR has highlighted that the use of the criminal law to punish especially protected speeches —such as those about public workers— is not only a direct restriction on freedom of expression but it can also be considered as an indirect method of freedom of expression restriction because of its inhibiting effect of freedom of thought, opinion, and circulation of information that might be controversial or offensive. The mere threat of being criminally prosecuted for having controversial

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<sup>857</sup> IACHR/UNO. IACHR Special Rapporteur for Freedom of Expression, Edison Lanza, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN, David Kaye. Information request. CIDH/RELE/Art. 41/06-2018/27. Ref. Proyecto de Ley nacional de ciberseguridad y medidas de protección ante los actos de odio y discriminación en internet y redes sociales. June 7, 2018.

<sup>858</sup> IACHR. Arguments before the Inter-American Court in the case *Herrera Ulloa Vs. Costa Rica*. Transcripts available at: I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004. Serie C No. 107. Para. 101.2); IACHR. Arguments before the Inter-American Court in the case *Ricardo Canese Vs. Paraguay*. Transcripts available at: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Merits, Reparations and Costs, Judgment of August 31, 2004. Serie C No. 111. Para. 72.h).

opinions on public interest matters might cause self-censorship given its frightening effect. According to the IACHR, “if the consequences of criminal penalties and the inevitably inhibiting effect they have on freedom of expression are considered, the punishment for any kind of expression can only be applied under exceptional circumstances where there is an evident and direct threat of anarchic violence.” [...] the use of such powers to limit the expression of ideas might lead to abuse, as a measure to silence unpopular ideas and opinions, so that it entails the restriction of a debate that is fundamental to the effective functioning of democratic institutions. The laws penalizing the expression of ideas that do not incite anarchic violence are incompatible with freedom of expression and thought included in Article 13, with the American Convention’s fundamental aim of protecting and assuring life’s pluralist and democratic nature.”<sup>859</sup>

678. Likewise, the new Criminal Code keeps the broadest classification terms for the crimes of “civil disorder,” “disregard for authority,” “attacks against authority,” “unlawful assembly and protests,” and the “access and dissemination of reserved information.” In this regard, the Commission observes that these rules might allow the criminalization of lawful social protest actions and the work of human rights defenders. Moreover, it reiterates that the application of criminal law in view of protesters’ conduct constitutes a serious restriction with harmful consequences on freedom of expression and the rights to assembly, association, and political participation, which can only be used in an exceptional manner and is subjected to strict scrutiny.

679. In its 2005 report, the IACHR’s Office of the Special Rapporteur for Freedom of Expression stated that: “There is interference by the Judiciary. The Office of the Rapporteur considers that the penalization *per se* of public demonstrations is initially inadmissible, when it is carried out in the framework of the right to freedom of expression and the right to assembly. In other words: It shall be investigated whether the utilization of criminal penalties is justified under the Inter-American Court’s standards, which establish the need for verifying if the said limitation (penalty) satisfies an imperative public interest necessary for the functioning of democratic society. In addition, it is necessary to analyze if the imposition of criminal penalties constitutes a less harmful means of restricting freedom of expression exercised through the right to assembly enforced in a demonstration on the street or public spaces.”<sup>860</sup>

680. In its Second Report on the Situation of Human Rights Defenders in the Americas, the Commission highlighted that “during the past years, there has been a growing initiation of criminal proceedings against those participating in social protests”<sup>861</sup> and in 2015, while concerned for this serious situation, the Commission submitted a report on the Criminalization of human rights defenders, in which it indicated that social protests are one of the more frequent contexts where this problem arises.<sup>862</sup>

681. Just as the Office of the Special Rapporteur for Freedom of Expression highlighted, “it is important to take into consideration that criminalization might cause (...) a frightening effect on the participatory expression of the sectors in society that cannot access other reporting or petition means, like the traditional press or the right to petition within the state bodies where the claim’s object is originated. Terrorization of expression, by means of the imposition of penalties restrictive to freedom for people making use of the aforementioned expression means, has a dissuasive effect on those sectors of society expressing their views or criticism regarding the government’s administration as a way of interfering with the decision and state policies processes that directly affect them.”<sup>863</sup>

682. Finally, during its visit, the IACHR was concerned about the received information about the absence of publicizing and transparency regarding the content of these bills during their processing at Congress. The IACHR condemns these practices. The access to the information in the State’s possession is one of the founding pillars of democracy and the secrecy on the Legislature’s intervention, in its essential function of drafting the law, directly reverts the State’s fundamental principles regarding law and democracy, and it is

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<sup>859</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights](#). Title IV Conclusion. OEA/Ser. L/V/II.88. doc. 9. rev. February 17, 1995.

<sup>860</sup> IACHR. [Annual Report 2005](#). Vol. III, Office of the Special Rapporteur for Freedom of Expression, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly”, para. 96. In that sense, see IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2002, Chapter IV, para. 35

<sup>861</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>862</sup> IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 12.

<sup>863</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2002, Chapter. IV, para. 35.

incompatible with the American Convention. In a democratic society, the lawfulness principle is strictly linked to the principles of legitimacy and publicizing, as well as respect for citizens' participation.

### C. National security and access to public information

683. In the 2015 Country Report, the Commission expressed concern for the approval and entry into force of the Law on Classification of Public Documents related to Security and National Defense<sup>864</sup> and encouraged the State to review it.<sup>865</sup> Just as it was analyzed in the 2015 Report, this law imposes serious restrictions on the right to access public information, and is incompatible to the State's international obligations on this matter and must be repealed.

684. Article 3 of the aforementioned law indicates that "the matters, cases, contracts, documents, information, data, and objects whose being known by unauthorized people might damage or risk national security and/or defense and the achievement of the objectives on these matters can be considered as Substances Classified." The law confers exclusive power over the classification of information to the National Defense and Security Council<sup>866</sup> and indicates that it shall be carried out considering a set of parameters oscillating among the "unwanted institutional effects" on "the imminent risk or direct threat against security, national defense, and public order" "constitutional order, territorial sovereignty, and integrity and the achievement of national objectives" regarding the damage level that might cause its publicity. According to Article 4 of the law reproduced below, the latter has four classification categories.

685. The aforementioned provision textually indicates as follows:

ARTICLE 4.- The classifying categories are: Reserved, Confidential, Secret, and Top Secret, according to the required protection degree. In this sense, the following terms are defined:

a) Reserved: Lower level Substances Classified in national order. Any information, documentation, or material referring to the strategic domestic sector of State bodies and whose disclosure might cause "unwanted institutional effects" if it was publicly available against the effective development of State policies or the appropriate functioning of public institutions.

b) Confidential: Intermediate level Substances Classified in national order. Any information, documentation, or material referring to the State's strategic domestic sector and whose disclosure might cause an imminent risk or direct threat against security, national defense, and public order. This material might "damage or internally harm" national security if it were publicly available.

c) Secret: Higher level Substances Classified in national order. Any information, documentation, or material referring to the State's strategic sector, domestically and externally, and whose disclosure might cause an imminent risk or direct threat against constitutional order, security, national defense, international relations, and the achievement of national objectives. This material will eventually cause "serious domestic and external damage" to national security if it was publicly available.

d) Top Secret: Highest level Substances Classified in national order. Any information, documentation, or material referring to the State's strategic political sector, domestic or external to national defense, and whose disclosure might cause an imminent risk or direct threat against security, national defense, sovereignty and territorial integrity, and the achievement of national objectives. This information might cause "an exceptionally serious domestic and external damage" to national security if it was publicly available.<sup>867</sup>

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<sup>864</sup> República de Honduras. Congreso Nacional. Decree 418-2013. [Ley para la clasificación de documentos públicos relacionados con seguridad y defensa nacional. Decreto 418-2013.](#)

<sup>865</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. 22/17. March 15, 2017. Para. 782.

<sup>866</sup> República de Honduras. [Ley para la clasificación de documentos públicos relacionados con seguridad y defensa nacional. Decreto 418-2013.](#)

<sup>867</sup> República de Honduras. [Ley para la clasificación de documentos públicos relacionados con seguridad y defensa nacional. Decreto 418-2013.](#)

686. The classification of public documents law regulates the deadlines of disqualification, indicating that it “shall be carried out” “after” five years in the case of reserved information, ten years in the case of confidential information, fifteen years in the case of secret information, and twenty-five years in the case of top secret information. “However, if the circumstances for which the substance was declared as classified persist, the National Defense and Security Council might extend the original classification period by means of a duly grounded and motivated order,” pursuant to law. Disqualification can only be requested before the respective deadline’s expiration in the case of national interest or to investigate potential crimes.

687. Furthermore, National Intelligence Act, Decree 211-2012<sup>868</sup> states that “the expenses of purchasing, hiring, and executing goods, services, construction, and human resources, which, if disclosed, might risk national security, the integrity of intelligence staff, or its sources of information, will be considered as reserved.”<sup>869</sup> Likewise, it indicates that “without prejudice to what is enacted in the Transparency and Access to Public Information Act, intelligence activities, information, and documentation will be deemed as reserved, in view of the fact that their content is confidential or secret, since they are inherent elements of national security and defense.”<sup>870</sup>

688. According to the information received during the visit, in 2015, the Access to Public Information Institute passed a resolution ordering the reform of the act and repeal of some articles.<sup>871</sup> In 2016, many civil society organizations filed for unconstitutionality proceedings against this act, which are still pending decision of the Constitutional Chamber of the Supreme Court of Justice.<sup>872</sup>

689. During its visit, the IACHR became aware of the fact that the Executive sent a reform bill to Congress, whose content is not publicly available in the Legislature, even though the debates have already started. The IACHR was informed by civil society organizations that, even though it brings about positive changes, the reform gives the Executive broad powers to restrict the access to public information. The IACHR and its Office of the Special Rapporteur express their availability to provide technical assistance to Congress on the reform of this Law.

#### **D. Postelectoral conflict and social protests**

690. With regard to the postelectoral conflict, the IACHR observed that the political climate remains polarized. Public perceptions around the lack of legitimacy of the elections gave rise to protests that were repressed through an indiscriminate and disproportionate use of force. The armed forces also took part in this repression, which contravenes intra-American standards. In any democratic system, it is essential that there be a clear and specific separation between domestic security, which is the role of the police force, and national defense, which is the role of the armed forces. As a result of the state response to the demonstrations, at least 22 people were murdered; hundreds of people were injured, including members of the security forces; and over a thousand people were arrested, many of whom reported having been mistreated during their detainment and subsequent deprivation of freedom. It was also reported that the security forces carried out illegal raids on houses. Given the irreversible nature of the consequences that the use of force can lead to, the IACHR considers that it should only be used a last resort to prevent a more serious incident than the one caused by the state’s reaction itself. In this sense, the use of force should be exceptional and should comply with the principles of legality, absolute necessity, and proportionality.

691. Finally, the Office of the Special Rapporteur received information regarding journalist Giovanni Sierra, of *Une Tv*, whose arm was injured by a gun shot when he was covering a public demonstration organized by the political party Libertad y Refundación (Libre) on November 24 in the capital<sup>873</sup>.

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<sup>868</sup> República de Honduras. [Ley de Inteligencia Nacional Decreto 211-2012](#). Published on April 15, 2018, Gaceta 33.099.

<sup>869</sup> See: Art. 16.

<sup>870</sup> See: Art. 18.

<sup>871</sup> Instituto de Acceso a la Información Pública. [Resolución No. SE- 001-2015](#). July 28, 2015.

<sup>872</sup> In this regard, see: Radio Progreso. February 12, 2016. [Con recurso de inconstitucionalidad buscan derogar Ley de Secretos Oficiales](#); La Tribuna. November 29, 2016. [Presentan recurso de inconstitucionalidad contra 'Ley de Secretos'](#); El Heraldo. April 28, 2014. [Recurso de inconstitucionalidad contra Ley de Secretos](#).

<sup>873</sup> El Heraldo. November 26, 2018. [Un periodista resulta herido de bala durante cobertura a manifestación libre](#); Criterio. November 26, 2018. [Hieren a periodista de UNETV y reprimen a manifestantes en Tegucigalpa](#).

## 22. JAMAICA

### A. Attacks, Threats, and Intimidation of Journalists and the Media

692. According to available information, on February 13, photographer Rudolph Brown was allegedly sprayed with pepper spray by police officers while trying to capture images of an arrest at Cross Road. The event would have generated strong outrage from representatives of the Caribbean Media Association who would have condemned the event. According to the information of public knowledge, after an investigation<sup>874</sup> the authorities would have taken disciplinary measures against the agents involved<sup>875</sup>.

693. 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, "States [must] prevent and investigate [this type of aggression], punish their perpetrators and ensure that victims receive due compensation." In a 2013 joint statement, the IACHR and UN Special Rapporteurs said that "it is essential for authorities to vigorously condemn assaults against journalists and media workers and to act with due diligence and swiftness to establish the facts and punish those responsible". Likewise, they pointed out the need to "properly educate State security forces on the role of the press in a democratic society is an important step in preventing violence against journalists and media workers in situations of social unrest."<sup>876</sup>

### B. Legal reform

694. According to the information received by the Office of the Special Rapporteur, civil society organizations expressed a series of concerns<sup>877</sup> about a bill presented in 2017<sup>878</sup> that is pending before parliament regarding the protection of personal data. As reported, the media would be considered as "data controllers" and would be obligated to send to the eventual office of the information commissioner the description of the personal data received, stored, or processed. Likewise, that office would have broad powers over individuals and organizations (including the media) to obtain information, such as the identification of sources, and demand rectifications, among others. Penalties for non-compliance would be varied and would include incarceration. The project has caused controversy and debate in the Caribbean country on freedom of expression and legal guarantees in support of press freedom<sup>879</sup>. According to official public information, the project would be a "legislative priority" for the 2018/2019 period<sup>880</sup>.

695. In this regard, this Office recalls that, according to principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR, "[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest." Likewise, principle 8 indicates that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." Finally, this Office highlights that IACHR, UN, and OSCE Special Rapporteurs mentioned in a 2004 joint declaration that "[t]he right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy." In this sense, "[e]xceptions

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<sup>874</sup> The Gleaner. February 15, 2018. [Most Upsetting... MAJ Decries Pepper-Spraying Of Photo Journalist](#). The Gleaner. February 16, 2018; [Police High Command Launches Investigation Into Pepper Spray Altercation](#); The Gleaner. February 15, 2018. IOC To [Investigate Pepper Spraying Incident Involving Cops And Public](#); Jamaica Observer. February 14, 2018. [Press Association calls for investigation into assault on photographer by Police](#); Jamaica Observer. February 15, 2018. [PAJ calls for immediate probe into assault of newspaper photographer](#).

<sup>875</sup> The Gleaner. September 27, 2018. [JCF Takes Action Against Cops Involved In Pepper-Spraying Of Photo Journalist](#).

<sup>876</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>877</sup> Inter American Press Association (IAPA). March 16, 2018. [IAPA asks Jamaica MPs to safeguard news media in data protection bill](#); Reporters Without Borders (RSF). May 16, 2018. [Jamaica - RSF concerned over proposed Data Protection Act's potentially "chilling effect" on press freedom](#).

<sup>878</sup> Parliament of Jamaica. [An act to Protect de the privacy of certain data and for connected matters](#). August 28, 2017.

<sup>879</sup> Inter American Press Association (IAPA). March 16, 2018. [IAPA asks Jamaica MPs to safeguard news media in data protection bill](#); IFEX. March 20, 2018. [Jamaican legislators called on to safeguard news media in data protection bill](#); Reporters Without Borders (RSF). May 16, 2018. [Jamaica - RSF concerned over proposed Data Protection Act's potentially "chilling effect" on press freedom](#); Global Voices. June 15, 2018. [¿Podrá la ley de protección de datos de Jamaica proteger a los políticos del escrutinio periodístico?](#)

<sup>880</sup> Jamaica. Office of the Cabinet. [GOJ priority legislation programme 2018/2019](#). No date.

should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information.”<sup>881</sup>

### C. Other relevant situations

696. According to available information, for several months the government would have stopped holding press conferences after meetings of the Cabinet of Ministers. On May 10, the Jamaica Press Association called on the government to resume press conferences and stated that “[n]o post-cabinet information meetings have been held since the beginning of the year.” Also, the statement emphasized that the last information meeting was held in November 2017 and was carried out in an “irregular” manner. Lastly, the organization called on the government to guarantee the possibility that the press can consult on the issues discussed in the cabinet meeting<sup>882</sup>.

697. The Office of the Special Rapporteur notes that, according to the 2001 Inter-American Democratic Charter, “[t]ransparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy”.

698. According to the 2018 joint statement of the UN, IACHR, OSCE, and ACHPR Special Rapporteurs on the independence and diversity of the media in the digital age, “[s]tates are under a positive obligation to create a general enabling environment for seeking, receiving and imparting information and ideas.”<sup>883</sup>.

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<sup>881</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. December 6, 2004. [Joint Declaration on Access to Information and on Secrecy Legislation](#).

<sup>882</sup> The Press Association of Jamaica. May 10, 2018. [Press Association calls on Government to immediately resume post-cabinet press briefings](#).

<sup>883</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. May 2, 2018. [Joint Declaration on Media Independence And Diversity In The Digital Age](#).

## 23. MEXICO

699. In 2018, the Office of the Special Rapporteur for Freedom of Expression of the IACHR and the UN Special Rapporteur on the Promotion and Protection of the Rights to Freedom of Opinion and Expression published the final report of the official visit to Mexico carried out from November 27 to December 4, 2017. In the "[Special Report on the Situation of Freedom of Expression in Mexico](#)" (hereinafter, "Special Report"), the Special Rapporteurs evaluate the situation of the right to freedom of expression in the country and make a series of recommendations to the State to guarantee the protection of journalists and the proper investigation of the attacks perpetrated because of the journalistic work. In addition, the Special Report presents several recommendations on topics such as digital surveillance of communicators and human rights defenders, access to public information, government advertising, and diversity of media.

700. The Special Rapporteurs stated that Mexico "faces a profound security crisis severely affecting the human rights of its people."<sup>884</sup> They also emphasized that "[a]t the heart of the crisis is a breakdown in the rule of law and governance at local levels across the country, simultaneously leading to and exacerbated by murders, disappearances and torture. The suffering is widespread, yet the violence has often singled out those most essential to telling the story of conflict and insecurity, corruption and criminality: journalists. It is violence seeking to undermine public debate and civic participation, a widespread attack on the roots of democratic life in Mexico, at local, state and national levels. During the visit, the Special Rapporteurs heard repeated stories of killings and disappearances, physical and psychological attacks on the media, and other forms of interference designed not only to harm individual journalists but the public's right to know."<sup>885</sup>

701. In 2018, the situation of violence was maintained with respect to the previous year. The Office of the Special Rapporteur documented 12 murders that would have been perpetrated against journalists for reasons allegedly linked to the professional work of the victims, which shows that the work of journalists continues to be the essential factor that motivates violence against journalists. Despite the actions and intentions of the government and of different federal and state entities in the strengthening of prevention policies, cases of violence continue to seriously affect the work of journalists. These events were reported by civil society organizations, the media, and human rights organizations.

702. The episodes of violence also occurred in a context of strong confrontation of political supporters during the electoral process that began in September 2017. From the beginning of the campaign until the general elections held on July 1, 2018, a hundred homicides were perpetrated for political reasons. In this context, there were also dozens of attacks against journalists due to coverage related to the electoral process.

### A. Progress

703. Within an alarming context of violence and widespread impunity, some positive measures have been adopted at different levels of the federal and state governments. This Office was informed that in January, the governing board of the Protection Mechanism for Human Rights Defenders and Journalists approved a document of "Guidelines for the Recognition of the Work of Human Rights Defenders and Journalists" that contains some recommendations from the Office of the Special Rapporteur. According to the published information, "[t]hese guidelines constitute a public policy tool aimed primarily at civil servants, in order to establish the criteria, content, and procedures to carry out actions and construct messages for the explicit recognition of the work of human rights defenders and journalists, who contribute to the prevention of aggressions and their protection, as well as to the strengthening of the Rule of Law and Democracy"<sup>886</sup>.

704. On March 15, the Congress of the State of Guanajuato informed that it repealed the crimes typified as defamation and slander in the Criminal Code and modified the Civil Code with the introduction of moral damage as a mechanism of reparation for people whose honor, reputation, image, or private life were

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<sup>884</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 5.

<sup>885</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 5.

<sup>886</sup> Estados Unidos Mexicanos. Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas. [Lineamientos para el Reconocimiento a la Labor de Personas Defensoras de Derechos Humanos y Periodistas](#). January, 2018.

affected<sup>887</sup>. In a similar step, in August the Congress of the State of Colima repealed the crime of slander of the criminal legislation. In this regard, the National Human Rights Commission [*Comisión Nacional de Derechos Humanos*] (CNDH) of Mexico recognized the importance of the decision of the legislative body and at the same time observed that in several states the criminal offense is still in force<sup>888</sup>.

705. In the area of procurement of justice, the Office of the Special Rapporteur received information that on March 27, the Attorney General of the State of Veracruz informed of the sentence of 25 years in prison for two individuals responsible for the murder, in 2015, of journalist and activist Moisés Sánchez Cerezo. According to what was published, those sentenced "were working at the Municipal Police of Medellín"<sup>889</sup>. For its part, on April 27, the Attorney General's Office (PGR) reported that it started the investigation of the murder of the journalist Miroslava Breach. In the specific case, the criminal chamber of the Superior Court of Justice of Chihuahua confirmed in a favorable manner the decision of a control judge in which the PGR was declared competent to hear about the process for the murder of the journalist<sup>890</sup>. In another case, on June 12, the PGR that the Special Prosecutor for the Attention of Crimes Committed against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*] (FEADLE) had analyzed more than five thousand journalistic notes in the framework of the investigation related to the homicide of journalist Javier Valdez<sup>891</sup>.

706. On October 16, the PGR informed about the approval of a "Homologated Protocol for the Investigation of Crimes Committed against Freedom of Expression." According to the published information, "[t]he protocol will be applicable to all investigations related to attacks on journalists due to their activity, and it was created through a broad process of participation and consultation with national and international organizations on the protection of human rights, as well as with civil society specialists"<sup>892</sup>. Civil society organizations stated that "[t]he approval of this important tool is a first step towards the main objective that is to eradicate the impunity that prevails in violence against the press in the country"<sup>893</sup>. During the process of drafting the document, the Office of the Special Rapporteur sent a technical note to the State in March, indicating positive aspects and recommendations<sup>894</sup>. Regarding the PGR's actions, according to the 2017-2018 report, by 2018 the number of agents of the Attorney General's Office was increased as one of the actions taken to guarantee freedom of expression and the protection of journalists<sup>895</sup>.

707. Regarding the right to access to public information and its link to the mechanisms for the protection and prevention of violence against journalists, on June 27, 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) informed that the PGR is obligated to release information about "[the] number of preliminary inquiries and cases started by the then Specialized Prosecutor for Crimes Committed against Journalists, from February to June of 2010". In this regard, commissioner Carlos Alberto Bonnin Erales mentioned that "[t]he complete and accurate presentation of official data on these crimes promotes the institutional responsibility of generating information, which contributes to strengthening better decision

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<sup>887</sup> Estados Unidos Mexicanos. Congreso del Estado de Guanajuato. March 15, 2018. [Derogan los delitos de difamación y calumnia; incorporan la reparación del daño moral.](#)

<sup>888</sup> Estados Unidos Mexicanos. Congreso del Estado de Colima. August 25, 2018. [Opinión ciudadana; Comisión Nacional de Derechos Humanos \(CNDH\). August 28, 2018. Reconoce CNDH trascendencia de la determinación del Congreso de Colima al derogar el delito de calumnia del Código Penal de esa entidad.](#)

<sup>889</sup> Estados Unidos Mexicanos. Fiscalía General del Estado de Veracruz. March 27, 2018. [Obtiene FGE sentencias condenatorias contra dos homicidas de periodista y activista Moisés Sánchez.](#)

<sup>890</sup> Estados Unidos Mexicanos. Procuraduría General de la República. No date. [Comunicado 410/18. Confirman que PGR atrae investigación del homicidio de la periodista Miroslava Breach.](#)

<sup>891</sup> Estados Unidos Mexicanos. Procuraduría General de la República. No date. [Comunicado 646/18. Analiza FEADLE más de cinco mil notas periodísticas relacionadas al caso Javier Valdez.](#)

<sup>892</sup> Estados Unidos Mexicanos. Procuraduría General de la República. No date. [Comunicado 1072/18. Aprueban Protocolo Homologado de Investigación de Delitos cometidos contra la Libertad de Expresión.](#)

<sup>893</sup> Artículo 19. October 16, 2018. [Aprueban protocolo para la investigación de delitos cometidos contra la libertad de expresión.](#)

<sup>894</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the State of Mexico: Protocolo Homologado de la Fiscalía Especializada de Atención a Delitos contra la Libertad de Expresión (FEADLE)- Procuraduría General de la República de México. March 16, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>895</sup> Estados Unidos Mexicanos. Procuraduría General de la República. [6to Informe de Labores 2017-2018.](#) September 1, 2018.

making in the generation of public policies, and greater effectiveness of efforts to improve conditions in Mexico”<sup>896</sup>.

708. In February and later in March, the quarterly follow-up reports on preventive measures for the protection of human rights defenders and journalists in the state of Chihuahua were published, in which some progress and outstanding issues are recorded<sup>897</sup>.

709. On November 15, the Supreme Court of Justice, by a large majority of 9 to 1, declared the controversial internal security law unconstitutional<sup>898</sup>. This law was enacted on December 21, 2017<sup>899</sup>. According to the statements made by civil society representatives, if implemented, it could have had negative impacts on human rights and the right to social protest. Faced with the lawsuits filed by civil society organizations and the request made by various institutions, the law was analyzed by the Supreme Court<sup>900</sup>. Previously, a judge in Mexico City and another state judge in Guanajuato, ruled in May the unconstitutionality of the law because it would introduce obstacles to the exercise of fundamental rights<sup>901</sup>. The law legitimized the "Internal security actions" as "those performed by federal authorities, including the Armed Forces, on their own or in coordination with other orders by the government, aimed at identifying, preventing, attending to, reducing, and containing risks and threats to internal security".

710. Also, according to the information available, the law had previously been suspended in terms of its effects in the state of Sonora; however, the Judicial Branch of the Federation informed that a collegial court in administrative matter decided to revoke said suspension<sup>902</sup>. In the Special Report, the Special Rapporteurs recommended "[r]epeal the law of Internal Security in its current version and instead initiate an open and comprehensive dialogue regarding the security model the country needs, reaffirming the role of civilian security agencies in addressing public security challenges."<sup>903</sup> They also mentioned that "[n]o laws should be adopted which counter the powers given to access to information authorities or standards relating to access to information for serious human rights violations."<sup>904</sup>

## **B. Murders and disappearances**

711. The Office of the Special Rapporteur notes with concern the resurgence of violence against journalists for reasons related to their professional work in a context of widespread violence. Despite the State's actions, violence against journalists continues, particularly murders for reasons linked to their journalist work. In 2018, journalist Carlos Domínguez was murdered in the city of Nuevo Laredo, Tamaulipas state, on January 13<sup>905</sup>; blogger Leslie Ann Pamela Montenegro del Real in the Costa Azul area, municipality of Acapulco, on

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<sup>896</sup> Estados Unidos Mexicanos. Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales (INAI). June 27, 2018. [Comunicado de prensa INAI/081/18](#). According to the statement, a private individual had requested statistical information on cases attracted by the FEADLE, in which the individual requested type of crime, federal entity involved and procedural status. The PGR had declared that the information was non-existent and added that it had no obligation to produce it.

<sup>897</sup> Estados Unidos Mexicanos. [Informe Trimestral de Seguimiento a las Medidas preventivas para la Protección de personas defensoras de derechos humanos y periodistas de Chihuahua](#) (July 2017 - February 2018); [Informe Trimestral de Seguimiento a las Medidas preventivas para la Protección de personas defensoras de derechos humanos y periodistas de Chihuahua](#) (March - May 2018).

<sup>898</sup> CNN en Español. No date. [Suprema corte de Justicia de México declara inconstitucional Ley de Seguridad Interior](#); Infobae. November 15, 2018. [La Corte invalidó la Ley de Seguridad Interior que ampliaba facultades de las Fuerzas Armadas en México](#).

<sup>899</sup> Estados Unidos Mexicanos. Unidad General de Asuntos Jurídicos. Available at: <http://www.ordenjuridico.gob.mx/leyes.php>

<sup>900</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 15.

<sup>901</sup> Aristegui Noticias. May 11, 2018. [Ley de Seguridad Interior es inconstitucional, resuelven dos jueces \(Documento\)](#); Periódico Correo. May 12, 2018. [Dos jueces declaran inconstitucional la Ley de Seguridad](#). Juzgado Octavo del Distrito en Materia Administrativa de la Ciudad de México. Juicio de amparo 124/2018. May 9, 2018. Available at: [http://www.cmdpdh.org/publicaciones-pdf/sentencia\\_lsi\\_10\\_mayo\\_2018.PDF](http://www.cmdpdh.org/publicaciones-pdf/sentencia_lsi_10_mayo_2018.PDF)

<sup>902</sup> Estados Unidos Mexicanos. Consejo de la Judicatura Federal. September 25, 2018. [Nota Informativa](#).

<sup>903</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 93.

<sup>904</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 93.

<sup>905</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. January 19, 2018. [Press Release R5/18 Office of the Special Rapporteur Condemns Murder of Journalist Carlos Domínguez in Mexico and Urges the State to Investigate Connection to Journalistic Activity](#).

February 5<sup>906</sup>; Leobardo Vázquez Atzin, on March 21 at Gutiérrez Zamora <sup>907</sup>; radio and television journalist Juan Carlos Huerta Martínez in Villahermosa, state of Tabasco, on May 15<sup>908</sup>; journalist Héctor González Antonio, whose body was found on May 23 at a spot of the Colonia Estrella in Ciudad Victoria, state of Tamaulipas<sup>909</sup>; María del Sol Cruz Jarquín, on June 2 in Juchitán, Oaxaca <sup>910</sup>; journalist José Guadalupe Chan Dzib in Cancún, Quintana Roo state, on June 29<sup>911</sup>; journalist Rubén Pat, in Playa del Carmen, in the municipality of Solidaridad, state of Quintana Roo, on July 24; journalist Mario Leonel Gómez Sánchez in Yajalón, state of Chiapas, on September 21; Gabriel Soriano Kuri, on October 24, in Acapulco, Guerrero <sup>912</sup>; Alejandro Márquez Jiménez, whose body was found in an area near the airport of the municipality of Tepic, state of Nayarit, on December 1<sup>913</sup>; y, Diego García Corona, municipality of Ecatepec, State of Mexico, on December 4 <sup>914</sup>.

712. The Office of the Special Rapporteur issued press releases in which it expresses its condemnation of the crimes and calls on the Mexican State to completely, effectively, and impartially investigate these crimes, which affect all of Mexican society. It must establish the motives for them, and legally determine whether there was any connection to the victims' journalistic activities. It is fundamental for the authorities to investigate the facts without ruling out the theory that the murders may have been connected to journalistic activity and freedom of expression.

713. Regarding the number of murders against journalists, there are differences in the databases of federal institutions. As of public information, the Protection Mechanism for Human Rights Defenders and Journalists, until October 3, recorded 15 murders of journalists<sup>915</sup>. According to the statistics published by Feadle, as of September, 7 murders of journalists derived from professional work had been perpetrated<sup>916</sup>.

714. The Special Rapporteurs in the Special Report stated that “[t]here is no single system that obtains and collects data on attacks against journalists, and the criteria and methodology for obtaining such data differs between and among federal and state institutions.”<sup>917</sup> They also recommended to the State “[c]ompile and publish detailed and disaggregated statistics of attacks against journalists and human rights defenders, including data concerning the criminal prosecution of these crimes.”<sup>918</sup>

715. Likewise, it was informed that journalist Agustín Silva would have disappeared since January 21. According to the information available, on that day the journalist had to meet with a source about a

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<sup>906</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 14, 2018. [Press Release R28/18 Office of the Special Rapporteur Condemns Murder of Citizen Journalist in Mexico, Urges Authorities to Investigate Relationship to Publications and Punish Perpetrators.](#)

<sup>907</sup> ONU Noticias Mexico. December 4, 2018. [ONU condena el asesinato del periodista Alejandro Márquez en Nayarit.](#)

<sup>908</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 24, 2018. [Press Release R115/18 The Special Rapporteur condemns murder of journalist in Mexico and urges to investigate relationship with his journalistic activity.](#)

<sup>909</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 1, 2018. [Press Release R125/18 The Office of the Special Rapporteur condemns the murder of journalists in Mexico and notes with concern the situation of violence against media workers.](#)

<sup>910</sup> ONU Noticias Mexico. December 4, 2018. [ONU condena el asesinato del periodista Alejandro Márquez en Nayarit.](#)

<sup>911</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 11, 2018. [Press Release R149/18 The Office of the Special Rapporteur condemns the murder of another journalist in Mexico and urges to investigate the relationship to his journalistic activity.](#)

<sup>912</sup> ONU Noticias Mexico. December 4, 2018. [ONU condena el asesinato del periodista Alejandro Márquez en Nayarit.](#)

<sup>913</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 13, 2018. [Press Release R263/18 Office of the Special Rapporteur Condemns Murder of Journalists in Mexico and Calls on New Government to Redouble Efforts to Prevent Violence against Journalists.](#)

<sup>914</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 13, 2018. [Press Release R263/18 Office of the Special Rapporteur Condemns Murder of Journalists in Mexico and Calls on New Government to Redouble Efforts to Prevent Violence against Journalists.](#)

<sup>915</sup> Estados Unidos Mexicanos Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas. No date. [Personas Periodistas Asesinadas 2018.](#)

<sup>916</sup> Estados Unidos Mexicanos. Procuraduría General de la República. Available at: [https://www.gob.mx/cms/uploads/attachment/file/397907/ESTADISTICAS\\_Sep\\_2018.pdf](https://www.gob.mx/cms/uploads/attachment/file/397907/ESTADISTICAS_Sep_2018.pdf)

<sup>917</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico.](#) June, 2018. Para. 20.

<sup>918</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico.](#) June, 2018. Para. 68.

journalistic investigation that he was carrying out. The next day, the journalist's car was found in a community called El Morrito, in the municipality of Asunción Ixtaltepec, state of Oaxaca, and there was no news about his whereabouts<sup>919</sup>.

716. This office 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."

717. In addition, in a joint declaration of 2005, the special rapporteurs, of the IACHR and of the ACHPR, affirmed that "[this kind of] crimes have a chilling effect on freedom expression that is exacerbated when governments fail to investigate such crimes thoroughly and to bring the perpetrators to justice."<sup>920</sup>

### **C. Attacks, Threats, and Intimidation of Journalists and the Media**

718. Through 2018, civil society organizations, the media, and human rights organizations warned of a series of attacks against journalists and communicators for reasons related to their professional work. According to the information of public knowledge, the media reports a figure close to 200 aggressions that occurred in different parts of the country. The assaults reported against journalists were death threats, physical attacks, harassment, and intimidation. Many of these episodes were related to the electoral context.

719. The investigation into violence and impunity in crimes against journalists is a constant concern within human rights organizations for the impact they have on the right of all society to receive and disseminate information of public interest. The context of aggressions against journalists in Mexico has received considerable critical attention from various sectors and civil society organizations. They have raised doubts about the effective interest on the part of the authorities in addressing the problem in a real and effective way, because, to date, there has been little impact from the measures taken to combat violence against journalists and the context of impunity that derives from it. The results obtained by the Judicial Branch are controversial and there is no general agreement on the full guarantee of impartiality and effectiveness of the investigations. Although considerable regulatory steps have been made, many important issues remain unresolved. In several episodes of aggression, public officials have also been linked, which further compromises the State's responsibility to implement the obligations to respect journalistic work and implement mechanisms of non-repetition.

720. For example, at the close of the edition of this report, the *Rompe el Miedo* platform has recorded on its page that 185 assaults of different types perpetrated against journalists were reported, in which the main reason for the attacks was the work of the victims.<sup>921</sup>

721. On September 27, the National Commission on Human Rights condemned the attack on journalist Deimos Sánchez and his family by officials of the State Investigation Agency [*Agencia Estatal de Investigaciones*] of the state of Oaxaca<sup>922</sup>.

722. The Office of the Special Rapporteur was informed of the alleged arbitrary detention of journalist Enrique Castro, of *De peso*, by the Benito Juárez Municipal Police, in the state of Quintana Roo on September 18, at the time when he was covering the murder of a person. According to the information, he would also have been subjected to mistreatments classified as "torture"<sup>923</sup>.

723. The Office of the Special Rapporteur received information on the attempted murder of journalist Rodrigo Acuña Morales, in the state of Veracruz on November 23, who was seriously injured after two people

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<sup>919</sup> ONU Noticias México. January 30, 2018. [ONU llama a autoridades a intensificar búsqueda del periodista Agustín Silva](#).

<sup>920</sup> The ACHPR Special Rapporteur for Freedom of Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. 2005. [Joint Declaration](#).

<sup>921</sup> Red Rompe el Miedo. Available at: <https://informaterompeelmiedo.mx/historial/>

<sup>922</sup> Comisión Nacional sobre los Derechos Humanos. September 27, 2018. [Comunicado de Prensa DGC/282/18](#).

<sup>923</sup> Artículo 19. September 20, 2018. [Reportero es detenido arbitrariamente y sometido a tortura en Benito Juárez, Quintana Roo](#);

shot at him with firearms<sup>924</sup>. This Office was also informed of an act of intimidation with firearms against journalist Ana Ledezma on November 20, in Cozumel, Quintana Roo state<sup>925</sup>.

724. According to the information available, on the afternoon of December 20, unknown individuals left a cooler containing human remains, along with a threatening message directed to the media, in front of the facilities of the *Expreso* newspaper, located in the city of Victoria, Tamaulipas state<sup>926</sup>. Given this, the National Human Rights Commission [*Comisión Nacional de los Derechos Humanos*] expressed its concern and called on the authorities to provide the necessary protections. Likewise, this organization emphasized that Tamaulipas, along with the state of Guerrero, occupy the second place in terms of murders of journalists<sup>927</sup>.

725. According to the 2017-2018 report of the PGR, "[f]rom September 1, 2017 to June 30, 2018, 56 Investigation Files [*Carpetas de Investigación*] (CI) were opened at FEADLE, and 15 others due to internal incompetence of other areas of the PGR: of those, 38 were for threats; 10 for homicide, nine for robbery, six for injuries, two for illicit access to computer systems and equipment, three for illegal deprivation of liberty, two for abuse of authority, one for damage in property of others, one for intervention of communications, and one for violation of correspondence"<sup>928</sup>. Likewise, the report reflects that FEADLE carried out actions for the procurement of justice. In this regard, according to the report, "the faculty of starting the investigation was exercised in five investigations, in Chihuahua, Coahuila, Puebla, Sinaloa and Yucatan", "19 people were linked to processes and six arrest warrants were obtained for the same number of people", "in coordination with state prosecutors and DA's offices, 23 arrest warrants were obtained in eight investigations for the crime of murder", "the agents of the Attorney General's Office of the Federation attached to the FEADLE requested 47 investigation techniques, of which 38 were oral and nine were written", "Attorney General's agents of the Federation attached to the FEADLE attended 77 hearings". Likewise, the report highlights other activities carried out<sup>929</sup>.

726. On July 31, the UN Human Rights Committee (OHCHR) ruled that the Mexican state violated the right to freedom of expression and other human rights of journalist Lydia Cacho, who was arbitrarily detained and tortured in 2005 by police officers. The arrest was made following the publication of the book "The demons of Eden" [*Los demonios del Edén*] in which the journalist revealed that businessmen and officials were involved in child sexual exploitation networks. The resolution orders the Mexican State to guarantee the right to justice, truth, and reparation. This resolution comes from a petition filed by *Artículo 19* in 2014<sup>930</sup>.

#### **D. Prevention, protection and impunity of crimes against journalists**

727. The Office of the Special Rapporteur highlights the government's progress in various measures adopted to prevent and protect journalists from all types of violence in the country. In this regard, the Office notes as positive a series of measures adopted in 2018 and significant progress in some crimes against journalists, such as the 25-year prison sentence for two individuals responsible for the murder in 2015 of journalist and activist Moisés Sánchez Cerezo. In addition, the Office of the Special Rapporteur highlights the efforts of the PGR and FEADLE, as well as the approval of a "Homologated Protocol for the Investigation of Crimes Committed against Freedom of Expression."

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<sup>924</sup> Reporters Without Borders (RSF). November 26, 2018. [Crime reporter badly injured in shooting attack in Veracruz state](#); Reporters Without Borders (RSF). November 27, 2018. [RSF pide a las autoridades mexicanas que investiguen el intento de asesinato del periodista Rodrigo Acuña Morales](#); Zona Franca. November 23, 2018. [Rodrigo Acuña Morales, reportero del Diario de Tepetzintla, es atacado a balazos en Veracruz](#).

<sup>925</sup> Maya sin frontera. November 22, 2018. [Intentan asesinar a la periodista Ana Ledezma en Cozumel](#); Diario19. November 23, 2018. [Se pronuncia y demanda "Colectivo Marea Verde", Quintana Roo en favor de la periodista Ana Ledezma Canaan](#).

<sup>926</sup> Univisión Noticias. December 21, 2018. [Una hielera con una cabeza humana y el mensaje "Esto es lo que les puede pasar": así amenazan a un diario mexicano](#); Animal Político. December 20, 2018. [Periódico Expreso de Tamaulipas recibe amenazas frente a sus instalaciones](#).

<sup>927</sup> Comisión Nacional sobre los Derechos Humanos. December 21, 2018. [Solicita CNDH medidas cautelares al Gobierno de Tamaulipas para proteger a los colaboradores del periódico Expreso, ante los mensajes amenazantes y la localización de una cabeza humana en las inmediaciones de ese rotativo](#).

<sup>928</sup> Estados Unidos Mexicanos. Procuraduría General de la República. [6to Informe de Labores 2017-2018](#). September 1, 2018.

<sup>929</sup> Estados Unidos Mexicanos. Procuraduría General de la República. [6to Informe de Labores 2017-2018](#). September 1, 2018.

<sup>930</sup> ONU Noticias México. August 3, 2018. [ONU reconoce violaciones a los derechos de la periodista Lydia Cacho](#).

728. Notwithstanding the foregoing, this Office notes that the climate of impunity persists in Mexico in almost all of the cases reported, which indicates that the State must redouble its efforts in policies for the prevention and protection and procurement of justice. According to the Special Report, “[t]he impunity for killings and other attacks against journalists has been documented by government institutions and civil society organizations, suggesting that at least 99.6% of these crimes remain unsolved.”<sup>931</sup>

729. According to the Special Report, “[t]he Government has taken important steps to strengthen the Mechanism’s operation and effectiveness and to implement recommendations made by civil society and experts in the field, and that has helped to build more confidence among beneficiaries and journalists. However, many of its challenges have yet to be adequately addressed. Coordination between the Mechanism and local authorities for the implementation of preventive and protective measures continues to be a challenge.”<sup>932</sup> In addition, Special Rapporteurs highlighted as positive “the adoption in 2017 of protocol to standardize operational procedures and facilitate coordination. The Government should ensure that local personnel are trained on how to perform their obligations under the protocol and fully understand the importance of the role of journalists in a democratic society. The Government should give priority to strengthening the Federal Mechanism over state mechanisms, not only to ensure effective coordination with local authorities but to provide it with the ability to operate locally in a sustainable way. Coordination between the Mechanism and other federal agencies and national institutions, such as the PGR, CEAV and CNDH should also be strengthened. In particular, the fulfilment of PGR’s responsibilities ensuring the risks facing beneficiaries are identified and duly investigated should be seen as an essential aspect of any protection program.”<sup>933</sup>

730. According to the observation of the special rapporteurs, “[r]isk assessment methodologies still need to effectively include a differentiated approach taking into consideration specific risks facing certain groups of journalists, including women and indigenous journalists. The Government should take further steps to include the digital safety of journalists in the risks assessments conducted by the Mechanism and provide, when appropriate, digital protection measures, including the secure management of personal communications data. Additionally, physical attacks perpetrated by state officials and other forms of institutional violence against journalists (i.e. discrediting campaigns and criminalization) should be effectively addressed by the Mechanism.”<sup>934</sup>

#### **E. Social protest**

731. Through 2018, *Informador.mx* reported a series of social protests in different parts of the country and on different topics<sup>935</sup>. An event that generated broad and deep concerns to various civil society organizations and generated the mobilization and protest of various sectors of the population, was related to the approval in 2017 of the Law of Internal Security [*Ley de Seguridad Interior*]. According to the Special Report, “[p]ursuant to protests by civil society and the formal request by a number of institutions, the law was under review by the Supreme Court. Also, according to information provided by the State, local judges in Guanajuato and Mexico City ruled the law unconstitutional in two separate proceedings. The authorities have justified the law by arguing that it is a critical tool to combat drug-related violence and that it would lead to a regulation of the use of Armed Forces in a legal framework. The Special Rapporteurs are concerned about provisions that could negatively impact access to information, the level of oversight for intelligence gathering, and the use of force during demonstrations”<sup>936</sup>. As indicated above, this law was declared unconstitutional by the Supreme Court of Justice of the Nation.

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<sup>931</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 43.

<sup>932</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 32.

<sup>933</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 32.

<sup>934</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 33.

<sup>935</sup> Informador.MX. Available at: <https://www.informador.mx/manifestaciones-en-la-cd-de-mexico-t2362>

<sup>936</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 15.

732. The Office of the Special Rapporteur received information on a series of protests initiated at the end of August by students of the National Autonomous University of Mexico [*Universidad Nacional Autónoma de México*], which would have been extended for several weeks through various measures. Within the framework of the protests, on September 3, students were reportedly injured by confrontations with destabilizing groups, in front of the esplanade of the university rectorate. Also, several students who were part of the protests would have been expelled from the University<sup>937</sup>.

733. Other violent episodes were reported to the Office of the Special Rapporteur. For example, on April 26, in the context of a social protest regarding the arrest of an independent candidate, a person would have been run over by an official vehicle, in the state of Morelos<sup>938</sup>. On May 23, Alfredo Páez, a reporter for *El Big Data*, was beaten by officials from the Mexico City fire brigade while covering a demonstration outside the headquarters of the Federal District Legislative Assembly<sup>939</sup>.

734. On July 18, journalist Marycarmen Díaz and journalist Fabian Guerrero, of *El Vocero*, were attacked at the time they were covering a protest against the local municipal president, Pablo Gutiérrez Lazarus, in Ciudad del Carmen, Campeche. Political supporters would have thrown partitions and sticks to the vehicle in which the journalists circulated. In addition, the affected individuals would have descended from the vehicle to request help to the state security that were present, and these would have ignored them<sup>940</sup>.

735. On October 6, the National Human Rights Commission of Mexico reported on an eviction that had been carried out arbitrarily and disproportionately against 35 elderly people in the context of a social protest in front of the government palace of the city of Xalapa, state from Veracruz. According to the published information, two journalists who were covering the protest were assaulted<sup>941</sup>.

736. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>942</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>943</sup>

737. Likewise, the joint declaration on violence against journalists in the context of social demonstrations, adopted in 2013, indicates that “[t]he State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession.”<sup>944</sup>

## **F. Protection Mechanisms for Human Rights Defenders and Journalists**

738. According to the information available, the Federal Mechanism for the Protection of Human Rights Defenders and Journalists faced a budget shortage that put at risk the validity of protection measures. On August 28, the Office of the United Nations High Commissioner made a call to the government to guarantee the allocation of funds necessary for the functioning of the agency<sup>945</sup>. In the same sense, the Special

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<sup>937</sup> CNN Español. September 5, 2018. [Protestas, alumnos expulsados y facultades cerradas: ¿qué está ocurriendo en la UNAM?](#); Milenio. September 3, 2018. [¿Por qué alumnos de la UNAM marchan en CU?](#)

<sup>938</sup> Red Rompe el Miedo. No date. [Historial de Agresiones](#). Available at: [https://informaterompeelmiedo.mx/wp-content/uploads/2018/05/RRM\\_Postal-0014.png](https://informaterompeelmiedo.mx/wp-content/uploads/2018/05/RRM_Postal-0014.png)

<sup>939</sup> Red Rompe el Miedo. No date. [Historial de Agresiones](#). Available at: [https://informaterompeelmiedo.mx/wp-content/uploads/2018/05/RRM\\_Postal-0025.png](https://informaterompeelmiedo.mx/wp-content/uploads/2018/05/RRM_Postal-0025.png)

<sup>940</sup> Red Rompe el Miedo. No date. [Historial de Agresiones](#). Available at: [https://informaterompeelmiedo.mx/wp-content/uploads/2018/07/RRM\\_Postal-0135.jpeg](https://informaterompeelmiedo.mx/wp-content/uploads/2018/07/RRM_Postal-0135.jpeg)

<sup>941</sup> Comisión Nacional sobre los Derechos Humanos. October 6, 2018. [Comunicado de Prensa DGC/296/18](#).

<sup>942</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>943</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>944</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>945</sup> Noticias ONU. August 28, 2018. [La protección de periodistas y defensores en México está en riesgo por falta de fondos](#).

Rapporteur expressed the need to strengthen and increase the resources of the mechanism<sup>946</sup>. In the Special Report, the Special Rapporteurs warn about the lack of resources and the need to increase them so that the Mechanism fulfills its mandate.

739. On November 2, on the International Day to End Impunity for Crimes against Journalists, Special Rapporteurs of the UN, the special rapporteur of the IACHR, and commissioner Francisco José Eguiguren Praeli, Rapporteur on Human Rights Defenders of the IACHR, urged the Mexican government to adopt all necessary measures to ensure continued and sufficient funding for the Federal Protection Mechanism for Human Rights Defenders and Journalists to prevent future financial crisis." Although they verified that the Protection Mechanism had made significant progress, "still lacks sufficient resources to fully exercise its mandate."<sup>947</sup>

740. Through 2018, a group of civil society organizations and authorities expressed their alarm at the impending financial crisis that the Protection Mechanism would face. According to the information received by the Office of the Special Rapporteur, since 2016, the Mechanism's budget has decreased and, in 2017, it also faced a financial crisis<sup>948</sup>. According to the information received by the Office of the Special Rapporteur, the funds earmarked for the Protection Mechanism were guaranteed until 2019.

### **G. Subsequent liabilities**

741. According to the information received by the Office of the Special Rapporteur, several states still maintain criminal offenses with broad, ambiguous and vague wording that seek to protect the right to honor through criminal types such as "slander", "defamation", "attacks on honor", "insults", "desacato". According to the information received, the states of Baja California, Baja California Sur, Campeche, Chiapas, Chihuahua, Mexico City, State of Mexico, Guerrero, Hidalgo, Jalisco, Michoacán, Morelos, Nayarit, and Nuevo León still have some of these offenses<sup>949</sup>. At the federal level, the law on printing offenses is still in force.

742. According to the Special Report, the Special Rapporteurs recommend the state "[r]epeal the 1917 Print Offences Act and amend state criminal codes in order to remove offences that are used to criminalize freedom of expression and refrain from using other criminal law provisions to punish the lawful exercise of freedom of expression."<sup>950</sup> Likewise, they recommend "amend state civil codes to ensure protection to honor through civil proceedings, establishing limits and criteria to sanctions, according to international standards. SEGOB and the Mechanism should play a key role on this."<sup>951</sup>

### **H. Government Advertising**

743. The Mexican Congress approved on May 11 a general law of social communication,<sup>952</sup> in order to regulate the allocation of government advertising. Prior to the approval of the law, the Special Rapporteurs urged the State of Mexico to protect the independence of the media in the bill<sup>953</sup>. The Special Rapporteurs in the Special Report recommended the state "[i]n consultation with civil society and experts, amend the law regulating government advertising (*Ley de Comunicación Social*) to ensure compliance with international

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<sup>946</sup> ONU Noticias México. September 6, 2018. [ONU y CIDH urgen asegurar fondos para mecanismo de protección a periodistas.](#)

<sup>947</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 2, 2018. [Press Release 236/18 International Experts call Mexico to ensure continued and sufficient funding for the Protection Mechanism for Human Rights Defenders and Journalists in Mexico.](#)

<sup>948</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 2, 2018. [Press Release 236/18 International Experts call Mexico to ensure continued and sufficient funding for the Protection Mechanism for Human Rights Defenders and Journalists in Mexico.](#)

<sup>949</sup> Office of the High Commissioner for Human Rights of the United Nations. Communication received by e-mail. September 5, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>950</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico.](#) June, 2018. Para. 93.

<sup>951</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico.](#) June, 2018. Para. 93.

<sup>952</sup> Estados Unidos Mexicanos. Unidad General de Asuntos Jurídicos. [Ley General de Comunicación Social.](#) May 11, 2018.

<sup>953</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. April 24, 2018. [Press Release R89/18 Mexico: Human rights experts call for media independence to be safeguarded in new government advertising bill.](#)

human rights principles and standards.”<sup>954</sup> They also underline that que “[o]fficial advertisement resources should be assigned according to preestablished, clear, objective and transparent criteria”<sup>955</sup>. In addition, they recommend “[e]nforce the legal obligation to proactively publish relevant information on hiring criteria, reasons to assign budgets, expenses and advertisement contracts of public entities.”<sup>956</sup>. The approved law does not have clear regulations on the objectives, criteria, and procedures for the assignment and mechanisms to monitor, which leaves a wide margin of discretion and potential abuses by the authorities.

### I. Freedom of expression in electoral contexts

744. According to the preliminary report of the OAS Electoral Observation Mission, the electoral process took place within a framework of “national violence.” In this context, there was a wave of crimes committed against political actors in which at least a hundred murders were committed for political reasons<sup>957</sup>.

745. On May 10, during the 168 Period of Sessions in the Dominican Republic, the IACHR observed “a special situation of risk for political actors in the country, including pre-candidates and candidates from different political movements and affiliations.” According to what was published, from September 2017 to April 2018 there were “high levels of violence against persons who occupied and are occupying political positions as well as pre-candidates, and candidates, particularly at the local level, belonging to different political affiliations and movements in the country”<sup>958</sup>.

746. Within the context of violence in the framework of the electoral process, several journalists were also victims of attacks and threats. For example, *RSF* and *Propuesta Cívica* reported that between January and May there were 45 cases of aggression against journalists and 4 attacks on media related to the electoral context. 16 attacks were against women and 29 against men. Among the main attacks, they reported that there were 8 cases of threats, 7 cases of beatings, 6 cases of smear campaigns, and 4 cases of legal harassment<sup>959</sup>.

747. On the other hand, according to the report of the electoral mission of the OAS, “the Mission received several complaints, including that of the then candidate Ricardo Anaya, related to the publication of a video and press releases by the Attorney General’s Office of the Republic (PGR), which, according to the complainant, sought to tarnish his candidacy.” In this sense, “the electoral authorities ordered the withdrawal of the press releases and the video of the official media of the PGR.” “[T]he Specialized Regional Chamber of the Electoral Court of the Federal Judicial Branch [*Tribunal Electoral del Poder Judicial de la Federación*] (TEPJF) determined that there was a ‘violation consisting of the partial use of public resources to affect the fairness of the election campaign’ by officials of the PGR”<sup>960</sup>. Also, the electoral mission emphasizes that “it verified [...] the spreading of false news that sought to disinform and discredit the electoral process”<sup>961</sup>.

748. According to the information available, in May, the National Electoral Institute [*Instituto Nacional Electoral*] (INE) ordered that a spot of children disguised as candidates continue to be broadcasted on television. The video would have been promoted by the organization *Mexicanos Primero*, which promotes the right to education. The video would have the purpose of expressing the diverse positions of the candidates on the education reform<sup>962</sup>. However, the Superior Chamber of the Electoral Court of the Federal Judicial Branch

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<sup>954</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 91.

<sup>955</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 91.

<sup>956</sup> IACHR. [Annual Report 2010](#). 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 4, 2011. Para. 65.

<sup>957</sup> OAS. Electoral Observation Mission. [Preliminary EOM Report](#). July 3, 2018.

<sup>958</sup> IACHR. May 10, 2018. [Press Release 102/18 IACHR Observes Violence During the Electoral Process in Mexico](#).

<sup>959</sup> Propuesta Cívica. [#AlertaPrensa Monitoreo de agresiones contra la prensa en contexto electoral](#).

<sup>960</sup> OAS. Electoral Observation Mission. [Preliminary EOM Report](#). July 3, 2018.

<sup>961</sup> OAS. Electoral Observation Mission. [Preliminary EOM Report](#). July 3, 2018.

<sup>962</sup> Imagen Noticias/Canal oficial de You Tube. May 4, 2018. [Retiran spot de niños disfrazados de candidatos | Noticias con Ciro Gómez Leyva](#). [1:06]; Novedades de Tabasco. May 1, 2018. [INE acepta spot de “niños candidatos”](#); Aristegui Noticias. April 30, 2018. [INE avala spot con niños “candidatos”, de ‘Mexicanos Primero’](#).

[Tribunal Electoral del Poder Judicial de la Federación] (TEPJF) would have revoked the decision and would have ordered the suspension of the transmission of the spot<sup>963</sup>.

749. On July 24, Camelia Muñoz, correspondent of MVS news and reporter of 4pnoticias.com, reported to the RPM platform that several videos published by her on the internet were eliminated. In several of these videos she covered the election day and the electoral journey. In addition, in several of the videos she reported on issues of public interest, on candidates and interviews with political supporters<sup>964</sup>.

750. The Office of the Special Rapporteur recalls that “[e]lections 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>965</sup>

#### **J. Access to public information**

751. On March 18, INAI informed that it ordered the Fund for the Protection of Human Rights Defenders and Journalists of the Ministry of the Interior "to make public the number of companies hired to implement preventive and security measures in favor of these sectors of the population, the type of contract, and the public versions of each legal instrument, from June 25, 2012 to December 6, 2017." According to the information, "[i]n the analysis of the case, it was determined that the publicity on the number of companies hired by the Fund and the type of hiring does not put the life, safety, or health of the people at risk, because it would not make identifiable the providers nor the human rights defenders and journalists, and would not account for the measures implemented within the framework of the protection mechanism"<sup>966</sup>.

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

752. According to the official legislative gazette of the Legislative Palace of the State of Veracruz, on September 27, the legislative body of said state approved a law of "Cybernetic Harassment" that introduces amendments to the state criminal code. According to the approved text, it describes as a criminal offense and punishes with penalty of "six months to two years in prison, and up to one hundred days of work to anyone who, using any means of digital communication, disseminates harmful or malicious information of another person, revealing, conceding, or transmitting one or more images, audio-visual recordings, or texts, which damage their reputation or self-esteem and cause them to be affected psychologically, in their family, work, or in their daily environment"<sup>967</sup>. According to the text published in the Gazette, among the considerations taken into account in the law it was observed that "cyberbullying" implies the "disclosure of confidential or false information", "implies a recurring damage inflicted through electronic means, causes emotional anguish, and concern," and that can manifest itself in ways such as publishing on the Internet "a compromising image (real or made by photomontages)" or "sensitive data, things that can harm or embarrass the victim and make them known in their relationship environments."

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

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<sup>963</sup> SDP Noticias. May 4, 2018. [TEPJF ordena suspender transmisión de spot con niños de Mexicanos Primeros](#); La Jornada. May 4, 2018. [TEPJF ordena suspender spot de Mexicanos Primero que utiliza niños](#).

<sup>964</sup> Red Rompe el Miedo. No date. [Historial de Agresiones](#). Available at: [https://informaterompeelmiedo.mx/wp-content/uploads/2018/08/RRM\\_Postal-0140.jpeg](https://informaterompeelmiedo.mx/wp-content/uploads/2018/08/RRM_Postal-0140.jpeg)

<sup>965</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 27, 2006. Para. 2.

<sup>966</sup> Estados Unidos Mexicanos. Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales (INAI). March 18, 2018. [Comunicado de prensa INAI/040/18](#).

<sup>967</sup> Estados Unidos Mexicanos. Palacio Legislativo del Estado de Veracruz. [Gaceta Legislativa N° 111](#). September 27, 2018.

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>968</sup>

754. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,<sup>969</sup> because “they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power.”<sup>970</sup> In this regard, the Inter-American Commission stated that “[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy.”<sup>971</sup> Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, “[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official.” That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

755. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.<sup>972</sup>

#### **L. Communications surveillance**

756. On the case of the acquisition of software for surveillance purposes, a district judge in Mexico City decided to order the PGR to conduct the investigation with the participation of the victims. In this sense, “the judge determined to revoke the refusal of the PGR, demanding the admission of the evidence offered by the victims, considering them conducive to the development of the investigation.” Likewise, it resolved that the victims have access to all the information related to the use of the software<sup>973</sup>.

757. Regarding the case, the Special Rapporteurs recommended in the Special Report that the State should conduct an independent investigation process “into the purchase and use of malware (including ‘Pegasus’).”<sup>974</sup> Likewise, emphasize that “[s]uch an investigation should be conducted independent of the federal and state governments alleged to have purchased or used the spyware and include experts from

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<sup>968</sup> 6 I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Serie C No. 193. Para.129.

<sup>969</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87.

<sup>970</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125- 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

<sup>971</sup> IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

<sup>972</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>973</sup> IMCO. May 25, 2018. [Juez Federal ordena a la PGR investigar con seriedad el caso #Gobiernospía](#).

<sup>974</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 89.

academic and civil society organizations, including potentially from outside of Mexico. In the meantime, any ongoing investigation must respect the rights of targets of surveillance, including their security and privacy.”<sup>975</sup> Finally, they recommend “[e]stablishing 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 matter.”<sup>976</sup> In this sense, “[g]uarantees and judicial oversight of state agencies engaging in surveillance should be established, within the permissible limitations of a democratic society”<sup>977</sup>. Also, “Mexico should consider creating an independent body to effectively oversee the State’s surveillance tasks.”<sup>978</sup>

#### **M. Diversity and pluralism or Concentration of media / Community broadcasting**

758. According to the information gathered by the special rapporteurs, “Mexico remains among the countries with the highest level of media concentration, in broadcast, print and online.”<sup>979</sup> Likewise, the Special Rapporteurs pointed out in the Special Report a series of problems and measures that the state must face in order to guarantee diversity and pluralism.

759. The Special Rapporteurs noted in the Special Report that, in March, the Federal Telecommunications Institute [*Instituto Federal de Telecomunicaciones*] (IFT) decided to revoke a decision it had previously adopted in which it decided to have specific regulations for one of the leading broadcasting companies in Mexico for having a “Substantial market power” or a dominant position in the paid television market. This decision to revoke was made by virtue of a Supreme Court decision that rendered the measure ineffective on formal grounds.

760. According to the official public information, “[s]ince its creation and until June 30, the IFT has granted 99 concessions for social use, 48 for community social use, and 4 for indigenous social use”<sup>980</sup>.

761. The Special Rapporteurs recommended the State “[c]ollect and make public all information necessary to identify the ownership of media outlets, and ensure all information submitted to the national media and telecommunications registries is available to the public in accessible formats”<sup>981</sup>; “[c]ontinue to establish policies to promote diversity and pluralism of media and enhance efforts to counter concentration in media, particularly within broadcasting and pay television”<sup>982</sup>; “[r]efrain from criminalizing the use of radio frequencies as this would be an unnecessary and disproportionate restriction to freedom of expression [...]”<sup>983</sup>; “[a]dopt measures to expand access of indigenous peoples and rural areas to community broadcasting, including by encouraging the development and resources available to community broadcasting, and continue to strengthen access to broadband in areas that lack reliable access.”<sup>984</sup>

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<sup>975</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 89.

<sup>976</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 89.

<sup>977</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 89.

<sup>978</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 89.

<sup>979</sup> IACHR Special Rapporteur for Freedom of Expression/pecial Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 61.

<sup>980</sup> Instituto Federal de Telecomunicaciones (IFT). July 18, 2018. [Concesionarios de medios sociales comunitarios e indígenas reciben plática informativa sobre donatarias autorizadas \(Comunicado 54/2018\)](#).

<sup>981</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 68.

<sup>982</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 92.

<sup>983</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 92.

<sup>984</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 92.

## N. Government Advertising

762. On May 11, the "General Law of Social Communication"<sup>985</sup> was enacted. It has as its object, "to establish the standards to which the Public Entities must be subject to in order to guarantee that the expenditure in Social Communication complies with the criteria of efficiency, effectiveness, economy, transparency, and honesty, and respects budget ceilings, limits, and conditions to exercise it, established by the respective expenses budgets". In the Special Report, the Special Rapporteurs warn that "the law does not establish clear rules regarding its objectives, allocation criteria and procedures, and oversight mechanisms, leaving a wide margin for Government discretion and abuse."<sup>986</sup>

763. Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR 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."

764. Also, according to the joint declaration on diversity in broadcasting, of 2007, the UN, IACHR, OSCE, and ACHPR Special Rapporteurs point out that "[m]easures should be put in place to ensure that government advertising is not used as a vehicle for political interference in the media."<sup>987</sup> Also, in the joint declaration of 2018, on media independence and diversity in the digital age, the Special Rapporteurs point out that States should put in place effective systems to ensure transparency, fairness and non-discrimination in access by the media to State resources, including public advertising."<sup>988</sup>

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<sup>985</sup> Estados Unidos Mexicanos. Unidad General de Asuntos Jurídicos. [Ley General de Comunicación Social](#). May 11, 2018.

<sup>986</sup> IACHR Special Rapporteur for Freedom of Expression/Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN. [Special Report on the Situation of Freedom of Expression in Mexico](#). June, 2018. Para. 66.

<sup>987</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint declaration on diversity in broadcasting](#).

<sup>988</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. May 2, 2018. [Joint declaration on media independence and diversity in the digital age](#).

## 24. NICARAGUA<sup>989</sup>

765. In 2018 the government of Nicaragua implemented a series of repressive measures and actions to restrict the exercise of protest and the right to demonstrate, to harass independent journalism and the actions of human rights defenders, within the context of the implementation of different forms of persecution of the citizen movement that led the social protests which started on April 18. A reoccurring official speech by the State labels those who protest as "terrorists" seeking to carry out a "coup d'état", this has been used to justify the criminalization and imprisonment of journalists and human rights defenders. Journalists, independent media, and their directors have been denouncing continuous attacks, threats, surveillance, arbitrary arrests, and even attacks on the facilities of the media.

766. Regarding the murder of journalist Ángel Gahona in the context of the protests, two young men were sentenced to 23 years and six months, and 12 years and six months in prison, respectively, as perpetrators of the crime. However, human rights organizations denounced that the condemned persons had been arbitrarily accused without procedural guarantees, in order to prevent the investigation of the possible responsibility of state agents. In addition, the IACHR notes that the process was developed without transparency or accountability, and both the Interdisciplinary Group of Independent Experts (GIEI, by its Spanish acronym) and local and international media were prevented from accessing the hearings during the development of the process.

767. The IACHR and its Office of the Special Rapporteur also express their grave concern over the decision of the Police to declare the illegality of the protests or demonstrations carried out by social movements, students and organizations, as well as the decision to establish prior authorization by this institution for all kinds of protests in public spaces, against international standards that protect freedom of expression and assembly. Civil society organizations pointed out that this measure would seek to inhibit protest in the country and criminally prosecute the organizers.

### A. Control and undue interference in the media

768. The Office of the Special Rapporteur has observed in its annual reports that in Nicaragua a duopoly was consolidated in the media, which controls the majority of television and radio media. In fact, most of the audiovisual media is under the political control of the presidential family or of a businessman related to the government. As a result, these media are biased, or their journalists face obstacles to perform their tasks independently. The IACHR found that during the protests that began on April 18, several journalists of these media were ordered to restrict the dissemination of information about the events, although a group of them resisted and denounced such instructions<sup>990</sup>.

769. Regarding the state-owned media, *Canal 6* and *Radio Nicaragua*, the IACHR documented that they are under the direct control of the government and that they are used to stigmatize protesters<sup>991</sup>. For example, the IACHR notes that *Canal 6* points to Bishop Silvio Báez as "the main promoter of the coup in Nicaragua"<sup>992</sup>. On the other hand, *Radio Nicaragua* informs about the situation and the contexts of confrontations with emphasis on expressions such as "terrorists", "coup-plotter", "coup right"<sup>993</sup>.

770. On the other hand, independent media continued to face harassment and government pressure to carry out their work. The Office of the Special Rapporteur observes a systematic attempt by the government to interfere in the informative work of these media, with the aim of directing information policies. The editorial team of "Acción 10", one of the newscasts with the largest audience in Nicaragua, has been under pressure from the government since the protests began. For example, on August 20 an emissary who would be press officer of *Canal 8*, a media related to the government, was present at the headquarters of *Canal 10* with the purpose of assuming the headquarters of the "Acción 10" news program, which would have been

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<sup>989</sup> This section corresponds to the section on freedom of expression in Nicaragua, included in Chapter IV of Volume I of the Annual Report 2018 of the IACHR, assigned to the Office of the Special Rapporteur for Freedom of Expression.

<sup>990</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 202.

<sup>991</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 199.

<sup>992</sup> Canal 6, "400 mil firmas exigiendo a Báez que se vaya del país", November 7, 2018.

<sup>993</sup> Radio Nicaragua, "Policía Nacional informa ataques de la derecha golpista en contra de las familias", September 23, 2018; Radio Nicaragua, "Miles piden justicia para las víctimas del terrorismo golpista", August 11, 2018; Radio Nicaragua, "[Terroristas matan y secuestran a policías y pobladores de Morrito](#)", July 12, 2018.

agreed with the owner of the channel. According to reports, the journalists of that news program opposed the measure and denounced the fact as a new attempt by the government to control the editorial line of the media. According to the information received, in retaliation, the Financial Analysis Unit [*Unidad de Análisis Financiero*] (UAF), a public institution in Nicaragua, initiated a "financial intelligence process" against the general manager of *Canal 10*, Carlos Alberto Pastora Rossler, for alleged "Money Laundering" and an immigration detention order would have been issued that would prevent him from leaving the country<sup>994</sup>.

771. On August 22, Carlos Pastora entered the headquarters of the Embassy of Honduras in Nicaragua and requested diplomatic protection to that country, of which he is also a national. He also requested protection against the actions of the State of Nicaragua against him and the risks to his life and personal integrity, due to direct threats and follow-ups that he claimed to have been a victim<sup>995</sup>. The Ministry of Foreign Affairs and International Cooperation of Honduras informed on December 3 that Pastora finally left the Embassy on this date and was accompanied by a diplomatic mission that escorted him to the airport. Finally, he boarded a flight to the United States of America<sup>996</sup>.

772. The IACHR reiterates that this type of measure seriously undermines the freedom and independence of the media. It also reiterates its concern over private media needing to adopt measures to restrict information on the situation in the country as a result of pressures from government sectors. In accordance with Principle 6 of the Declaration of Principles, "journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State."

773. The IACHR notes that public media must have guarantees to maintain the independence from the Executive Branch. In this sense, they must be pluralistic and universally accessible. In addition, they must have adequate financing for the mandate provided by law; and with mechanisms of accountability and community participation in the different instances of production, circulation, and reception of contents<sup>997</sup>.

774. Based on the foregoing, the IACHR reiterates to the State of Nicaragua to guarantee respect for the independence of the media and refrain from applying prior censorship by any state body, as well as any prior conditioning that may involve censorship to freedom of expression.

## **B. Blocking of television signals and attacks on the Internet**

775. Interference in the emissions of subscription channels has been another constant in Nicaragua. On April 18, Telcor, the regulator of the audiovisual media, arbitrarily ordered all the cable companies to suspend the live broadcast of the media that were covering the protests. The Office of the Special Rapporteur notes that this measure was intended to restrict information of public interest. In this context, the IACHR documented that *Canal 12*, *Canal de Noticias de Nicaragua* (CDNN23), *Telenorte* and *Canal 51*, were suspended for 24 hours. In addition, the *100% Noticias* channel was unable to broadcast for 6 days, as a consequence of the refusal to accept Telcor's pressures to remove from the air programs designated or perceived as opposition<sup>998</sup>.

776. Subsequent to the IACHR's visit, on October 31, Telcor ordered the television companies by subscription to restrict the reach and permanence of the *100% Noticias* channel on their platforms. Telcor would have sent a communication to the television companies by subscription ordering to broadcast *Canal 6* (state) on channel 15 of the UHF frequency, where it broadcasts the channel *100% Noticias*. "It is the obligation of the operating companies of Television by Subscription to include in their programming all the national, analogue, and digital channels", adds the press release of the organism<sup>999</sup>. The Office of the Special Rapporteur found that the *100% Noticias* channel maintains private contracts with the television companies

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<sup>994</sup> IACHR. Office of the Special Rapporteur on Freedom of Expression. [Relatoría Especial condena ataques, presiones políticas y censura indirecta contra periodistas y medios de comunicación en Nicaragua](#), September 8, 2018.

<sup>995</sup> IACHR. Office of the Special Rapporteur on Freedom of Expression. [Relatoría Especial condena ataques, presiones políticas y censura indirecta contra periodistas y medios de comunicación en Nicaragua](#), September 8, 2018.

<sup>996</sup> Estado de Honduras. Secretaría de Relaciones Exteriores y Cooperación Internacional. [Comunicado](#), December 3, 2018.

<sup>997</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, §83.

<sup>998</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 205.

<sup>999</sup> IACHR, [La Comisión Interamericana de Derechos Humanos y su Relatoría Especial manifiestan grave preocupación por nuevo intento del gobierno de Nicaragua de imponer restricciones al canal de televisión 100% Noticias](#), October 31, 2018.

for subscribers for years and broadcasted on channel 15, so the government measure to impose a state channel in that space would require - at the best of the cases- to relocate it, which would affect their audience and coverage. The media *100% Noticias* and its director Miguel Mora have covered the protests and the measures of the government in the face of the country's political crisis<sup>1000</sup>.

777. In addition, the weekly *Confidencial* has suffered periodic obstructions that had left it off the Internet, through denial of service attacks, during the busiest times in Nicaragua and abroad, as when it circulated a list of nineteen dead during the protests that the *Confidencial* journalistic team would have confirmed one by one, and that it would have had a wide international and national diffusion. Also, on the same date, the *La Prensa* website suffered cyber-attacks<sup>1001</sup>.

778. Several media also reported that "there are practices of discriminatory allocation of government advertising and the use of tax control as a mechanism of economic pressure"<sup>1002</sup>. Finally, the IACHR underlined in its visit "the lack of clear procedures and with legal guarantees for the assignment of broadcasting licenses is used by state authorities to pressure the media to remove from the air news programs that have spaces contracted in these media for reasons of their editorial line"<sup>1003</sup>.

779. On the other hand, 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, express ideas and opinions of all kinds. However, according to the information received, a group related to the government would be misinformed through these networks and stigmatize journalists and the media that transmit critical information against the government<sup>1004</sup>. In addition, during the work visit to the country, the IACHR received testimony alleging that the government ordered the monitoring of social network profiles in order to find out who participated in the protests or spread messages or information contrary to the government<sup>1005</sup>. The IACHR notes with concern that these people may be the object of reprisals by the authorities. In addition, prior to the crisis that began on April 18, the Office of the Special Rapporteur received information about the government's intentions to present a bill that would seek to control social networks in cases of "cyber-harassment"<sup>1006</sup>.

780. The IACHR recalls that, according to 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".

781. 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".

782. Principle 13 states that "the media 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".

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<sup>1000</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 207.

<sup>1001</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 208.

<sup>1002</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 209.

<sup>1003</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 209.

<sup>1004</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, paras. 214, 252, 264, 265, 266.

<sup>1005</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, paras. 13, 166.

<sup>1006</sup> Hoy, "[Gobierno con pretensiones de controlar redes sociales](#)", March 13, 2018; El Nuevo Diario, "[Las redes sociales y la libertad](#)", March 19, 2018; *Confidencial*, "[La regulación de redes sociales: una ley para reducirnos libertad](#)", March 14, 2018.

783. The IACHR reiterates that "it is essential that Nicaragua has a truly independent enforcement agency, whose institutional framework has sufficient guarantees to avoid the assignment, withdrawal, or non-renewal of licenses for discriminatory or arbitrary reasons"<sup>1007</sup>.

### C. Violence and Attacks against Journalists and the Media

784. During its work visit to the country, the IACHR verified that the practice of journalism represents a serious risk in Nicaragua, which is reflected in the numerous violent attacks against journalists and the media since the beginning of the protests. These attacks have come from state agents, vigilante groups, and even groups of demonstrators.

785. After the IACHR's visit, the Office of the Special Rapporteur continued observing a context of aggressions and restrictions for journalists and the media that continue to cover the political and social crisis<sup>1008</sup>. According to the information received, dozens of press workers would have been victims of physical attacks, arbitrary arrests, surveillance by state security forces and parapolice elements, as well as confiscation, theft, or destruction of work tools<sup>1009</sup>. In particular, those journalists who are appointed by the government, or their supporters, for their critical coverage of the country's situation and human rights situation, would be subject to constant harassment of government supporters or trolls in social networks, death threats, and campaign of stigmatization and defamation. Several of these journalists have had to leave the country owing to fear of attacks on their lives and integrity<sup>1010</sup>.

786. Likewise, according to the reports of several organizations, there is a context of "aggression and disqualification against journalists in different parts of the country such as Managua, Nindirí, San Rafael del Sur and León"<sup>1011</sup>; a modality that is beginning to be practiced is the interception and confiscation of work tools of various journalistic teams, such as, for example, on June 19 during the protest in Veracruz by "hooded parapolice elements"<sup>1012</sup>.

787. On July 2, the IACHR issued a precautionary measure in favor of Aníbal Toruño, owner and director of *Radio Darío* in the city of León, whose facilities were set on fire as part of the protests that began on April 18<sup>1013</sup>. The precautionary measure was issued in favor of all radio workers. The IACHR indicated that the beneficiaries are in a situation of "risk after a series of threats, intimidations, and attacks that the Radio employees would have been subjected to, as well as their installations in the context of the protests in Nicaragua"<sup>1014</sup>. On December 3 last, the facilities of the radio were subject to a raid in the afternoon. During the police operation, the cessation of the transmissions was ordered<sup>1015</sup>, cell phones were seized<sup>1016</sup>, and the

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<sup>1007</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 211.

<sup>1008</sup> Cénidh, "[El CENIDH repudia agresiones contra medios de comunicación y periodistas independientes de Nicaragua](#)", December 4, 2018; El Universal, "[Periodistas y medios opositores denuncian ser objeto de ataques en Nicaragua](#)", December 5, 2018; La Prensa, "[Periodistas independientes bajo violentos ataques del orteguismo](#)", December 5, 2018; Confidencial, "[La libertad de prensa en gran peligro en Nicaragua](#)", December 5, 2018; La Prensa, "[Crítica situación del periodismo ante la Comisión Interamericana de Derechos Humanos](#)", December 6, 2018; 100% Noticias, "[Periodismo independiente realiza plantón en solidaridad con el director de 100% Noticias, Miguel Mora](#)", December 3, 2018; Confidencial, "[Jefe policial de León dirigió operativo contra Radio Darío, afirma su director](#)", December 5, 2018;

<sup>1009</sup> El Nuevo Diario, "[Amenazan a periodista de Vos Tv que cubre crisis en Nicaragua](#)", August 14, 2018; 100% Noticias, "[Jaime Arellano y Luis Galeano amenazados de muerte y cárcel](#)", August 22, 2018; 100% Noticias, "[Al menos nueve periodistas de Nicaragua denuncian ataques, detenciones y amenazas](#)", November 25, 2018; La Prensa, "[Régimen de Daniel Ortega ataca a periodistas independientes](#)", November 25, 2018; Confidencial, "[Policías y paramilitares amenazan a periodista de 100% Noticias](#)", September 8, 2018.

<sup>1010</sup> Fundación Violeta Chamorro, "[La dictadura continúa el asedio contra periodistas y medios independientes](#)", June 28, 2018; Fundación Violeta Chamorro, "[Condenamos las agresiones a periodistas independientes en Nicaragua](#)", September 26, 2018; Fundación Violeta Chamorro, "[Condenamos censura a 100% Noticias y encarcelamiento del periodista Álvaro Montalván](#)", November 6, 2018.

<sup>1011</sup> Cénidh, "[Informe No.3 CENIDH denuncia violaciones sistemáticas a los derechos humanos de los nicaragüenses por el régimen dictatorial de Daniel Ortega y Rosario Murillo en el periodo del 16 de mayo al 18 de junio del 2018](#)", June 29, 2018.

<sup>1012</sup> Cénidh, "[Informe No. 4 CENIDH denuncia violaciones sistemáticas a los derechos humanos de los nicaragüenses por el régimen dictatorial de Daniel Ortega y Rosario Murillo en el periodo del 19 de junio al 14 de julio del 2018](#)", July 18, 2018.

<sup>1013</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 36.

<sup>1014</sup> IACHR, [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), June 21, 2018, para. 10.

<sup>1015</sup> Committee to Protect Journalists (CPJ). [Nicaraguan police raid independent Radio Dario](#), December 6, 2018; 100% Noticias, "[Policía Sandinista allana sin orden judicial las instalaciones de Radio Darío](#)", December 3, 2018.

station's work materials were seized. In addition, four workers would have been detained<sup>1017</sup> for several hours, and the rest of the workers would have been interrogated<sup>1018</sup> by police officers.

788. The Office of the Special Rapporteur received information that on December 1 Miguel Mora, director of the *100% Noticias* channel, was detained and forced to take off his shoes and to approach a police patrol where a group that had been hooded would have placed a balaclava on his head and he would have received a death threat. Also, on December 3, a complaint against Mora was filed before the Attorney General's Office, which accused him of being one of the instigators of "hatred" and accused him of being responsible for the death of a person in Jinotepe and for the disappearance of another person<sup>1019</sup>. In addition, according to the information received, the entire group of journalists of *100% Noticias* would have been the target of constant threats and several workers were subjected to aggressions in different places and coverages<sup>1020</sup>.

789. The Office of the Special Rapporteur also received information about the deportation of journalist Carl David Goette-Luciak, who reported to different foreign media. In this regard, the IACHR and its Office of the Special Rapporteur expressed their concern about the expulsion without any known charges<sup>1021</sup>. According to the information, the expulsion would have been caused by the various publications and his coverage of the situation in the country, which the government sought to silence. The Office of the Special Rapporteur received the testimony of the journalist that is illustrative of the treatment that journalists receive covering events, independently of the governmental narrative<sup>1022</sup>:

"[I have] been living and working in Nicaragua for three years. After the outbreak of protests in April, I began covering the Nicaraguan crisis for outlets including fue Washington Post, the Guardian, the BBC, and others. I covered a number of controversial subjects relating to human rights abuses by Nicaraguan authorities including fue murder of Ángel Gahona, the Mother's Day Massacre on May 30, and the murder of fue Velásquez family, who were burned alive in their home.

On September 17, pro-government accounts on social media posted photos of my face, my name, and the address of my borne in Managua, accusing me of being a CIA agent who'd armed rebels, and encouraging government supporters to find and assault me. I fled my home the same morning and went into hiding for two weeks as I received a flurry of death threats from Sandinista pages and accounts, while my personal information continued to be shared broadly in a massive campaign of harassment, intimidation, and defamation. On October 1, I was seized by Nicaraguan police who roughly pulled me into a police car without shoes or a shirt, handcuffed me, and transponed me to a room where I was interrogated for six hours. I was threatened with torture if I did not offer up the codes to unlock electronic devices pollee had seized from my borne, or provide information about the locations of opposition figures and the names of student activists. Nicaraguan authorities made it clear my treatment at their hands was due to my having "false opinions" and "sharing inappropriate opinions" through my journalistic work. Finally, I was deported from the country without any of my possessions.

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<sup>1016</sup> El Nuevo Diario. December 4, 2018. [Policía desmantela Radio Darío](#); La Prensa. December 3, 2018. [Policía Orteguita de León saca del aire a Radio Darío e intimida a sus trabajadores](#); Artículo 66. December 3, 2018. [Policía de León saquea instalaciones de Radio Darío y secuestra a cuatro periodistas](#).

<sup>1017</sup> El Nuevo Diario, "[Policía desmantela Radio Darío](#)", December 4, 2018; El Nuevo Diario, "[Tras desmantelar Radio Darío, Policía amenaza a trabajadores](#)", December 4, 2018.

<sup>1018</sup> El Nuevo Diario, "[Policía desmantela Radio Darío](#)", December 4, 2018; La Prensa, "[Policía Orteguita de León saca del aire a Radio Darío e intimida a sus trabajadores](#)", December 3, 2018; Artículo 66, "[Policía de León saquea instalaciones de Radio Darío y secuestra a cuatro periodistas](#)", December 3, 2018.

<sup>1019</sup> El Nuevo Diario, "[Presentan acusación contra director de 100% Noticias](#)", December 3, 2018; Metro, "[Esto dice la acusación contra director de 100% Noticias](#)", December 3, 2018.

<sup>1020</sup> Document delivered by the Violeta Chamorro Foundation, Washington, December, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1021</sup> IACHR. [Press Release R222/18. IACHR and Special Rapporteurship on Freedom of Expression express deep concern over decision to declare protests illegal in Nicaragua](#), October 9, 2018.

<sup>1022</sup> E-mail received by the Office of the Special Rapporteur for Freedom of Expression on November 1, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

Because of my long work history in Nicaragua, and my involved on-the-ground coverage of the Nicaraguan crisis, I can speak, as a journalist, to the distressing reality of the events that have transpired in the country over the last six months. I can also speak personally about the threats to freedom of expression and the repression of the press inside Nicaragua, having been targeted myself by the government for reprisals due to my work as an independent journalist. My story is one shared by innumerable Nicaraguans who have recently faced intense harassment, repression, and violence due to their opinions or work: whether they are activists, journalists, or community leaders. I would be grateful for any opportunity to share some of my experience and understanding of the crisis in Nicaragua and the dangers faced within the country to essential human rights.”

790. During the IACHR’s 169 period of session in Boulder, Colorado, from September 30 to October 5, 2018, at the hearing "Reports on Repression and Violence in the Context of Protests in Nicaragua," civil society organizations reported to the IACHR about the lack of security guarantees for those who oppose the government. They also expressed concern about the constant threats to journalists and their families, and about possible reprisals by the government for exposing the facts at the public hearing<sup>1023</sup>.

791. According to the information received from civil society organizations, during a public ceremony held on September 22 in Managua, President Daniel Ortega would have expressed a general threat against the dissident groups to his government, whom he accused for the deaths of government sympathizers. According to what was published, he would have stated the following:

The bishops gentlemen when we invited them to the dialogue asked as a condition to quarantine the police and we did not think that in this country there were criminals who were going to take advantage of that to torture our brothers, burn them, and dance around them, that is provocation, but we have patience but they should not continue provoking us, because we cannot allow that they continue committing this type of crimes<sup>1024</sup>.

792. Finally, the IACHR reiterates its condemnation of the murder of journalist Ángel Gahona on April 21, 2018, while broadcasting live protests in the streets of Bluefield. The Office of the Special Rapporteur received information on the conviction of two young people who participated in the protests for the crime<sup>1025</sup>. The IACHR observes that it received information pointing to irregularities in the process, as well as lack of transparency and access of the media during the development of the process and the trial<sup>1026</sup>.

793. The IACHR emphasizes 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 in a particularly drastic way 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 (a term understood under a broad definition, from a functional perspective) or people who work in the media and that are linked to their professional

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<sup>1023</sup> IACHR, 169 Period of Sessions, Hearing on "Denuncias sobre represión y violencia en contextos de protestas en Nicaragua", October 2, 2018. Available at: [https://www.youtube.com/watch?v=XECN6LBEUU&list=PL5QlapyOGhXtXcMOPg35GCa2M7dJo\\_QVh&t=0s&index=2](https://www.youtube.com/watch?v=XECN6LBEUU&list=PL5QlapyOGhXtXcMOPg35GCa2M7dJo_QVh&t=0s&index=2)

<sup>1024</sup> El Nuevo Diario "Discurso de Daniel Ortega en acto de los sandinistas", September 22, 2018; Metro, "Ortega brinda discurso en acto del FSLN en Managua", September 22, 2018; Noticias Nicaragua 24, "Ortega brinda discurso en acto del FSLN en Managua", September 22, 2018.

<sup>1025</sup> El Nuevo Diario, "Tribunal declara culpables a dos jóvenes por asesinato de periodista en Nicaragua", August 28, 2018; La Prensa, "Juez declara culpable a los dos jóvenes acusados de matar al periodista Ángel Gahona", August 27, 2018.

<sup>1026</sup> El Nuevo Diario, "Condenas de 12 y 23 años en caso Gahona", August 31, 2018; 100% Noticias, "Esposa de Ángel Gahona tilda como "circo judicial" el juicio donde se declaró culpable a Brandon y Glen", August 28, 2018; Vos TV, "Remiten a juicio a jóvenes acusados por la muerte de Ángel Gahona", May 18, 2018; El Universal, "Impiden a CIDH entrar a juicio por muerte de periodista en Nicaragua", August 14, 2018; La Prensa, "Gobierno de Nicaragua bloquea el trabajo del Grupo de Expertos Independientes de la CIDH", August 16, 2018; Onda Local, "Estado de Nicaragua no ha entregado información requerida por el GIEI", August 16, 2018; El Periódico, "Denuncian obstrucción del trabajo en Nicaragua", August 17, 2018; Hoy, "Grupo Interdisciplinario de Expertos Independientes sin acceso a información", August 17, 2018; El Nuevo Diario, "Juzgado de Nicaragua niega a CIDH presenciar juicio por muerte de Ángel Gahona", August 27, 2018; Confidencial, "Proceso viciado mantiene asesinato de periodista en impunidad", September 8, 2018.

activity, violate the right of these people to express and impart ideas, opinions, and information and, in addition, undermine the rights of citizens and societies in general to seek and receive information and ideas of any kind<sup>1027</sup>.

794. In this regard, the IACHR and its Office of the Special Rapporteur reiterate that in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority<sup>1028</sup>. The State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession<sup>1029</sup>.

795. The IACHR notes that the State has not complied with its obligation to guarantee the exercise of journalism free of violence in the context of social demonstrations. This duty is not limited to guaranteeing that its agents refrain from committing acts of violence against journalists. It also includes the obligation to create the necessary conditions to mitigate the risk of exercising the profession in these situations<sup>1030</sup>. In addition, the State must launch an independent, prompt and effective investigation that allows impartial and independent tribunals to hear both those who committed these acts of violence and their intellectual authors.

#### **D. Prohibition and illegality of protests**

796. After the IACHR's visit, on October 9, 2018, the IACHR and its Office of the Special Rapporteur expressed their extreme concern over the decision adopted by the National Police of Nicaragua that declared protest demonstrations to be illegal and held their conveners criminally responsibly<sup>1031</sup>. This measure has been qualified by the Special Follow-up Mechanism for Nicaragua (MESENI), as a strategy to prevent social protest<sup>1032</sup>.

797. According to the information provided by the MESENI, the National Police, in a press release of September 28 (Note 115-2018), declared violent and illegal demonstrations that do not have authorization and hold those who summon and organize them responsible of "any alteration to the public order, of the offensive and criminal actions, and of the aggressions", making reference to the fact that this responsibility will be prosecuted legally. In another press release (Note 116-2018) it mentions that, in accordance with Nicaragua's constitutional normative framework, "any mobilization in any part of the country must take place once the organizers have requested the corresponding permit from the police authorities and that it has been granted." It also mentions that "[t]he National Police reiterates that no action will be allowed that violates the right of Nicaraguan families to peace and life and recalls that any provocative, inciting, and violent activity will be punished according to the Political Constitution and the Laws of Nicaragua. The National Police fulfills its duty to protect the security, calmness, peace, and life throughout Nicaragua"<sup>1033</sup>. In another press release,

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<sup>1027</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. Office of the Special Rapporteur 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>1028</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. [Joint declaration on violence against journalists and media workers in the context of protests](#). September 13, 2013.

<sup>1029</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>1030</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>1031</sup> IACHR. [Press Release R222/18. IACHR and Special Rapporteurship on Freedom of Expression express deep concern over decision to declare protests illegal in Nicaragua](#). October 9, 2018.

<sup>1032</sup> IACHR. [Press Release. IACHR's MESENI expresses concern over Nicaragua's strategy to prevent social protest](#). November 20, 2018.

<sup>1033</sup> Estado de Nicaragua, Policía Nacional, [Nota de Prensa No. 116-2018](#), October 13, 2018.

the Police indicates the detention of 30 people "who summoned and participated in Public Demonstration without due police permission, altering the peace and the normal coexistence of our people"<sup>1034</sup>.

798. In this context, the police denied a permit for a demonstration set for November 25 by a group called "*Unidad Nacional Azul y Blanco*." The document states that within the applicants the police identified 5 people "who perform vandalism practices." It also notes that "the simple communication of the protest is not considered as an application or permission." It also notes that the purpose of the demonstration is "to continue promoting vandalism and terrorism" and also states that "it does not authorize or allows Public Mobilizations, People, Associations, or Movements that participated and are being investigated for their actions in the failed coup attempt"<sup>1035</sup>.

799. Based on the foregoing, the IACHR notes that the statement that the anti-government protests are illegal because of violent acts and the a priori attribution of responsibility to conveners and organizers - in addition to being a clear violation of the principle of innocence -, implies an arbitrary limitation of the right to social protest and therefore violates international human rights standards.

800. On this matter, 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 excessive requirements that hinder its realization<sup>1036</sup>. The legal requirements that provide a basis for a meeting or demonstration to be prohibited or limited, for example, through the requirement of prior permission, are not compatible with the right of assembly<sup>1037</sup> or freedom of expression under the inter-American legal framework.

801. In this regard, the Commission recalls that "in a democracy, States must act on the basis of the legality of protests or public demonstrations and on the assumption that they do not constitute a threat to public order." In this normative 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.

802. This presumption of legitimacy of public protests must be clearly and explicitly established in the legal systems of States 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.

## **E. Conclusion**

803. The IACHR notes that acts of direct or indirect censorship, as well as acts of violence against the press documented in this report, flagrantly violate the right of people to express themselves without fear of reprisals, as well as the fundamental right of the Nicaraguan society to receive information from a plurality of sources without any type of censorship. The IACHR reiterates that, as it has stated on several occasions, in circumstances of political crisis and social conflict, the unrestricted exercise of the right to freedom of expression that guarantees a broad and robust public debate is indispensable<sup>1038</sup>. It is the obligation of the State to guarantee all journalists and the media, regardless of their editorial line, the possibility of expressing their ideas and disseminating the information obtained without being subject to undue restrictions.

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<sup>1034</sup> Estado de Nicaragua, Policía Nacional, [Nota de Prensa No. 117-2018](#), October 14, 2018.

<sup>1035</sup> Estado de Nicaragua, Policía Nacional, [Resolución N° 029-18](#), November 23, 2018.

<sup>1036</sup> IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 129.

<sup>1037</sup> In the aforementioned report, the IACHR found that legislation that required the request of a police permit ten days in advance for any public act, assembly, election, conference, parade, congress or sporting, cultural, artistic or family event was a restriction incompatible with the right of assembly. Cfr. IACHR, Annual Report 1979-1980, OEA/Ser.L/V/II.50, October 2, 1980, pages 119-121.

<sup>1038</sup> IACHR. Country Report. [Honduras: Human Rights and the Coup d'État](#). Chapter V. F "The Right to Freedom of Expression", 2009, para. 511.

## 25. PANAMA

804. During 2018, the Office of the Special Rapporteur was concerned about the context in which multiple criminal and civil suits were filed against journalists and the media, aiming at protecting political actors' privacy and honor, or due to the disclosure of information on public interest facts. Particularly, the fact that these disproportionate actions risk the media's economic sustainability is worrisome, as a consequence of the high amount required and the economic expenditure of these media to adopt defense measures.

### A. Progress

805. On December 19, 2017, the National Transparency and Access to Public Information Authority (ANTAI) informed on the progress in the creation of an "Open Government School." According to what was published, this initiative corresponds to one of the commitments in the framework of the Third Open Government Action Plan adopted by Panama for the 2017-2019 period.<sup>1039</sup> According to the referred action plan, it aims at creating "a virtual platform for the effective civic education and training of students, so as to encourage and facilitate their participation in public matters, both in community projects' drafting and follow-up, and the adoption of public decisions."<sup>1040</sup>

806. On January 17, 2018, the ANTAI adopted a resolution aiming at making progress in the public policy regarding transparency and open government data that was established by the Executive's decree on November 24, 2017.<sup>1041</sup>

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

807. On April 23, the TV Host Álvaro Alvarado from "Telemetro," submitted a legal action against the administrator of Twitter account @rmaestre85, in which there was a message published on April 20 that was reported by the journalist as he considered it as a threat. The message allegedly said: "One of these days they are going to kill you, so watch out..."<sup>1042</sup>

808. On September 4, journalists unions allegedly delivered their opinion in view of "the growing and alarming number of attacks, threats, and judicial actions" that have taken place against different journalists and media. According to what was published, the attacks allegedly took place in the form of "virtual violent actions, through social media" against journalists due to the exercise of their duties. Likewise, they stated that "situations like these promote hate, intolerance, and revenge speech." Particularly, they indicate that the victims were Guadalupe Castellero, Álvaro Alvarado and five journalists from "La Prensa" newspaper.<sup>1043</sup>

809. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression 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 protest

810. The Office of the Special Rapporteur received information on a series of protests carried out in Colón city during March and April, claiming the different social vindications. Pursuant to what was published, in the framework of these protests, between March 12 and 13, there were conflicts among demonstrators and the

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<sup>1039</sup> República de Panamá. Autoridad Nacional de Transparencia y Acceso a la Información (ANTAI). December 19, 2018. [Avanzan en la creación de una Escuela de Gobierno Abierto.](#)

<sup>1040</sup> Plan de Acción de Gobierno Abierto 2017 - 2019 - Panamá. Available at: <http://www.antai.gob.pa/wp-content/uploads/2017/11/Tercer-Plan-de-Acci%C3%B3n-Nacional-de-Gobierno-Abierto-2017-2019-1.pdf>

<sup>1041</sup> República de Panamá. Autoridad Nacional de Transparencia y Acceso a la Información (ANTAI). Resolución DS-3513-2018. January 17, 2018. Available at: <http://www.antai.gob.pa/resolucion-no-ds-3513-2018-de-17-de-enero-de-2018/>

<sup>1042</sup> Mi Diario. April 21, 2018. ["TE VAN A MATAR. CÚDATE" le advierten a Álvaro Alvarado. Pondrá denuncia;](#) Día a día. April 21, 2018. [Álvaro Alvarado ya tiene identificado al que lo amenazó de muerte;](#) Telemetro. April 23, 2018. [Periodista Álvaro Alvarado presenta denuncia penal por amenaza recibida a través de redes sociales;](#) Panamá América. April 23, 2018. ["Cuidate que te van a matar", advierten en redes a Álvaro Alvarado;](#) Crítica. April 23, 2018. [Periodista Alvaro Alvarado presenta denuncia contra persona que lo amenazó.](#)

<sup>1043</sup> La Prensa. September 4, 2018. [Gremios rechazan ataques contra los periodistas panameños;](#) Metro Libre. September 4, 2018. [Gremios rechazan ataques a periodistas panameños.](#)

police, as well as material damage. During the events, 35 people were arrested and five were injured, four of whom were police officers. Moreover, the government allegedly established a curfew for minors.<sup>1044</sup>

811. Furthermore, the Office of the Special Rapporteur received information about a protest carried out by members of agricultural sectors on December 4, which was repressed by the Police. According to the information available, there was excessive use of force with the aim of scattering the protests that were occupying the streets and affecting traffic.<sup>1045</sup>

812. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>1046</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>1047</sup>

813. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>1048</sup>

#### **D. Subsequent liability**

814. On May 30, the Peace Judge of Ancón Community, Panama District, allegedly sentenced Poet Manuel Alfredo Belda to 30 days in prison, commuted for a USD 30 fine, since as part of the process of becoming an independent candidate for the House of Representatives, Mr. Belda allegedly got naked on April 11 at the headquarters of the Electoral Court. The would-be candidate allegedly said that he did it to show that his candidacy was transparent. However, the Electoral Court decided to report him for committing “immoral acts.”<sup>1049</sup>

815. According to the information sent to the Office of the Special Rapporteur, a series of criminal judicial suits against the media, their board of directors and journalists is still pending resolution on the part of judicial instances. The complaints are mostly about alleged crimes against “honor” and “individual freedom,” “harassment and violation of the right to privacy,” “defamation” and “slander.” Moreover, the Office was informed of a proceeding for “potential violations of electoral provisions related to electoral propaganda.”

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<sup>1044</sup> EFE. March 13, 2018. [Al menos 5 heridos y 35 detenidos deja una protesta en la ciudad panameña de Colón](#); El Universal. March 13, 2018. [Dictan toque de queda para menores por violencia en provincia panameña](#); Gobierno de la República de Panamá. March 13, 2018. [Comunicado](#); Telesur. March 16, 2018. [Al menos cinco heridos y 35 detenidos tras protestas en Panamá](#); Panamá América. March 19, 2018. [Sancionarán a padres de menores que infrinjan toque de queda en Colón](#); La Prensa. April 19, 2018. [Culminan las manifestaciones en Colón: comercios operan con regularidad](#).

<sup>1045</sup> Kien y Ke. December 4, 2018. [Incumplimiento y represión, origen de las protestas](#); Panamá América. December 5, 2018. [Gobierno responde con represión a productores](#).

<sup>1046</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>1047</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>1048</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>1049</sup> El Siglo. April 12, 2018. [Presentan denuncia contra precandidato que se desnudó en el TE](#); Mi Diario. May 30, 2018. [Imponen sanción a aspirante a diputados que se desnudó, pero...](#); Crítica. May 30, 2018. [Belda pide que audiencia sea pública](#); La Prensa. May 30, 2018. [Por desnudarse en la sede del TE condenan a Belda a 30 días de arresto](#); La Estrella de Panamá. May 31, 2018. [Juez condena a 30 días de cárcel a Alfredo Belda por desnudarse en el TE](#); Crítica. May 31, 2018. [Belda no pagará multa de \\$30 por empelotarse en el TE](#).

Additionally, the Office received information on million-dollar civil judicial suits against journalists and means of communication, seeking compensations for “damages.”<sup>1050</sup>

816. According to the information available, journalists, directors, and publishers from “La Prensa” and “Mi Diario” newspapers allegedly still had pending 35 criminal legal actions, 18 civil suits, an electoral proceeding, and a family suit, by virtue of the publications made on topics involving political actors. As an example, the Office of the Special Rapporteur was informed about the fact that Former Panama President, Ricardo Martinelli, submitted a criminal legal action for slander and defamation, and a civil suit against both newspapers due to a series of publications that, according to him, contain false facts which caused offensive statements damaging his “honor,” “reputation,” and “private life.”<sup>1051</sup> Moreover, Marta Linares de Martinelli, the former president’s wife, filed a family complaint in order to make both newspapers, specially “La Prensa,” stop “disclosing or publishing private and family facts and situations, and the full names or last names of the family group, as part of a media campaign against the members of this Panamanian family.”<sup>1052</sup>

817. On September 5, a group of Panamanian journalists allegedly protested at Plaza Porras, Panama City’s downtown, asking for the termination of what they believe is a campaign of “persecution, harassment, and economic attacks” against the union and has resulted in the filing of multiple civil complaints, which has been considered as “a new form of harassment toward freedom of expression” by civil organizations.<sup>1053</sup>

818. Previously, on August 23, the Journalists’ Forum for the Freedom of Expression and Information and the National Journalism Council allegedly issued a joint ruling, in which they requested the judicial body and public ministry to remain “alert in view of the abuses to the justice institutional system.” On September 4, the Journalists’ Union of Panama, the National Journalists’ Association of Panama, the Chiquirí Journalists’ Association, and the Colón Journalists’ Association allegedly issue another ruling expressing their “dismay, outrage, and rejection regarding the growing and alarming number of attacks, threats, and judicial actions” carried out against journalists from different media of the country.<sup>1054</sup>

819. According to the information disclosed, several journalists, among whom there was Guadalupe Castellero from “NexTV,” and multiple collaborators from “La Prensa” newspaper have been the object of multi-million-dollar suits (around USD 12 million) and several potential suits, claiming the payment of multi-million-dollar compensations.<sup>1055</sup>

820. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,<sup>1056</sup> because “they have

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<sup>1050</sup> Information sent to the Office of the Special Rapporteur for Freedom of Expression on October, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; La Prensa. September 6, 2018. [La Prensa y Mi Diario suman \\$61.7 millones en demandas](#); La Estrella de Panamá. October 6, 2018. [Demandas a La Prensa y Mi Diario ascienden a \\$61.7 millones](#).

<sup>1051</sup> La Prensa. September 6, 2018. [La Prensa y Mi Diario suman \\$61.7 millones en demandas](#); Radio Panamá. July 18, 2018. [Martinelli querrela a Corporación La Prensa](#); Panamá América. July 19, 2018. [Defensa de Martinelli presenta querrela contra La Prensa y Mi Diario](#); En Segundos. July 18, 2018. [Martinelli querrela a Mi Diario por noticias sobre visita de colombiana](#); Crítica. July 19, 2018. [Martinelli demanda por \\$5 millones a La Prensa y director de El Renacer](#).

<sup>1052</sup> La Prensa. August 21, 2018. [Marta de Martinelli pretende que los medios no informen sobre su familia](#); EFE. November 2, 2018. [Fiscalía rechaza querrela de Martinelli contra líderes de opinión en Panamá](#).

<sup>1053</sup> Panamá América. September 2, 2018. [Concentración en defensa del periodismo se hará el miércoles](#); EFE. September 5, 2018. [Periodistas panameños cierran filas contra los hostigamientos e intimidaciones](#); La Prensa. September 5, 2018. [Periodistas protestan para exigir respeto a la libertad de prensa](#); crhoy.com. September 5, 2018. [Periodistas panameños protestan contra ataques a la libertad de expresión](#); TVN Noticias. October 5, 2108. [Hostigamiento judicial, una nueva forma de acoso a la libertad de expresión](#).

<sup>1054</sup> TVN Noticias. August 23, 2018. [Fórum y CNP preocupados por demandas a medios y periodistas](#); “Organizations speak out against attacks on Journalists”. Twitter account of Colegio Nacional de Periodistas @Conape\_Panama. [September 4, 2018](#); Día a día. September 4, 2018. [Periodistas panameños piden cese ‘inmediato’ de hostigamiento contra gremio](#). Contacto Hoy. September 4, 2018. [Periodistas panameños piden cese ‘inmediato’ de hostigamiento contra gremio](#).

<sup>1055</sup> TVN Noticias. August 21, 2018. [Marta de Martinelli demanda al diario La Prensa para impedir publicaciones sobre su familia](#); Metro Libre. August 31, 2018. [Comisionado Fanuco demanda a NexTV y a la periodista Guadalupe Castellero](#); Mi Diario. August 31, 2018. [Comisionado Fanuco demanda por \\$2 millones a presentadora de noticias](#); La Estrella de Panamá. September 4, 2018. [Demandas por más de \\$12 millones contra periodistas](#); Panamá Today. September 5, 2018. [Diputado de CD demandará a diario La Prensa por \\$20 millones](#).

<sup>1056</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of

voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power.”<sup>1057</sup> In this regard, the Inter-American Commission stated that “[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy.”<sup>1058</sup> Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, “[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official.” That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

821. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a 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>1059</sup>

822. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “*desacato* laws,” restrict freedom of expression and the right to information.” Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.<sup>1060</sup>

## E. Legal reforms

823. The Office of the Special Rapporteur received information on the submission of unconstitutionality actions against several articles of the act that modified provisions of the Electoral Code in 2017.<sup>1061</sup> Among the modifications, it extended the period in which it is prohibited to publish political polls from 10 to 20 days previous to elections.<sup>1062</sup> On April 16, “Televisora Nacional TVN” filed an unconstitutionality complaint before

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August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87.

<sup>1057</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125-129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

<sup>1058</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

<sup>1059</sup> I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

<sup>1060</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>1061</sup> La Estrella de Panamá. April 17, 2018. [Código Electoral enfrenta 10 demandas en la Corte Suprema](#); La Prensa. March 7, 2018. [Nueva demanda contra artículos del ‘Código Electoral’ llega a la Corte](#); Gaceta Oficial. Gobierno de la República de Panamá. December 11, 2017. [Acuerdo N° 82-2, p. 89](#); TVN.com. No date. [Texto de la acción de inconstitucionalidad promovida en contra del artículo 254 del Código Electoral](#); TVN Noticias. April 16, 2018. [TVN Media presenta demanda de inconstitucionalidad contra la veda en la divulgación de encuestas](#); En Segundos. April 16, 2018. [Presentan demanda de inconstitucionalidad contra veda de encuestas electorales](#); El Nuevo Diario. April 16, 2018. [Televisión se querrela contra ley electoral panameña por prohibir encuestas](#); Panamá América. May 17, 2018. [Gremios piden agilizar fallo sobre veda de encuestas](#); TVN Noticias. August 20, 2018. [Veda electoral a las encuestas podría estar violando el derecho a la libertad de expresión](#); La Estrella de Panamá. September 17, 2018. [Una veda absurda](#).

<sup>1062</sup> República de Panamá. Gaceta Oficial. [Ley N° 29](#). May 30, 2017; Inter American Press Association (IAPA). 74th General Assembly Report. October 19 - 22, 2018. Salta, Argentina. [Panama](#). October 18, 2018.

the Supreme Court of Justice, since the aforementioned electoral prohibition period violated the right to freedom of expression.<sup>1063</sup>

824. Likewise, according to the information published, several decrees were passed by the Electoral Court, through which, among several provisions, it was created a “Digital Media Unit” [*Unidad de Medios Digitales*] that has the function of “monitoring social networks and digital media, potential violations of the regulations on electoral propaganda,”<sup>1064</sup> as well as the candidates’ obligation to “provide the Electoral Court of the domain of their official webpage/s, as well as their main account/s on the digital media they have.”<sup>1065</sup>

825. The Office of the Special Rapporteur recalls that “[e]lections 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>1066</sup>

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

826. According to the information available, during 2018, the General Assembly repeatedly refused to provide the information that had been required by “La Prensa” newspaper from February 2017 on the administration of certain public funds. On January 4, 2018, due to the *habeas data* remedy submitted, the Supreme Court of Justice allegedly ordered the General Assembly to provide the information;<sup>1067</sup> however, the requirement remained unfulfilled.<sup>1068</sup>

827. In view of the abovementioned context, the Office of the Special Rapporteur received information about an unconstitutionality action submitted in March by the General Assembly, which aimed at invalidating the unfulfillment punishment, the recruitment advertising, and the public workers’ appointments.<sup>1069</sup> This measure was allegedly adopted as a consequence of the “desacato” suit submitted by “La Prensa” newspaper in view of the Supreme Court’s resolution’s unfulfillment.<sup>1070</sup> In the light of this measure, the National Transparency and Access to Public Information Authority (ANTAI) rejected “any action that might diminish the “Transparency Principle” according to what is established by law, and consequently, it requested the National Assembly not to “carry out these unfortunate actions” and “to comply with Transparency regulations.”<sup>1071</sup> The Supreme Court allegedly dismissed the action.<sup>1072</sup>

828. In September, the ANTAI allegedly initiated a punitive proceeding against the General Assembly’s president as she failed to provide public information.<sup>1073</sup> This guarantor body requested the General Assembly to carry out “the itemization of the specific data forms” that had not been provided. According to what was published, the petition “caused that [the General Assembly] summon the General Director [of

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<sup>1063</sup> Inter American Press Association (IAPA). 74th General Assembly Report. October 19 - 22, 2018. Salta, Argentina. [Panama](#). October 18, 2018; tvn Noticias. April 16, 2018. [TVN Media presenta demanda de inconstitucionalidad contra la veda en la divulgación de encuestas](#).

<sup>1064</sup> Tribunal Electoral de Panamá. [Boletín del Tribunal Electoral](#). January 16, 2018.

<sup>1065</sup> Tribunal Electoral de Panamá. [Boletín del Tribunal Electoral](#). June 19, 2018.

<sup>1066</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>1067</sup> La Prensa. January 4, 2018. [Corte ordena levantar secreto a la Asamblea Nacional](#).

<sup>1068</sup> La Prensa. March 2, 2018. [Corte admite desacato de 'habeas data' contra la Asamblea Nacional](#); tvn Noticias. August 3, 2018. [Pleno de la CSJ discute incidente de desacato contra Yanibel Ábreo](#).

<sup>1069</sup> La Prensa. March 26, 2018. [Asamblea demanda Ley de Transparencia](#); La Prensa. March 26, 2018. [Asamblea alega que demanda contra la Ley de Transparencia 'no fue admitida'](#); Kien Ke Noticias. March 27, 2018. [Corte de Panamá no admite demanda contra Ley de Transparencia](#).

<sup>1070</sup> La Prensa. March 26, 2018. [Asamblea demanda Ley de Transparencia](#); La Prensa. March 26, 2018. [Asamblea alega que demanda contra la Ley de Transparencia 'no fue admitida'](#); Kien Ke Noticias. March 27, 2018. [Corte de Panamá no admite demanda contra Ley de Transparencia](#).

<sup>1071</sup> República de Panamá. Autoridad Nacional de Transparencia y Acceso a la Información (ANTAI). March 26, 2018. [Comunicado sobre Ley de Transparencia](#).

<sup>1072</sup> Kien Ke Noticias. March 27, 2018. [Corte de Panamá no admite demanda contra Ley de Transparencia](#); La Prensa. March 27, 2018. [Corte Suprema de Justicia rechaza demanda de la Asamblea Nacional](#).

<sup>1073</sup> La Prensa. September 1, 2018. [Antai iniciará proceso a Ábreo por no entregar planillas](#); tvn Noticias. September 26, 2018. [Directora de la Antai cuestiona manejo presupuestario en la Asamblea](#).

ANTAI] in order to complete a questionnaire” and the said measure was allegedly considered as “pressure” by some sectors of society.<sup>1074</sup>

829. Furthermore, according the monitoring of the fulfillment of transparency obligations on the part of Panamanian public institutions, the ANTAI informed that in September 2018, after assessing 177 reporting parties that own web pages, 68% of them complies with 100% of the obligations established in the Transparency Act.<sup>1075</sup>

830. The IACHR has encouraged the States to “[s]trengthen 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.” Likewise, it has recommended to “[e]stablish active transparency obligations in relation to information necessary for effective accountability and the fight against corruption, in particular with regards 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>1076</sup>

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<sup>1074</sup> República de Panamá. Autoridad Nacional de Transparencia y Acceso a la Información (ANTAI). September 19, 2018. [Miembros de Coordinadora Fecha se solidarizan con acciones de la ANTAI para exigir rendición de cuentas.](#)

<sup>1075</sup> República de Panamá. Autoridad Nacional de Transparencia y Acceso a la Información (ANTAI). [Informe de monitoreo de las secciones de Transparencia en los sitios Web de las diferentes instituciones del Estado mes de SEPTIEMBRE 2018](#). December 3, 2018.

<sup>1076</sup> IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018.

## 26. PARAGUAY

831. Throughout 2018, within a context of continued social protests in different parts of the country due to corruption cases and other issues of public interest, in April congress representatives and the president of the executive were elected. Before and after, the Office of the Special Rapporteur notes important progress in various areas that have had in common an aim to strengthen transparency in public institutions, particularly in places such as the Supreme Court of Justice [*Corte Suprema de Justicia*], the Magistrates Prosecution Panel [*Jurado de Enjuiciamiento de Magistrados*], and the Judicial Council [*Consejo de la Magistratura*]. However, this Office has received information regarding episodes of violence, assaults, and judicial measures against journalists in the context of the protests, as well as measures by the Attorney General's Office which sought to subpoena journalists and request their sources to inform and disseminate information on topics of public relevance. In addition, unions and civil society organizations warned of death threats, physical attacks, censorship measures, the continued job insecurity in the sector, and the reiteration of unjustified dismissals.

### A. Freedom of expression in electoral contexts

832. On April 22, general elections took place in Paraguay in which Mario Abdo Benítez of the Colorado party was elected as the head of the executive branch. In addition, members of congress, governors, and members of the Mercosur Parliament were elected. According to the preliminary report of the OAS electoral mission, "there has been a great national legal and political debate regarding the candidacies of former presidents and of the acting President of the Senate."

833. According to the preliminary report, "exit polls have as their origin a clear link between companies, the media, and political parties." It also adds that "their broadcast during election day constitutes a mechanism of manipulation and deceive."<sup>1077</sup> Also, the document highlights the implementation of a software that "facilitates and makes transparent the registration of income and expenditures of political groups."<sup>1078</sup>

834. On the day of the elections, the Office of the Special Rapporteur received information on attacks by political sympathizers on a group of ABC Color journalists at a polling station in the city of Luque. The events occurred at the time when this group tried to approach and interview a Senate candidate who was going to deposit his vote. According to what was published, police officers who were present at the scene wouldn't have intervened and the aggressors were not apprehended. Subsequently, the affected journalists would have reported the events to the authorities. According to reports, several of the aggressors would be public officials<sup>1079</sup>.

835. The Office of the Special Rapporteur recalls that "[e]lections 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>1080</sup>

### B. Progress

836. On December 19, 2017, a Trial Court declared the former mayor of the city of Ypejhú, Vilmar «Neneco» Acosta, responsible of ordering in 2014 the murder of ABC Color reporter Pablo Medina and his assistant, Antonia Almada, and was sentenced to twenty-nine years of imprisonment plus ten years of detention as a security measure<sup>1081</sup>. Judge Janine Ríos González, in her broadened vote, within the framework

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<sup>1077</sup> OAS. [Preliminary Report of the Electoral Observation Mission to Paraguay](#). April 22, 2018.

<sup>1078</sup> OAS. [Preliminary Report of the Electoral Observation Mission to Paraguay](#). April 22, 2018.

<sup>1079</sup> ABC TV Paraguay/YouTube channel. April 22, 2018. [Hurreros de Daher agreden a periodistas](#). [02.03]; ACB Color. April 22, 2018. [Policía se desentiende de agresión a periodista](#); ACB Color. April 22, 2018. [Hurreros de González Daher agreden a periodistas](#); Última Hora. April 22, 2018. [Agredidos por seguidores de González Daher presentan denuncia](#); ABC Color. April 23, 2018. [Patoters agreden a periodistas](#); La Nación. April 23, 2018. [Jornada electoral tranquila y con algunos incidentes leves](#); Foro de Periodistas del Paraguay (FOPEP). [FOPEP repudia agresión a periodistas en elecciones generales del Paraguay](#). April 22, 2018.

<sup>1080</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 27, 2006. Para. 2.

<sup>1081</sup> República del Paraguay. Poder Judicial. Tribunal Colegiado de Sentencia de la Circunscripción Judicial de Canindeyú. Sentencia Definitiva N° 113. December 19, 2017. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. The Office of the Special Rapporteur notes that the Sindicato de Periodistas de Paraguay (SPP) regretted that "the fiscal work has not followed up on indications that pointed to the complicity of other political actors that made possible the escape of Acosta to Brazil".

of conventionality control, cites inter-American jurisprudence and the standards established by the Office of the Special Rapporteur through joint statements, thematic reports, among others. The judgement, however, is in a state of appeal<sup>1082</sup>.

837. On May 8, a criminal court granted the constitutional *amparo* action filed against the Comptroller General of the Republic [*Contraloría General de la República*] (CGR) by the journalist Juan Carlos Lezcano with the support of civil society organizations, in order to access the financial disclosure affidavits of a group of public authorities who held positions between 1998 and 2017. On June 7, the First Chamber of the Criminal Court of the Capital [*Primera Sala del Tribunal de Apelación Penal de la Capital*] partially upheld the first instance judgment that had been appealed by the CGR<sup>1083</sup>. At the close of the edition of this report, the case is pending an unconstitutionally decision before the Supreme Court of Justice.

838. The Supreme Court of Justice informed about the implementation of a project to train judges on issues of freedom of expression and access to information<sup>1084</sup>; and on the provision that the plenary and deliberative sessions of the jurisdictional body shall be public except for matters related to the internal security of the institution<sup>1085</sup>. According to what has been reported to the Office of the Special Rapporteur, this last decision comes after civil society organizations promoted in this branch of the State and in other public institutions —such as the Judicial Council and the Magistrates Prosecution Panel— transparency mechanisms in decision-making procedures. In this same line, the executive had previously presented a bill for the sessions of these bodies to be public —which at the close of the edition of this report was half sanctioned, with the inclusion of the council of ministers within the subjects bound to publicize its sessions—<sup>1086</sup>.

839. According to the information received by the Office of the Special Rapporteur, during the period covered by this report, state and civil society representatives continued to carry out various actions in order to implement and disseminate the law on access to public information throughout the country. The results include the inauguration of access to information offices in 200 municipalities, the implementation of projects, the release of the cadastral database, the set-up of a jurisprudence section on access to public information, and the rules of procedure for the law on access to information with regards to the Judicial Branch<sup>1087</sup>.

### C. Attacks, Threats, and Intimidation of Journalists and the Media

840. In the period covered by this report, the Office of the Special Rapporteur received information on death threats against Manuel Gómez, a journalist of radio Génesis located in the city of Alberdi, in February<sup>1088</sup>; and against Alberto Núñez Barreto, correspondent for *ABC Color* in Capiibary, in May<sup>1089</sup>. In October, the Office of the Special Rapporteur was informed by the Committee of Experts of the Follow-up Mechanism of the Convention on the Prevention, Punishment and Eradication of Violence against Women "Belém do Pará Convention" (MESECVI), on the death threat through social networks against Noelia Díaz Esquivel, journalist and General Secretary of the Union of Journalists of Paraguay [*Sindicato de Periodistas del*

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<sup>1082</sup> IFEX. January 8, 2018. [Historic prison term for former mayor behind killing of journalist](#); Inter American Press Association (IAPA). December 20, 2017. [Paraguay: 39 años de prisión a asesino de Pablo Medina](#).

<sup>1083</sup> República del Paraguay. Poder Judicial. [Luzgado Penal de Garantías N° 4 de la Capital. Sentencia N° 24](#). May 8, 2018.

<sup>1084</sup> República del Paraguay. Poder Judicial. October 2, 2018. [Decisiones de la plenaria de la Corte Suprema de Justicia](#).

<sup>1085</sup> República del Paraguay. Poder Judicial. October 23, 2018. [Decisiones de la plenaria de la Corte Suprema de Justicia](#).

<sup>1086</sup> ABC Color. October 22, 2018. [La Corte ante el desafío de actuar con total transparencia](#); República de Paraguay. Congreso. Sistema de Información Legislativa. [S-181463](#). May 9, 2018.

<sup>1087</sup> See: República del Paraguay. Ministerio de Justicia. June 19, 2018. [Suman 200 los municipios que cuentan con oficinas de Acceso a Información Pública](#); Grupo Impulsor Acceso a la Información. Noticias: Available at: <http://www.giai.org.py/noticias-giai>; ABC Color. May 18, 2018. [Catastro libera datos de inmuebles y propietarios](#); IDEA. Twitter account. @InstIDEA. [May 20, 2018](#); República del Paraguay. Poder Judicial. Available at: <http://www.pj.gov.py/transparencia-documentos>; República del Paraguay. Poder Judicial. Noticia. August 2, 2018. [Se emitió la acordada de Acceso a la Información Pública en el ámbito judicial](#).

<sup>1088</sup> Sindicato de Periodistas del Paraguay (SPP) / Twitter account @PeriodistasPy, "From the Sindicato de Periodistas del Paraguay (SPP) we denounce that the life of Manuel Gómez, journalist of Alberdi, remains at risk. The SPP holds the Public Prosecutor and the National Police responsible for any act that endangers the colleague's life". [February 13, 2018](#).

<sup>1089</sup> Sindicato de Periodistas del Paraguay. May 28, 2018. [Amenazan a periodista en San Pedro](#); ABC Color. May 29, 2018. [Amenazan al corresponsal](#).

Paraguay] (SPP), after the journalist published an opinion on her social network about a crime of alleged femicide. The Committee of Experts and this Office issued a joint statement in which they expressed concern about the situation and requested the authorities to adopt the necessary measures to protect the journalist's physical integrity<sup>1090</sup>. According to official public information, the deputy interior minister received authorities from the SPP and members of the Interinstitutional Roundtable for the Protection of Journalists [*Mesa Interinstitucional de Protección de Periodistas*] to analyze the case of the threatened journalist<sup>1091</sup>.

841. According to what was reported to the Office of the Special Rapporteur, during the year there were some incidents that hampered the work of the press. In particular, this Office received information regarding a senator who pushed and attempted to snatch the cell phone of a journalist when he tried to consult him at the end of a congress session<sup>1092</sup>. Another episode occurred when several journalists tried to interview a police officer who was being escorted as a detainee in a homicide case. In this event, the policemen who were guarding him assaulted the reporters<sup>1093</sup>.

842. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression 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."

#### **D. Social Protest**

843. In a context of diverse protests due to corruption cases and other events of public interest that have motivated the resignation and the judicial processing of congressmen, there have been a series of episodes in which journalists were attacked. In some of the demonstrations the disproportionate use of force by police has been denounced. There were also confrontations between political supporters and protesters.

844. On August 10, there were a series of incidents in several areas of the country. On said day, following a series of student protests in the city of Asunción, a few days after leaving the position of head of the executive, Horacio Cartes, following a journalist's query about his opinion on the demonstrations, he mentioned "rubber bullets" as a response to them<sup>1094</sup>. Later he would have apologized through his official twitter account<sup>1095</sup>. On the other hand, in the city of Luque, ABC TV journalist Kiara Coronel, who was covering a social demonstration, would have been sexually assaulted by the head of the city police station<sup>1096</sup>. In Ciudad del Este, reporter Víctor Duarte, of the newspaper Vanguardia, would have been physically assaulted when he was covering a social protest in which there were incidents between protesters and political supporters against the protests. According to what was published, he was kicked, thrown eggs, hot water, and guampas<sup>1097</sup>.

845. In October there were continued social protests in the city of Concepción. In view of the incidents that would have been registered in the protests, where journalists who were covering it were victims, the

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<sup>1090</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. October 30, 2018. [Press Release R228/18 Committee of Experts and Special Rapporteurship of the IACHR express their concern over the threats against journalist Noelia Díaz Esquivel in Paraguay.](#)

<sup>1091</sup> República del Paraguay. Ministerio del Interior. October 11, 2018. [Ministerio del Interior garantiza seguridad de periodista amenazada vía redes sociales.](#)

<sup>1092</sup> ABC Color. March 15, 2018. [Bogado intentó arrebatar celular a periodista](#); Vanguardia. March 16, 2018. [Senado aprueba "autoblindaje" para dificultar pérdida de investidura.](#)

<sup>1093</sup> Radio 1000 AM/Facebook. October 26, 2018. [Agentes policiales que custodiaban al comisario Julio Cabañas agredieron a los periodistas de diversos medios de prensa](#); Última Hora. October 26, 2018. [Incidentes en la Fiscalía con policías que custodian a comisario detenido.](#)

<sup>1094</sup> ABC Color. August 10, 2018. [Cartes: "Balines de goma"](#); Última Hora. August 10, 2018. [Cartes sobre manifestantes: "Balines de goma".](#)

<sup>1095</sup> Twitter account of Horacio Cartes @Horacio\_Cartes, "I want to express my apologies to young people for the statements that were published. I have always encouraged them to express themselves and my goal is the harmony of all Paraguayans". [August 10, 2018.](#)

<sup>1096</sup> Sindicato de Periodistas del Paraguay (SPP). [Acoso sexual es inadmisibile](#). August 13, 2018; Hoy. August 14, 2018. [Periodista denuncia acoso por parte de comisario y él responde: "tiene que alegrarse".](#)

<sup>1097</sup> Sindicato de Periodistas del Paraguay (SPP). [Clan Zacarías Es Responsable De Ataques A La Prensa En CDE](#). August 13, 2018; Vanguardia. August 17, 2018. [Responsabilizan a McLeod por agresión a reportero.](#)

Union of Journalists of Paraguay (SPP) issued press releases on different times through which, respectively, called on the authorities to protect journalists who perform coverage tasks; repudiated judicial harassment against colleagues who cover and report on demonstrations; and report aggressions by police against protesters. In addition, in the context of other protests the SPP denounced aggressions against journalists by political supporters<sup>1098</sup>.

846. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>1099</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>1100</sup>

847. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>1101</sup>

#### **E. Protection mechanisms**

848. According to the information available, in the first semester of the year, the Inter-institutional Roundtable for the Safety of Journalists and the Fight against Impunity continued to operate as a space for dialogue on the problem of journalists’ safety in Paraguay and the articulation of joint actions to contribute to the establishment of public policies on the subject. In addition, the Ministry of the Interior continued working on the implementation of the Security Protocol for journalists in high-risk situations approved in 2017. Several actors highlighted the importance of Congress sanctioning a law protecting journalists and human rights defenders<sup>1102</sup>.

849. According to the information received by the Office of the Special Rapporteur<sup>1103</sup>, the inter-institutional roundtable currently operates without a solid institutional framework, without defined protocols, and without defined competencies. In this sense, the action of the roundtable is governed according to the circumstances that arise and the means of communication to report threats through informal means. Nonetheless, the coordination of the roundtable has permitted the monitoring of specific cases and the activation of security measures by state security bodies, as well as the planning of trainings for prosecutors and security forces. On the other hand, the law for the protection of journalists and human rights defenders

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<sup>1098</sup> Sindicato de Periodistas del Paraguay (SPP). October 25, 2018. [SPP Pide Seguridad Para Periodistas De Concepción](#). October 17, 2018; SPP. [Adherentes Políticos Agreden A Periodistas De Ciudad Del Este](#); SPP. October 23, 2018. [SPP Repudia Acoso Judicial Contra Colegas De Concepción](#); SPP. October 19, 2018. [Policías Agreden A Periodistas Durante Manifestación](#).

<sup>1099</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>1100</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>1101</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>1102</sup> República del Paraguay. May 16, 2018. [Ministerio del Interior propicia mesa interinstitucional que promueve el ‘Protocolo de Seguridad de Periodistas’](#); República del Paraguay. June 21, 2018. [Ministerio Público. Fiscal General recibió a integrantes de la Mesa de Seguridad para Periodistas](#).

<sup>1103</sup> Information received by the delegation of the Office of the Special Rapporteur for Freedom of Expression within the framework of the *Ley Modelo 2.0* discussions held on November 5 and 6 in Asuncion, Paraguay.

introduced to the congress in 2016<sup>1104</sup>, would have lost momentum on the part of the guilds and organizations that initially presented it, so there are currently no expectations of its eventual approval.

850. In relation to the aggression committed against 23 journalists outside the Congress within the framework of the coverage of the protests that took place on March 31, 2017, the information revealed indicates that at the beginning of 2018 the Human Rights Unit of the Prosecutor's Office allegedly filed an accusation against two police officers for the assault of two cameramen who were covering the events and had requested an oral trial. The two officials would have been assigned to a hydrant car. The actions of the prosecution would be linked to the attacks suffered by LaTele camera operator Cynthia Soledad Saldívar Martínez and ABC TV cameraman Jaime Osvaldo Woitschach Giménez<sup>1105</sup>.

851. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for protective mechanisms to be effective. For example, the Office of the Special Rapporteur has recommended placing emphasis on: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and procurement of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society and beneficiaries in the implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism's operation<sup>1106</sup>.

#### **F. Stigmatizing statements**

852. According to the information available in the media, a senator from an independent party made a series of stigmatizing statements against journalists and the media on different occasions, and accused journalists of being "bandits" and "criminals"<sup>1107</sup>.

853. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."<sup>1108</sup>

#### **G. Confidentiality of Sources**

854. During 2018, the Office of the Special Rapporteur received worrying information on at least two situations in which the right of confidentiality of sources was neglected as a fundamental guarantee for the important work carried out by journalists. In February, journalist Cristian Bianciotto was coerced by Coronel Oviedo's mayor, Eladio Armando González, when he was requested through a public notary to disclose the identity of his sources, following a journalistic publication in Oviedo Press, as reported by the Union of Journalists<sup>1109</sup>.

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<sup>1104</sup> República del Paraguay. Sistema de Información Legislativa. [D-1642344](#). November 16, 2016.

<sup>1105</sup> Última Hora. February 10, 2018. [31M: Fiscalía presentó acusación en caso de agresión a camarógrafos](#); ABC Color. February 10, 2018. [Piden juicio para policías por agredir a la prensa](#).

<sup>1106</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>1107</sup> ABC TV. October 25, 2018. [Un show más de Payo Cubas](#); Hoy. July 31, 2018. [Payo y el incidente con periodistas: "Me rompen las bolas, les voy rompiendo las bolas también"](#); SPP. October 25, 2018. [Senador Debe Evitar Estigmatizar A Los Trabajadores De Prensa](#).

<sup>1108</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>1109</sup> "SPP denounces that journalist Cristian Bianciotto was coerced by the mayor of Coronel Oviedo, Eladio Armando González, when he was required by public notary to disclose the identity of his sources, following a journalistic publication". Twitter account of Sindicato de Periodistas del Paraguay. @PeriodistasPy. [February 19, 2018](#).

855. On March 22, journalist Mabel Rehnfeldt of ABC Color newspaper and ABC Cardinal radio station was subpoenaed by prosecutors Josefina Aghemo and Claudia Morys to give a testimony in the framework of the cases in which an alleged traffic of influence at the Magistrates Prosecution Panel was being investigated. In 2017, through Radio ABC Cardinal, journalist Rehnfeldt disclosed the recordings of telephone dialogues that revealed alleged extortion practices. According to several organizations, she was "questioned about the origin of the audios, about how its veracity was verified, about whether or not she had a court order to disseminate them." Following the subpoena, the Forum of Paraguayan Journalists [*Foro de Periodistas Paraguayos*] (FOPEP) issued a public statement in which it expressed its repudiation of the measure and assured that it was a clear legal intimidation. Meanwhile, diverse organizations that integrate the Impulse Group on Access to Information [*Grupo Impulsor de Acceso a la Información*] (GIAI) characterized it as an act of indirect censorship. According to the information available, the journalist refused to reveal her sources and assured that she had the right to suspect that her subpoena could be an "intimidation process", insofar as she was the first person called about the case; she also indicated that she could not be "considered a witness, because the witness is the one who has direct or indirect knowledge of the punishable acts"<sup>1110</sup>. After the concern generated by these events in different areas, on March 23 the head of the Attorney General's Office requested detailed reports from the prosecutors involved in the subpoena in order to assess the situation<sup>1111</sup>.

856. The Office of the Special Rapporteur recalls that Principle 8 of the Declaration of Principles establishes that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." Likewise recalls that in Article 13.3 of the American Convention it is established that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "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.

## H. Legal Reform

857. On September 12, the House of Representatives approved a bill which "creates the Ministry of Communications and Information Technology and establishes its charter [...]"<sup>1112</sup> Journalist's guilds expressed concern about the drafting of the legislative proposal and the intention to merge and concentrate several institutions related to the field of communication such as Sicom, Senatics, Copaco and Conatel<sup>1113</sup>. The project passed over to Senate revision. According to official public information, the law was finally approved on October 17 and published on October 22, and Sicom and Senatics were merged<sup>1114</sup>. According to the information available, guilds indicated that the regulations create a superstructure that will manage the radio and television spectrum in order to benefit official or political sectors, as well as acting as judges and parties regarding the granting of licenses<sup>1115</sup>. In another context, an open data bill<sup>1116</sup> and bill of publicity of affidavits of public officials would be under study<sup>1117</sup>.

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<sup>1110</sup> ABC Color. March 22, 2018. "[No puedo ser considerada testigo](#)"; ABC TV Paraguay/YouTube channel. March 22, 2018. [Mabel Rehnfeldt llamada a testificar en caso "Audios"](#). [3:18].

<sup>1111</sup> República del Paraguay. Ministerio Público. March 23, 2018. [Comunicado de prensa](#).

<sup>1112</sup> República del Paraguay. Sistema de Información Legislativa. [D-1847643](#). July 18, 2018.

<sup>1113</sup> Foro de Periodistas del Paraguay (FOPEP). [FOPEP y SPP alertan sobre proyecto Micotic](#). September 12, 2018.

<sup>1114</sup> República del Paraguay. [Gaceta Oficial](#). October 22, 2018.

<sup>1115</sup> Última Hora. October 23, 2018. [Mario Abdo promulga ley que crea el Mitic](#); ABC. October 23, 2018. [Crea el "Superministerio de Comunicación"](#).

<sup>1116</sup> República del Paraguay. Sistema de Información Legislativa. [S-188038](#). September 12, 2018.

<sup>1117</sup> República del Paraguay. Sistema de Información Legislativa. [S-187898](#). July 17, 2018.

## I. Media Concentration

858. During the presidency of Horacio Cartes, from 2013 to 2018, his business group represented by his sister acquired television channels, radios, and newspapers, which sharpened the concentration of media in the country. The Office of the Special Rapporteur documented in its 2015 Annual Report that "[t]hese acquisitions were criticized by opposition political groups and civil society organizations, who rejected the concentration of media in the hands of the President of the Republic's relatives"<sup>1118</sup>. Also, the rest of the media would be under the direction of few business groups who would handle ninety percent of the information agenda<sup>1119</sup>.

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

## J. Censorship

860. The Office of the Special Rapporteur received information indicating that at least two judicial decisions had banned the publication of certain content in the media on the basis of seeking to protect the right to privacy. In June, it transcended that the Criminal Court of Appeal in Ciudad del Este had confirmed a ruling that imposes a prior censorship on several media outlets, banning them from publishing a complaint about sexual harassment, as reported<sup>1120</sup>. However, the Court would have subsequently revoked the measure<sup>1121</sup>. Also, in May the Union of Journalists expressed its rejection of a court ruling that would have barred almost 30 media outlets from publishing certain information of the private sphere related to an extortion case. The SPP indicated that, although the objective of the measure would have been to protect the privacy of a journalist, the decision supposes a prior censorship<sup>1122</sup>.

861. In June, the Union of Journalists denounced that workers of Radio Nacional del Paraguay, 920 AM, received instructions from officials of the Secretariat of Information and Communication [*Secretaría de Información y Comunicación*] (SICOM) so that press workers don't interview ministers or referents of the Government<sup>1123</sup>.

862. 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."

## K. Access to public information

863. According to the statistical data that from the Unified Portal of Access to Public Information, as of October 2018, 360 public institutions had adhered to this system through which at that date had received

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<sup>1118</sup> 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. 1027.

<sup>1119</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. 958.

<sup>1120</sup> ABC Color. June 16, 2018. [Tribunal de CDE confirma sentencia que atenta contra libertad de prensa](#); Vanguardia. June 19, 2018. [Jueces que son un peligro para la democracia](#).

<sup>1121</sup> Vanguardia. May 19, 2018. [Levantán medida cautelar que pretendía censurar publicación](#); Última Hora. June 15, 2018. [Dilatan decisión sobre amparo que censura a los medios](#); ABC Color. June 14, 2018. [Denunciarán a los jueces que censuran a la prensa](#).

<sup>1122</sup> SPP. May 7, 2018. [Comunicado: Preocupa resolución judicial de censura previa a medios de comunicación y sus trabajadores](#).

<sup>1123</sup> Resumen de Noticias. June 19, 2018. [Sindicato de Periodistas denuncia censura en Radio Nacional](#); Sindicato de Periodistas del Paraguay (SPP)/Facebook. June 19, 2018. [Denunciamos que además de precarización laboral, compañeros y compañeras de Radio Nacional son obligados a escuchar una sola campana](#).

16,870 requests for information<sup>1124</sup> had been made since its operation in 2015. Likewise, according to the portal 72.6% of the answers have been satisfactory, with 976 requests qualified as such by the requesting parties<sup>1125</sup>. In addition, the "portal of active transparency" adhered to this application portal, "with monitoring mechanisms for compliance by the National Anticorruption Secretariat and the Civil Service Secretariat"<sup>1126</sup>.

864. Despite the country's progress in the initiatives and measures adopted to strengthen access to public information, the Office of the Special Rapporteur received information on some denials and adverse judicial decisions. In this context, in March the Constitutional Chamber of the Court rejected as a preliminary matter the action of unconstitutionality filed by the Impulse Group on Access to Information (GIAI) with respect to a ruling by a court that denied access to a set of information on the selection process of the lists of candidates for the State Attorney General's Office<sup>1127</sup>. In April, the Office of the Comptroller General of the Republic denied having made public the files of officials incorporated in the last three years, considering it to be private information<sup>1128</sup>. In October, by virtue of the possible study of the draft law on the publicity of affidavits, judges of the Supreme Court of Justice would have officially sent an opinion to congress through which they express their rejection to the approval<sup>1129</sup>. Representatives of civil society would have qualified this action as irregular and also expressed their concern that the court has a pending unconstitutionality case in which the publicity of affidavits must deal with. The decision to send the opinion, according to what was expressed, would be grounds for recusal in the case because it implied a prejudgment<sup>1130</sup>.

865. Principle 4 of the Declaration of Principles 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."

#### L. Other relevant situations

866. A report presented in March by the organization TEDIC indicates that Paraguay is still a country characterized by inequality in Internet access: although the connection is massive, it is not of quality. The costs of the data packages are high, the connection is slow, and the increase in coverage is through the zero rating offers, which violate net neutrality. This digital divide leaves sectors of the population without the opportunities offered by the network, including the absence of policies with a gender perspective<sup>1131</sup>, the report points out.

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<sup>1124</sup> República del Paraguay. [Portal Unificado de Información Pública](#) (accessed on October 26, 2018).

<sup>1125</sup> República del Paraguay. [Portal Unificado de Información Pública](#). [Reporte de calificación de satisfacción ciudadana](#) (accessed on October 26, 2018).

<sup>1126</sup> República del Paraguay. [Portal Unificado de Información Pública](#). [Reporte de calificación de satisfacción ciudadana](#) (accessed on October 26, 2018).

<sup>1127</sup> Última Hora. March 15, 2018. [Corte rechaza acción por datos de selección de terna a fiscal general](#); ABC Color. March 18, 2018. [Cero...es decir, la NADA](#); 780 AM. November 27, 2017. [Presentan acción de inconstitucionalidad para acceder a puntajes de candidatos a FGE](#).

<sup>1128</sup> ABC Color. April 9, 2018. [Contraloría niega entrega de legajo de sus funcionarios](#).

<sup>1129</sup> ABC Color. October 19, 2018. [Grosera intromisión de la Corte Suprema de Justicia en el Congreso](#); Última Hora. October 22, 2018. [La Corte se lava las manos por dictamen sobre declaración jurada](#).

<sup>1130</sup> ABC Color. October 18, 2018. [Ministros de la Corte no quieren dar declaraciones juradas y prejuizan](#); Última Hora. October 22, 2018. [La Corte se lava las manos por dictamen sobre declaración jurada](#).

<sup>1131</sup> TEDIC. [El estado de libertad de expresión en línea en Paraguay](#). April 24, 2018.

## 27. PERU

867. In 2018, the Office of the Special Rapporteur noted that investigative journalism was threatened in Peru due to harassment coming from the judicial and political sphere against a group of journalists that revealed a plot of alleged corruption that involved members of the Legislative and Judicial Branch, politicians, and businesspersons. The harassment was characterized by the filing of requests to reveal the sources of the investigations. On the other hand, several journalists were victims of threats and physical and verbal aggressions due to their work. In addition, the Office of the Special Rapporteur was informed that reporters were frequently attacked by security forces and demonstrators while covering social protests. In another context, the approval of a law by the Legislative Branch that banned the State from allocating advertisement to private media, generated opposition by the Executive Branch, and motivated a note from the Office of the Special Rapporteur. Ultimately, the law was declared unconstitutional by the Constitutional Court. Regarding access to public information, the State made legislative efforts to strengthen the National Authority for Transparency and Access to Public Information [*Autoridad Nacional de Transparencia y Acceso a la Información Pública*], due to this the Office of the Special Rapporteur recalled the importance of providing the initiative with the necessary budget and guaranteeing its autonomy and institutional independence.

### A. Progress

868. On April 26, Supreme Decree No. 044-2018-PCM was approved, establishing the "National Plan for Integrity and Fight against Corruption 2018-2021"<sup>1132</sup>. The Decree provides, among other things, actions to "strengthen the National Authority for Transparency and Access to Public Information in order to guarantee its autonomy and effectiveness"<sup>1133</sup> by presenting a bill—which at the close of this edition is under study—. It also establishes guidelines to improve the level of active transparency, standardization of portals, publication of criminal sanctions linked to corruption, promotion of accountability hearings, among others<sup>1134</sup>. In addition, the regulations include recommendations raised by the Presidential Integrity Commission, whose compliance is monitored by civil society<sup>1135</sup>.

869. On September 25, the Ministry of Justice and Human Rights [*Ministerio de Justicia y Derechos Humanos*] (MINJUSDH) reported that the National Authority for Transparency and Access to Public Information (ANTAIP), ascribed to said ministry, issued a binding opinion on the publicity of public officials' e-mails or technological messaging applications, in which it argued that institutional emails and messaging applications for institutional use should be considered protected within the right of access to public information<sup>1136</sup>.

870. On November 3, the National Institute of Radio and Television of Peru [*Instituto Nacional de Radio y Televisión del Perú*] (IRTP) launched an information program in the Asháninka language that seeks to give a national presence to the culture of the Asháninka ethnic group, the largest in the Peruvian Amazon. The program "Ashi Añane" joins two other informative programs in native languages of the country (Ñuqanchik, in Quechua and Jiwasanaka, in Aymara) that were launched between 2017 and 2018<sup>1137</sup>.

### B. Prosecution

871. On October 4, the National Criminal Chamber would have acquitted Daniel Urresti, former Minister of the Interior, of the charge of co-authorship in the murder of journalist Hugo Bustíos, which occurred in 1988 in Huanta, Ayacucho. The Attorney General's Office, which had requested 25 years in prison for Urresti,

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<sup>1132</sup> Comisión de Alto Nivel Anticorrupción. April 26, 2018. [Poder Ejecutivo aprueba el Plan Nacional de Integridad y Lucha contra la Corrupción 2018-2021](#).

<sup>1133</sup> Comisión de Alto Nivel Anticorrupción. April 26, 2018. [Poder Ejecutivo aprueba el Plan Nacional de Integridad y Lucha contra la Corrupción 2018-2021](#).

<sup>1134</sup> Comisión de Alto Nivel Anticorrupción. April 26, 2018. [Poder Ejecutivo aprueba el Plan Nacional de Integridad y Lucha contra la Corrupción 2018-2021](#).

<sup>1135</sup> Observatorio de Integridad. [Recomendaciones de la Comisión Presidencial de Integridad](#). No date.

<sup>1136</sup> Ministerio de Justicia y Derechos Humanos. September 25, 2018. [Correos electrónicos de funcionarios y servidores sí son de acceso al público, precisa la Autoridad Nacional de Transparencia del MINJUSDH](#).

<sup>1137</sup> Instituto Nacional de Radio y Televisión del Perú. November 12, 2018. [Presidente del IRTP destaca lanzamiento de Ashi Añane](#); Knight Center for Journalism in the Americas. November 20, 2018. [Peruvian state TV and radio launch third news program hosted in an indigenous language](#).

announced that it would file an appeal for annulment of the ruling, while the family of the journalist said they would appeal. The sentence would have enabled Urresti to continue in the electoral contest for the Mayor's Office of the Municipality of Lima for the Podemos Peru party<sup>1138</sup>.

### C. Attacks, Threats, and Intimidation of Journalists and the Media

872. The Office of the Special Rapporteur received information on some acts of threat and intimidation against journalists for the performance of their work. Among these, on January 6, unidentified persons would have intentionally set fire to the vehicle of journalist Juan Ferdinand Berrios Jiménez, of *Radio Tahuamanu RTV*, allegedly for his reports of acts of corruption in a municipality<sup>1139</sup>; On January 24, reporter Eduardo Juárez, of *RPP*, would have been threatened with a firearm while broadcasting live an interview from the Fiori Terminal, located in the district of San Martín de Porres, in Lima, where a group of transporters tried to resist a judicial order of eviction<sup>1140</sup>; On January 29, reporter Manuela Camacho Jaramillo and her cameraman Johnny Richard García Carrillo, of *América TV*, reported being attacked by traveling merchants who work on Pucusana beach while trying to document the contamination of the place<sup>1141</sup>.

873. On February 13 journalists Idelfonso Espinoza, from the *Noticierolibre.com* portal, and Guillermo Ibarra, from *Radio Armonía* and *Canal 13* from Huaraz, would have been abducted and beaten by a group of people from a district in the Ancash region, northeast of the country, when they covered a complaint about alleged irregularities in a construction for water installation and sewerage of the municipality<sup>1142</sup>.

874. The Office of the Special Rapporteur received information that on March 27 Congresswoman Patricia Donayre had threatened to sue journalist Nancy Alarcón after abruptly ending an interview that the communicator was carrying out on the "En Directo" program through *Canal 21*. The threat would have been registered after the communicator reiterated questions about alleged acts of corruption in which the congresswoman would be involved<sup>1143</sup>.

875. On September 25, journalist Liubomir Fernández, a contributor to *La República* in the Puno region, would have been the victim of death threats following the publication of investigations into the candidate for regional governor, Alexander Flores Pari, and the alleged link between his family and illegal mining, and the consequent contamination of the area<sup>1144</sup>.

876. On October 9, the congresswoman of the Fuerza Popular party, Esther Saavedra, allegedly assaulted journalist Edgar Alarcón, of the newspaper *El Poder*, at an office of the Judicial Branch. The congresswoman, who was supposed to testify in the framework of an investigation into alleged false documents, sought to prevent the reporter from taking photographs of her. Several police officers would have temporarily arrested Alarcón<sup>1145</sup>.

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<sup>1138</sup> La República. October 4, 2018. [Elecciones 2018: Daniel Urresti quedó absuelto por caso Bustíos y continúa en carrera](#); El Comercio. October 5, 2018. [Absuelven a Daniel Urresti por asesinato del periodista Hugo Bustíos](#); Committee to Protect Journalists (CPJ). October 4, 2018. [Peru mayoral candidate Daniel Urresti acquitted of Hugo Bustíos murder](#).

<sup>1139</sup> Asociación Nacional de Periodistas del Perú. January 6, 2018. [Perú: Incendian vehículo de periodista para amedrentarlo](#). El Comercio. January 9, 2018. [Incendian vehículo de periodista de Madre de Dios](#). Telemás. January 8, 2018. [Madre de Dios: Queman carro de periodista para amedrentarlo](#).

<sup>1140</sup> La República. January 25, 2018. [Fiori: periodista fue amenazado en vivo con arma de fuego](#). Perú 21. January 25, 2018. [Terminal Fiori: Periodista fue amenazado con arma de fuego en plena transmisión](#). Perú.com. January 25, 2018. [Fiori: amenazan con arma a reportero durante transmisión en vivo](#). RPPNoticias. January 25, 2018. [Periodista fue amenazado con pistola durante transmisión en vivo](#). Diario Correo. January 25, 2018. [Hombre amenaza con arma a reportero en transmisión durante protesta en Fiori](#); elPopular.pe. January 26, 2018. [Terminal Fiori: Reportero es amenazado en vivo con un arma de fuego](#).

<sup>1141</sup> Asociación Nacional de Periodistas del Perú. March 30, 2018. [Perú: Bañistas de Pucusana agreden verbalmente a reportera y camarógrafo](#). Correo. January 30, 2018. [Manuela Camacho fue amenazada y agredida por bañistas de Pucusana](#); Altavoz. January 31, 2018. [Video: Bañistas de Pucusana agreden a periodista por grabar playa contaminada](#); Rafaelnippon Chanel/Youtube. January 29, 2018. [Pucusana: Agreden a reportera de la Banda del Chino!](#)

<sup>1142</sup> Ipys. February 15, 2018. [Perú: secuestran y golpean a periodistas](#).

<sup>1143</sup> La República. March 27, 2018. [Congresista Patricia Donayre amenaza a periodista en programa de televisión](#). Instituto Prensa y Sociedad. March 28, 2018. [Congresista Patricia Donayre amenaza a periodista en programa de televisión](#). Lima Noticias 360. April 1, 2018. [Congresista amenaza con denunciar a diario local](#).

<sup>1144</sup> IFEX/Ipys. October 3, 2018. [Periodista Liubomir Fernández es amenazado de muerte](#).

<sup>1145</sup> 24 horas. October 9, 2018. [Congresista Esther Saavedra pierde los papeles y agrede a periodista en Tarapoto](#); Ipys. October 9, 2018. [Perú: congresista agrede a periodista. Policía intenta detenerlo](#).

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

#### D. Subsequent Liabilities

878. The bishop of Piura and Tumbes, José Antonio Eguren Anselmi, would have criminally sued journalists Pedro Salinas and Paola Ugaz for aggravated defamation, due to their investigations that would link him to abuses and irregularities committed in the religious organization Sodalicio Vida Cristiana. The lawsuit against Salinas was filed before the First Unipersonal Criminal Court of Piura in August<sup>1146</sup>. On October 4, the lawsuit against Ugaz was reportedly admitted for trial by Judge Esther Alva Pantaleón of the Fifth Unipersonal Criminal Court of Piura<sup>1147</sup>.

879. Sol Carreño, journalist of *América TV*, would have been reported to the Attorney General's Office for the alleged crime of money laundering, due to the statements of journalist Laura Bozzo -who was convicted for association to commit a crime and embezzlement- who would have suggested that the Carreño would have received money from Vladimiro Montesinos, presidential adviser to former president Alberto Fujimori, in the 1990s<sup>1148</sup>.

880. The Inter-American Commission stated that "[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy."<sup>1149</sup> Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, "[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official." That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

#### E. Source confidentiality

881. On July 12, the Office of the Special Rapporteur issued a statement in which it expressed concern regarding the actions of Peruvian government institutions aimed at forcing journalists to reveal their sources and information materials. According to the information received, journalists Gustavo Andrés Gorriti Ellenbogen, director of the Legal Defense Institute [*Instituto de Defensa Legal*] (IDL-Reporteros), and Rossana Cueva Mejía, director of the "Panorama" Journalistic Program, were summoned to an Extraordinary Session on July 12 before the Congress of the Republic of Peru, convened by the Audit Commission and Comptroller [Comisión de Fiscalización y Contraloría], with the objective of addressing "the claim regarding the wiretapping." The purpose of summoning the journalists was for them to inform about "the form and circumstances in which they obtained the audios and/or documentation in relation to the wiretapping". Also, in the document, they were required to deliver "the audios and/or original documentation that supported the aforementioned report"<sup>1150</sup>.

882. The summoned media disclosed a series of audios by which representatives of the Judicial Council would be involved in an alleged traffic of influence. In turn, on July 10, the Anti-Corruption Prosecutor's Office

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<sup>1146</sup> El Comercio. August 16, 2018. [Caso Sodalicio: obispo denuncia a Pedro Salinas por difamación agravada](#); Ipsys. August 16, 2018. [Perú: Obispo denuncia a periodista por difamación agravada](#).

<sup>1147</sup> La República. October 14, 2018. [Arzobispo de Piura investigado por Sodalicio, demanda a periodista Paola Ugaz](#); Ipsys. October 14, 2018. [Perú: Obispo denuncia a periodista por difamación agravada](#).

<sup>1148</sup> La República. August 18, 2018. [IPYS denuncia campaña contra Sol Carreño tras dichos de vinculados a Montesinos](#); Ipsys. August 18, 2018. [Perú: denuncian a periodista por dichos de cómplice de Montesinos](#); Informatoperu. August 18, 2018. [Denuncian que Sol Carreño percibía 10 mil dólares mensuales de gobierno fujimorista](#); Lucidez. July 3, 2018. [Sol Carreño: "Intentan desprestigiar a los medios que investigan y denuncian"](#); La República. December 20, 2017. [Vía Twitter: Laura Bozzo hace serias acusaciones contra Sol Carreño](#).

<sup>1149</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

<sup>1150</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 12, 2018. [Press Release 151/18 Office of the Special Rapporteur Expresses Concern over Measures Forcing Journalists in Peru to reveal their sources and materials](#).

would have opened investigations into the alleged irregularities denounced by IDL-Reporteros and Panorama. According to reports, the Prosecutor's Office would have issued a warrant for IDL Reporters to produce documents in order to access the material and the journalistic work carried out. The implementation of the warrant was reportedly initiated, but soon after it would have been suspended<sup>1151</sup>. After an alert issued by civil society organizations, the Public Prosecutor's Office, on the same date, issued a press release stating that "[t]he Attorney General of the Nation, Pablo Sánchez Verlarde, reiterates his respect for freedom of the press and affirms that during all his professional and personal trajectory he has been a firm defender of the democratic values of our society"<sup>1152</sup>.

883. During the 169 Period of Sessions of the IACHR held in Boulder, Colorado, from October 1 to 5, the organization IDL-Reporteros spoke about corruption events that involve high-level authorities, political, and economic actors, and that affect judicial independence. It also referred to the violation of freedom of expression and the right to source confidentiality due to judicial harassment against journalists who broadcasted the audios that revealed a plot of alleged corruption, and other measures adopted by state institutions. The organization noted the lack of guarantees from the investigators to continue the work. For their part, the representatives of the State recognized and repudiated the acts of corruption, spoke about measures led by the Executive and reforms to take on in order to strengthen the fight against corruption, transparency, and access to public information. The IACHR expressed its appreciation for the work of investigative journalism and the work of the petitioning organization, as well it thanked the representatives of the State for their openness<sup>1153</sup>.

884. The IACHR has urged States to "[f]oster a climate of guarantees for the freedom to report acts of corruption, the development of the practice of investigative journalism and the exercise of the right to seek, receive and impart information related to corruption. This includes guaranteeing the safety of journalists, human rights defenders and activists who investigate and report corruption; repealing so-called "contempt" and criminal defamation laws while ensuring the proportionality of penalties in civil proceedings; ensuring protection for the confidentiality of journalistic sources; and establishing protection systems for corruption whistleblowers."<sup>1154</sup>

885. The Inter-American Commission recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression states that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

#### **F. Access to Public Information**

886. According to official information, on August 28 the Ministry of Justice and Human Rights presented a bill that creates the "National System for Transparency, Access to Public Information, and Protection of Personal Data" [*Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales*]<sup>1155</sup>. The explanatory memorandum of the bill states that its design is consistent with the "Draft Model Inter-American Law on Access to Information." In this sense, it seeks to create the "National Authority for Transparency, Access to Public Information, and Protection of Personal Data" as "specialized technical public body with legal personality of national public law, which enjoys technical, functional, economic, administrative, and financial autonomy" and that "it is ascribed to the Ministry of Justice and Human Rights." It also empowers the Court of Transparency, Access to Public Information, and Protection of Personal Data, created by legislative decree in 2017, as a "decision-making body that exercises its functions as a final administrative authority" and that "has technical and functional autonomy in the adoption of their decisions".

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<sup>1151</sup> Twitter account of IDL-Reporteros (@IDL\_R). [July 10, 2018](#); El Comercio. July 10, 2018. [Fiscalía suspendió diligencia en IDL-Reporteros por audios de CNM y PJ](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. July 12, 2018. [Press Release 151/18 Office of the Special Rapporteur Expresses Concern over Measures Forcing Journalists in Peru to reveal their sources and materials](#).

<sup>1152</sup> Twitter account of Ministerio Público del Perú (@FiscaliaPeru). [Fiscal de la Nación reitera su respeto a la libertad de prensa y valores democráticos](#). July 10, 2018.

<sup>1153</sup> IACHR, 169 Period of Sessions, Hearing on: [Crisis de corrupción judicial en Perú y su impacto sobre los derechos humanos y a la libertad de expresión](#). October 1, 2018.

<sup>1154</sup> IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018.

<sup>1155</sup> Ministerio de Justicia y Derechos Humanos. [Proyecto de Ley que crea el Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales](#). August 28, 2018.

887. Regarding the National Authority for Transparency, Access to Public Information, and Protection of Personal Data, in accordance with the bill, it would be integrated by a Board of Directors, a General Secretariat, and the Court of Transparency, Access to Public Information, and Government Transparency. The Board of Directors would be composed of three members and would be the highest body of the institution. The president of the Board of Directors would be elected by public tender and for the other two members, one would be appointed by the president of the Council of Ministers and the other one by the representatives of civil society organizations that make up the High-Level Anticorruption Commission [*Comisión de Alto Nivel Anticorrupción*], created by Law No. 29.976.

888. On October 11, the Office of the Special Rapporteur sent the State of Peru a request for information on the aforementioned bill, in accordance with the powers established in Article 41 of the American Convention on Human Rights. In the letter, the Office of the Special Rapporteur informed the State that it considers essential the creation of an independent and specialized oversight body with the power to promote the implementation of laws on access to public information, and also review the denials of public institutions with the purpose of taking decisive decisions. The Office of the Special Rapporteur noted that the legislative initiative is a step forward in complying with international obligations to protect the right of access to public information, but at the same time reminded the State that technical, functional, and administrative independence, including the budgetary dimension, is important to guarantee the autonomy and institutional independence of the enforcement authority. In this regard, the Office of the Special Rapporteur asked the State for information on where the bill is lodged at, on the legal opinions of the review committees, and on the budgetary aspects for the effective implementation of the aforementioned project, in case it is approved by congress<sup>1156</sup>.

889. Through a note dated November 5, the State replied that the project was still being drafted by the Executive. Regarding the budgetary aspects, it responded that "it is understood that there would not be a final decision on this matter yet and that the Ministry of Justice and Human Rights would be evaluating budget alternatives to finalize its financing"<sup>1157</sup>.

### **G. Concentration of the Media**

890. In April, the El Comercio Group reported to the Stock Market Superintendency [*Superintendencia del Mercado de Valores*] (SMV) the acquisition of 100% of the shares of the company Prensart (formerly Epensa), of which it owned 54%. In 2013, El Comercio acquired the shares of Epensa and Alfa Beta Sistemas, with which it would have dominated 78% of the newspaper sales market<sup>1158</sup>. The Association of Journalists of Peru [*Colegio de Periodistas del Perú*] (CPP), through a public statement, questioned the commercial operation because it deepens the concentration of journalistic media in Peru, and recalled that a writ of amparo filed in court is still pending resolution against the acquisition made in 2013<sup>1159</sup>.

### **H. Government Advertising**

891. On June 18, the Congress of the Republic of Peru published in the official gazette the text of Law 30.793 that regulates spending on official advertising in the State. In essence, it states: "Article 1. Advertising only in state media. From the entry into force of this law, all public entities, including private law and those under special regimes, as well as state companies, local governments, and regional governments may advertise their management tasks only in the state media at a cost rate"; "Article 2. Free broadcasting in digital network. Said public entities must also open accounts in the main applications of social networks, especially those that have greater broadcasting and number of users and place in them their communications, notices, and other issues of social broadcasting"; "Article 3. Prohibition. All advertising in private media is prohibited, under liability. Journalistic work such as reports, interviews, press conferences, and the like are not considered as such, which can be freely carried out without any payment to the media. The breach of this

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<sup>1156</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Ref: Request for information on the bill that creates the "Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales". October 11, 2018.

<sup>1157</sup> República de Perú. Permanent Mission of Peru to the OAS. Note N° 7-5-M /204 to the Office of the Special Rapporteur for Freedom of Expression. November 25, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1158</sup> La República. April 7, 2018. [El Comercio da un paso más en la concentración de medios impresos](#); Observacom. April 13, 2018. [Se consolida la concentración en la prensa de Perú: El Comercio completa compra de acciones de ex EPENSA](#).

<sup>1159</sup> Colegio de Periodistas del Perú. April 16, 2018. [Concentración de medios afecta libertad de expresión y pluralidad de información](#).

rule will be considered a crime of embezzlement"; "Article 4. Exceptions. Excluded from the prohibition are cases of disasters or national emergencies declared by the decree of urgency, electoral education campaigns by the electoral entities once the elections have been convened"<sup>1160</sup>.

892. Prior to the enactment of the law, on January 23, the Office of the Special Rapporteur forwarded a communication to the State, based on Article 41 of the American Convention on Human Rights, in which it requested information on the grounds of the bill and its compatibility with international standards of freedom of expression, and on the criteria and regulatory frameworks for the allocation of government advertising in Peru. Also, in the letter the Office of the Special Rapporteur expressed its concern about the content of the then draft law that had as an objective "to optimize the use of public resources and avoid the use of advertising for electoral or political parties' purposes." At that time, the parties represented in Congress who promoted the project based the initiative on the fact that "many (public) entities allocate huge resources to commercial media which have extremely high rates and only affordable to large business entities." They also indicated that the "discretion" of public bodies to allocate government advertising "is very broad both in the amounts and the media."

893. In addition, the Office of the Special Rapporteur took note of the position of various civil society organizations and the media that expressed concern about the scope of the bill, which they considered discriminatory and in violation of inter-American standards on the right to freedom of expression<sup>1161</sup>.

894. On March 9, the Government of Peru responded by note that the Executive Branch did not identify with the proposed bill, as it violates the Constitution<sup>1162</sup>. Despite this position, the bill passed its course in Congress and was finally approved. Faced with the entry into force of the legislation, civil society organizations such as the National Radio and Television Society [*Sociedad Nacional de Radio y Televisión*], the Peruvian Press Council [*Consejo de la Prensa Peruana*], and the Press and Society Institute [*Instituto Prensa y Sociedad*] (IPYS), as well as various media outlets publicly announced their opposition to the law and warned about the negative impact that its implementation would have on the viability of the media, the discriminatory exclusion of private media from the allocation of government advertising, and the impact on the population's right to information.

895. On August 9, the Permanent Representation of Peru before the OAS asked the Office of the Special Rapporteur for a technical note on the "Law Governing the Advertising Expenditure of the Peruvian State." On August 14, the Office of the Special Rapporteur sent the State a technical note that contains the analysis of Law 30.793 in light of the inter-American standards on freedom of expression. In order to support the efforts of the State to adequately regulate the matters covered by the bill of reference, the Office of the Special Rapporteur requested that the analysis of the law be sent to the Constitutional Court authorities. In the note, the Office of the Special Rapporteur analyzed that the law would be "excessively costly or disproportionate for the exercise of freedom of expression, in its double dimension." In that sense, the law would affect, on the one hand, "the sustainability of the private sector, with the consequent risk of closing a number of media outlets, which in our region depend largely on access to government financing, which will have an impact on the information sources available to the public". On the other hand, "direct advertising only through state media and social networks will limit and restrict the right of the public to obtain such information through the broadest circulation. Advertising on state media per se does not guarantee access to plural information or reach the entire public." The Office of the Special Rapporteur stated that "the exclusion of an entire sector from the allocation of government advertising is a disproportionate and unnecessary measure to achieve the legitimate goal sought: to eliminate discretionality and arbitrariness in the distribution of government advertising", and in that sense it recommended that "in order to face this problem, it is the State's responsibility to guarantee that all sectors can compete in equal conditions in the allocation of these resources, through clear, objective, prior, and transparent rules that prevent arbitrariness based on the editorial or informative line of the media."

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<sup>1160</sup> Congreso de la República. [Ley No 30.793 que regula el gasto de publicidad del estado peruano](#). June 18, 2018.

<sup>1161</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. January 23, 2018. Letter to the State of Peru: Proyecto de Ley para la regulación de la publicidad Estatal Solicitud de información conforme al artículo 41 de la CADH. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1162</sup> República de Perú. Permanent Mission of Peru to the OAS. Note N° 7-5-M /204. November 5, 2018. Received on November 5, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

896. The Office of the Special Rapporteur also indicated that the law was approved in a context characterized by investigations of corruption in the political system, which are being developed and disseminated by several of the affected media, where congresspersons and prosecutors have even requested the removal of journalistic sources<sup>1163</sup>.

897. In October, the Constitutional Court of Arequipa declared the aforementioned law inapplicable for the Caja de Ahorro y Crédito of Arequipa, within the framework of a writ of amparo against the rule promoted by the credit institution<sup>1164</sup>.

898. On October 11, the Constitutional Court accepted a lawsuit filed by the Executive Branch and a section of Congress and declared Law 30.793 to be unconstitutional<sup>1165</sup>. The ruling, were the technical note sent by the Office of the Special Rapporteur is mentioned, determined that the law violates the right to freedom of information, criminal legality, freedom of contract for lawful purposes, and constitutional regulation of emergency decrees.

899. The Court held that although the arbitrariness in spending on public advertising could be reduced through the challenged law, since public resources would no longer be allocated to private media, "the drawbacks generated by the excessive use of public spending on advertising" can be combated with "less burdensome measures for freedom of information", without needing "to resort to absolute prohibition and criminalization". Indeed, "it is possible to face this scourge with control measures and with the introduction of limits on financing," the Court said. In this sense, the judgment concluded that the challenged law did not pass the proportionality test and therefore declared its articles 1 and 3 unconstitutional. Likewise, it considered that engaging in advertisement with the State cannot be considered unlawful, since such action is necessary to protect other fundamental rights, for which it ruled that Article 3 of the challenged law "constitutes an unjustified limitation to the right to freedom of contract". "The State contracts advertising not because it is an end in itself, but because it is a necessary means to satisfy the right to freedom of information and comply with its constitutional duties," said the Court. It added that it is also appropriate to declare the unconstitutionality of article 3 because, by criminalizing the allocation of government advertising in private media, it implies a criminal sanction, "which must be the last ratio of the intervention of the state force, to suppress an act (...) necessary to guarantee the fundamental rights of the population". On the other hand, the Court rejected that the law violates freedom of expression, because "if one starts from the premise that there is no fundamental right to obtain financing from the State, it could not be said that the decision not to grant supposes a censorship mechanism"<sup>1166</sup>.

## I. Social Protest

900. On December 27, 2017, a group of students from the Universidad Tecnológica de los Andes, located in the community of Abancay, who took the seat of the university in protest of the temporary closure of the institution, would have been evicted with tear gas. At least 40 students would have been arrested and released hours later<sup>1167</sup>.

901. At least three demonstrations held on February 23 and 26, as well as on March 15, in the city of Lima, would have been repressed by police officers using tear gas. The demonstrations, in which mainly students participated, were held in rejection of a bill that is being discussed in Congress on reforms to the law on labor training<sup>1168</sup>.

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<sup>1163</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. REF.: Technical note in relation to Law 30.793 that regulates spending on official advertising. August 14, 2018.

<sup>1164</sup> La República. October 2, 2018. [Juzgado declara fundada medida cautelar contra la Ley Mulder](#); El Comercio. October 3, 2018. [Juzgado de Arequipa declara inaplicable ley de publicidad estatal](#).

<sup>1165</sup> Tribunal Constitucional. [Sentencia. Expedientes 00 18-131/TC y 0013-2018-PFTC \(Acumulados\)](#). October 11, 2011.

<sup>1166</sup> TV Noticias. October 11, 2018. [TC declara inconstitucional ley de publicidad estatal](#); Ipys. October 11, 2018. [TC declara inconstitucional 'Ley Mulder'](#).

<sup>1167</sup> La República. December 29, 2017. [Procesan a 42 estudiantes de UTEA por causar disturbios](#). Diario Correo. December 28, 2017. [Policía desaloja a universitarios que tomaron local en Abancay](#). El Comercio. December 27, 2017. [Abancay: detienen a alumnos atrincherados en local universitario](#).

<sup>1168</sup> Publímetro. February 21, 2018. [Rosa Bartra defiende ley de modalidades formativas laborales](#). Noticias de América Latina y el Caribe. February 24, 2018. [Represión en Perú tras manifestaciones en contra de la "ley de esclavo juvenil"](#). La República. February 23, 2018. [Marcha contra la "Ley del esclavo juvenil": los incidentes durante la manifestación](#). La República. February 24, 2018. [Los estudiantes y](#)

902. On March 23, a team of journalists from *Canal N* would have been assaulted by demonstrators of the march "Que se vayan todos", which took place in Lima in protest of the country's political situation<sup>1169</sup>. On April 21, photographers reported being attacked by the National Police of Peru [*Policía Nacional del Perú*] (PNP) during their coverage of World Marijuana Day, held at the Plaza San Martín in Lima<sup>1170</sup>.

903. The National Association of Journalists of Peru [*Asociación Nacional de Periodistas del Perú*] (ANP) sent a letter to Interior Minister, Mauro Medina, in September to express its deep concern over the repeated physical attacks that photojournalists are victims of during their information coverage. The ANP mentioned as a recent example the shot wound suffered by photojournalist César Zamalloa, of the magazine *Caretas*, on July 27 during a citizen mobilization, and maintained that it is not an "isolated incident". "Journalists in 2017 and this year have been frequent targets of the use of the repressive force of police officers during coverage of demonstrations or social protest, apparently, with the intention of avoiding their informative work," said the journalistic union. Because of this, it raised the "immediate need to prepare an action protocol for the National Police of Peru regarding the work of men and women in the press during the coverage of these events and situations that put them at risk"<sup>1171</sup>.

904. According to the preliminary conclusions of the international investigation mission carried out in Peru by the Observatory for the Protection of Human Rights Defenders [*Observatorio para la Protección de los Defensores de Derechos Humanos*] (OBS) of the World Organization Against Torture, from June 4 to 9, criminalization, stigmatization, and a punitive and repressive framework against social protest and against the defense of human rights, affects many defenders, including journalists<sup>1172</sup>.

905. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"<sup>1173</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>1174</sup>

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

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[el Gobierno rechazan la ley del esclavo juvenil](#). TeleSur. February 23, 2018. [Reprimen marcha en Perú contra "ley del esclavo juvenil"](#). La República. February 24, 2018. [Marcha contra la "Ley del esclavo juvenil": los incidentes durante la manifestación \[FOTOS\] \[VIDEOS\]](#). Perú 21. February 27, 2018. [Policía dispersó a manifestantes en contra de la Ley de Empleo Juvenil \[VIDEO\]](#). Nodal. February 24, 2018. [Represión en Perú tras manifestaciones en contra de la "ley del esclavo juvenil"](#). Diario Norte. February 27, 2018. [Perú: enorme manifestación estudiantil contra nueva norma de Prácticas Laborales](#). RT.com. March 16, 2018. [Perú: Jóvenes toman las calles por cuarta vez contra la "ley de esclavitud juvenil"](#). Congreso de la República. June 21, 2018. [Congreso en cifras, Pleno del Congreso y Comisión Permanente](#) (page 18).

<sup>1169</sup> Ipps. March 22, 2018. [Lima: Manifestantes agreden a equipo de Canal N en marcha "Que se vayan todos"](#); EFE. March 22, 2018. [Agreden a reporteros en una marcha contra el fujimorismo y los políticos en Lima](#).

<sup>1170</sup> Ipps. April 21, 2018. [Lima: Fotógrafos denuncian represión policial durante cobertura del Día Mundial de la Marihuana](#).

<sup>1171</sup> Asociación Nacional de Periodistas del Perú. No date. [ANP advierte a sector Interior reiteradas agresiones a fotoperiodistas](#); IFEX. September 11, 2018. [ANP advierte al gobierno sobre reiteradas agresiones a fotoperiodistas](#); Ipps. September 17, 2018. [Fotoperiodistas en riesgo: ANP recomienda creación de protocolo para PNP](#).

<sup>1172</sup> World Organisation Against Torture. [Peru: Human rights defenders stigmatised, criminalised and repressed](#). June 26, 2018.

<sup>1173</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>1174</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.

exception, used under strictly necessary circumstances consistent with internationally recognized principles."<sup>1175</sup>

#### **J. Other relevant situations**

907. On November 5, the First Mixed Court of the district of Wanchaq, by Resolution No. 76 of Judge Yanet Ofelia Paredes Salas, accepted the writ of amparo filed by four citizens against the television programs of the character "La Paisana Jacinta", on the understanding that it violates the right to human dignity, equality, non-discrimination, and cultural ethnic identity, by representing an Andean indigenous woman as a "vulgar", "dirty", and "of poor intellectual capacity", which would generate "a stereotype that only causes, promotes, and reinforces discrimination based on ethnic and cultural origin". The decision ordered the Compañía Latinoamérica de Radiodifusión, *Frecuencia Latina*, not to broadcast again the "La Paisana Jacinta" and "Circo de la Paisana Jacinta" programs on open and cable channels; and to remove all videos containing the television program from their YouTube channel and other virtual platforms<sup>1176</sup>.

908. On October 12, six members of the Fuerza Popular party sent a letter to the Culture Minister, Patricia Balbuena, requesting that the journalist of the state TV channel *TV Perú* be sanctioned for having shared a 'meme' that made a humorous reference to the legal situation of the party leader, Keiko Fujimori<sup>1177</sup>.

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<sup>1175</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>1176</sup> Poder Judicial del Perú. Primer Juzgado Mixto del distrito de Wanchaq. [Resolución N° 76](#). November 5, 2018. La República. November 28, 2018. [La Paisana Jacinta: Poder Judicial ordena a Latina no volver a emitir programa](#); Chirapaq. May 1, 2018. [La Paisana Jacinta vuelve a ser cuestionada en la ONU](#); Ipys. December 5, 2018. [PERÚ: el IPYS rechaza arbitrario control de contenidos por parte del poder judicial](#).

<sup>1177</sup> Ipys. October 17, 2018. [Perú: congresistas piden amonestar a periodista por comentario en Facebook](#); Altavoz. October 18, 2018. [Alejandra Aramayo exige sanción a periodista que compartió meme sobre Keiko Fujimori](#).

## 28. DOMINICAN REPUBLIC

909. In 2018, the Office of the Special Rapporteur received information on judicial decisions that held journalists accountable under a normative framework incompatible with inter-American standards. In addition, this Office is concerned about legislative initiatives that could represent setbacks to the right to freedom of expression. The Office of the Special Rapporteur was also informed of harassment, threats, and attacks against journalists and the media that would be linked to the exercise of journalism. On the other hand, the National Commission of Public Shows and Radio [*Comisión Nacional de Espectáculos Públicos y Radiofonía*] would have issued a series of resolutions that imposed prior censorship and sanctions against journalists and artists under alleged infractions of "morals" and "good manners." Despite progress in transparency and e-government policies, a large group of public institutions would continue to fail to comply with the obligations arising from the law on access to public information.

### A. Progress

910. On April 10, the Collegiate Court of the Judicial Department of San Pedro de Macorís sentenced Matías Avelino Castro to 20 years in prison, for ordering the kidnapping and murder of journalist José Agustín Silvestre Maldonado in August 2011<sup>1178</sup>. Castro was previously extradited from Colombia in January 2017<sup>1179</sup>. The murdered journalist was director of the magazine *La Voz de la Verdad* and, in addition, he held the position of presenter of a program on *Caña TV* station. He was dedicated to practicing critical journalism and research; because of this, he faced judicial accusations and threats against his life<sup>1180</sup>.

911. In 2018, various activities were organized - by civil society, unions and state entities - with the aim of discussing and training on the situation of freedom of expression in the Dominican Republic<sup>1181</sup>. For example, on July 3, the House of Representatives held a "Discussion on Freedom of Expression", with the purpose of analyzing the exercise of this right, its threats and challenges in the current context, as well as its promotion and defense. In the framework of the event, it was concluded on the need to carry out reforms to the regulations in force in the country, among them, the Law on Expression and Dissemination of Thought<sup>1182</sup>.

912. According to the information available, on February 16 the Dominican government inaugurated 65 new public services online, provided by nine government institutions, through which citizens and companies will have access to procedures and information in the field of public administration. These services are framed in the electronic government policies and will be provided through a data processing center inaugurated as part of the "Digital Republic" portal<sup>1183</sup>.

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<sup>1178</sup> Diario Libre. April 11, 2018. [El caso de Avelino Castro desde su captura hasta su condena de 20 años](#); El Día. April 10, 2018. [Tribunal condena a 20 años de prisión Matías Avelino Castro por asesinato del periodista José Silvestre](#).

<sup>1179</sup> República Dominicana. Procuraduría General de la República. [Procuraduría informa extradición de Matías Avelino Castro](#). January 31, 2017.

<sup>1180</sup> 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. 486.

<sup>1181</sup> Comisión Nacional Dominicana para la UNESCO. [Seminario La libertad de expresión en la era digital. Internet, redes sociales, poder y Estado](#); El Nacional. February 23, 2018. [Analistas plantean retos libertad de expresión en la era digital](#); Diario Digital RD. July 24, 2018. [Experta dice legislación sobre libertad de expresión de RD es deficiente y arcaica](#); Diario Libre. June 22, 2018. [Adriano Miguel Tejada defiende el derecho de los medios al acceso a las fuentes](#); UNI. September 3, 2018. [El Centro Montalvo llama a preservar la libertad de prensa en República Dominicana](#); Informativo Teleatillas. September 2, 2018. [El Centro Juan Montalvo Llama A Preservar La Libertad De Prensa](#); Escuela de Formación Electoral y del Estado Civil. August 7, 2018. [Inicia diplomado en Acceso a la Información Pública y Servicio al Ciudadano](#); República Dominicana. Superintendencia de Vigilancia y Seguridad Privada. No date. [Charla sobre Ley General de Libre Acceso a la Información Pública No. 200-04](#); República Dominicana. Tribunal Constitucional. August 18, 2018. [Tribunal Constitucional ofrece conversatorio para comunicadores en El Seibo](#).

<sup>1182</sup> El Nuevo Diario. July 3, 2018. [Recomiendan legislación adecuada para ejercicio de expresión del pensamiento en RD](#). Observacom. July 13, 2018. [República Dominicana: Expertos recomiendan reformar la Ley sobre Libertad de Expresión para adecuarla a estándares internacionales](#); El Día. July 4, 2018. [Expertos recomiendan legislación adecuada para libertad de expresión](#).

<sup>1183</sup> República Dominicana. Presidencia. No date. Available at: <https://presidencia.gob.do/plan-de-gobierno/republica-digital>; República Dominicana. OPTIC. February 16, 2018. [Danilo Medina inaugura y pone en operación Datacenter del Estado](#); Diario Libre. February 15, 2018. [Danilo Medina inaugura un moderno datacenter](#).

## B. Attacks, Threats, and Intimidation of Journalists and the Media

913. Throughout 2018, the Office of the Special Rapporteur received information on threats and intimidation against communicators and journalists<sup>1184</sup>. Among the most serious cases reported to this Office is the attack suffered by journalist Deyanira López, of *CDN Canal 37*, on May 3, at the Justice Palace of the city of Santiago de los Caballeros, in the province of Santiago. Lopez was reportedly physically assaulted by family members of a defendant during the coverage of a court hearing and would have had to go to a medical center for the injuries suffered. Three people were reportedly arrested after the incident<sup>1185</sup>. On May 7, dozens of journalists reportedly held a demonstration in front of the Justice Palace in rejection of the aggression suffered by the journalist and in demand for greater security to perform their duties<sup>1186</sup>. On January 12, journalist Albania Flores, of *Telemicro*, would have been threatened and assaulted by family members of a businessman investigated for corruption<sup>1187</sup>. On April 2, journalist Alicia Ortega, host of the show "El Informe", of the *Noticias SIN* channel, reported the existence of threats against her due to the publication of a report related to the trial of Matías Avelino Castro - later convicted - for the murder of journalist José Agustín Silvestre Maldonado. The Office of the Attorney General reported the opening of an investigation based on the complaint<sup>1188</sup>.

914. On the other hand, the Association of Photojournalists [*Asociación de Fotoperiodistas*] of the Dominican Republic denounced the existence of a "wave of theft" of several journalists' work tools<sup>1189</sup>.

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

## C. Subsequent liability

916. In April, the First Instance Court of the Judicial District of Bahoruco province sentenced journalist Otoniel de León, director of the "Voz del Pueblo" program of the radio station *Sur Visión*, for the crimes of insult and defamation against the senator of the Dominican Liberation Party [*Partido de la Liberación Dominicana*], Manuel Antonio Paula and his wife Mercedes Mella. The Court would have found De León, who is also a leader of the Green March Movement [*Movimiento Marcha Verde*], responsible for violating articles 29, 33, and 35 of Law 6132-62 on the expression and dissemination of thought, by attributing, through a media, to the legislator and his wife the commission of intentional acts that allegedly could not be proved in court, and the court would have sentenced journalist to the payment of a fine and an indemnification of 1

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<sup>1184</sup> International Federation of Journalists (IFJ). January 19, 2018. [República Dominicana: agresiones y amenazas a una periodista](#); La Voz del SNTF. January 31, 2018. [SNTF Condenó agresión contra fotógrafo Juan Valenzuela de el Caribe](#); Hoy Digital. March 24, 2018. [Agreden a pedradas residencia de periodista en Nagua](#); El Nuevo Diario. March 25, 2018. [Condenan agresión contra residencia de periodista en Nagua](#); Hoy Digital. March 28, 2018. [Agreden a pedradas vehículo de periodista que iba con sus tres hijas](#); El Nuevo Diario. March 29, 2018. [Seccional del Distrito condena atentado contra el periodista Logan Jiménez en Boca Chica](#); Listin Diario. September 5, 2018. [KQ 94.5 condena atentado contra estación radial](#); Diario Libre. September 5, 2018. [VIDEO: Emisora KQ 94.5 califica tiroteo como "un atentado contra la libre expresión"](#); Voz Dominicana. No date. [Quieren asesinar a Marino Zapete : "Mi vida está en peligro, me quieren matar"](#); denuncia Marino Zapete; November 19, 2018. ["Mi vida está en peligro, me quieren matar", denuncia Marino Zapete](#).

<sup>1185</sup> Hoy Digital. May 4, 2018. [Video y fotos: Periodista dominicana explica cómo recibió trompadas, bofetadas y arañazos mientras realizaba su trabajo](#); Al Momento. May 4, 2018. [SANTIAGO: Detienen tres personas agredieron a una periodista de CDN](#); Hoy Digital. May 9, 2018. [Video: Mujer que golpeó periodista en Palacio de Justicia pide disculpas](#); Listin Diario. June 7, 2018. [Periodistas dan apoyo a colegas ante agresiones](#); 7 Días. May 3, 2018. [CDN condena agresión contra periodista Deyanira López](#);

<sup>1186</sup> Colegio Dominicano de Periodistas. May 7, 2018. [Gremios de la Comunicación montan piquete frente al Palacio Justicia de Santiago](#); Diario Libre. May 7, 2018. [Periodistas montan piquete frente al Palacio Justicia de Santiago](#).

<sup>1187</sup> International Federation of Journalists (IFJ). January 19, 2018. [República Dominicana: agresiones y amenazas a una periodista](#); Listin Diario. January 15, 2018. [Conocen querrela de periodista contra familiares de Ángel Rondón por agresión](#).

<sup>1188</sup> República Dominicana. Procuraduría General de la República. April 3, 2018. [Procurador recibe a la periodista Alicia Ortega para tratar su denuncia de amenazas desde cárcel La Victoria](#).

<sup>1189</sup> El Día. June 17, 2018. [Ola de robos afecta fotoperiodistas; reclaman ayuda de la Policía](#); El Caribe. June 19, 2018. [Fotoperiodistas piden aclarar robo de equipos](#).

million Dominican pesos (approximately US \$ 19,800), that would be destined to a charitable organization<sup>1190</sup>.

917. On April 20, the Eighth Criminal Chamber of the Court of First Instance of the National District sentenced journalist Julio Martínez Pozo to two months of suspended prison and to the payment of a 2 million Dominican pesos (approximately US \$ 39,600) compensation for the crime of insult, in the context of a lawsuit filed by Ricardo Ripoll, activist of the Somos Pueblo movement, after the communicator stated that he had a police record of drug use and trafficking. Judge Giselle Naranjo would have understood that although the information was true and had an informative nature, which would not have configured the defamation, the journalist would have used insulting terms against the activist<sup>1191</sup>.

918. On November 20, the Second Criminal Chamber of the Supreme Court of Justice revoked a second instance judgment and sentenced journalist Marcos Martínez to two years of suspended prison and the compensation payment of 1 million Dominican pesos (approximately US \$ 19,800) for the use of false public documents to the detriment of the Vice President of the Republic, Margarita Cedeño de Fernández. According to the ruling, the journalist allegedly showed on television false checks and bank reports that would show that the Vice President had money in the Danske Bank of Denmark<sup>1192</sup>.

919. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information." Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.<sup>1193</sup>

920. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,<sup>1194</sup> because "they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power."<sup>1195</sup> In this regard, the Inter-American Commission stated that "[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy."<sup>1196</sup> Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, "[t]he protection to reputation

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<sup>1190</sup> CDN. April 14, 2018. [Periodista que criticó a senador PLD tendrá que pagar un millón de pesos](#); Listín Diario. April 15, 2018. [Tribunal condena a comunicador por cometer difamación e injuria](#); El Caribe. April 15, 2018. [Condenan director de programa al pago RD\\$1 MM por difamar senador de Bahoruco y su esposa](#).

<sup>1191</sup> Twitter account of Julio Martínez Pozo (@MartínezPozo). [April 20, 2018](#) and [April 20, 2018](#); Diario Libre. April 20, 2018. [Condenan a periodista Julio Martínez Pozo por injuria contra Ricardo Ripoll](#); Hoy Digital. April 21, 2018. [Condenan a periodista Julio Martínez Pozo por injuria](#).

<sup>1192</sup> El Caribe. November 20, 2018. [SCJ dicta 2 años de cárcel a comunicador Marcos Martínez en caso Margarita Cedeño](#); Sentido Común; Listín Diario. November 20, 2018. [Suprema anula descargo a Marcos Martínez y lo condena a dos años de prisión suspendida](#).

<sup>1193</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>1194</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of August 31, 2004. Serie C No. 111. Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151. Para. 87.

<sup>1195</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 Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111. Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125-129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151. Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193. Para. 115.

<sup>1196</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9. rev. February 17, 1995.

should only be guaranteed through civil sanctions in those cases which the person offended is a public official." That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

921. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as "the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a 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>1197</sup>

#### D. Legal Reform

922. According to the information available, on April 5 the Dominican Journalists Association [*Colegio Dominicano de Periodistas*] (CDP) presented a bill to the Dominican legislative body with the purpose of modifying Law 10-91 -which creates the CDP-. As published by the union, the project "[i]ncorporates new chapters concerning the independence of journalist, confidentiality of the source, free access to information, the right to identify their works, their faithful reproduction, and the rights of reply and response". Likewise, "[i]t includes a chapter on freedom of expression and the right to information, with the understanding that they are fundamental, inalienable, and inherent rights of every person"<sup>1198</sup>.

923. According to the information available, on May 3, as part of the World Press Freedom Day, the general secretary of the National Union of Press Workers [*Sindicato Nacional de Trabajadores de Prensa*] (SNTP) expressed concern about the presentation of a bill "which aims to privatize the term journalist and define who is or is not a journalist in exercise, contrary to all international standards"<sup>1199</sup>.

924. According to the information available from the Senate<sup>1200</sup>, the aforementioned bill has as its "object to regulate the association of journalists of the Dominican Republic, as well as the exercise of journalism and establish all the general guidelines, rights, and duties of journalists." Article 8 of the project mentions that "when employing a person to carry out the activities of a journalist, they should only accept graduates of a degree in journalism or social communication from the recognized university-level journalism or social communication schools in the country." Article 11 defines journalists as "graduates of a degree in journalism or social communication" and article 12 mentions that "it is essential to hold a degree in social communication or journalism from a national university, or to legally revalidate in the country the university-level degree issued abroad." Paragraph III of article 54 mentions that "journalists will be obligated to reveal the identity of the source when, as a result of this, the true commission of an offense against life, integrity, health, liberty, or the sexual freedom of people can be avoided." Article 59 provides that media executives "may not adulterate or falsify objective facts of the information nor force journalists to perform adulterations or falsifications." Finally, from article 63 to 65, it contains fines of "10 to 20 national minimum salaries for those who practice journalism illegally, whether posing as a journalist or announcing themselves as such, and for any foreigner who exercises journalism without authorization"; "From 50 to 200 national minimum wages for media that illegally employ people to exercise the role of a journalist"; and, from 5 to 10 minimum wages for using "a press badge in vehicles that are not owned by the media, press agencies, and public relations offices duly identified, or the unduly use of the journalist's badge"<sup>1201</sup>.

925. The Office of the Special Rapporteur recalls that the Inter-American Court has established that the compulsory membership in an association prescribed by law for the practice of journalism, insofar as it

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<sup>1197</sup> I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

<sup>1198</sup> Colegio Dominicano de Periodistas. April 5, 2018. [Colegio de Periodistas somete proyecto modifica Ley 10-91](#); Últimas Noticias. August 25, 2018. [Dirigente CDP dice periodistas tienen la última oportunidad para tener el colegio anhelado](#).

<sup>1199</sup> La Voz del SNTP. May 3, 2018. [SNTP considera frágil libertad de prensa en República Dominicana](#).

<sup>1200</sup> República Dominicana. Cámara de Senadores. Sistema de Información Legislativa. [00673-2018 Proyecto de ley](#). No date

<sup>1201</sup> República Dominicana. Cámara de Senadores. Sistema de Información Legislativa. [00673-2018 Proyecto de ley](#). No date

prevents any person from accessing the full use of the media as a vehicle to express themselves or to transmit information, is incompatible with the article 13 of the American Convention on Human Rights<sup>1202</sup>.

926. In addition, the Office of the Special Rapporteur recalls that, in accordance with principle 2 of the Declaration of Principle of the IACHR, "[e]very person has the right to seek, receive, and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights". Principle 6 mentions that "[c]ompulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression" and adds that "[j]ournalistic activities must be guided by ethical conduct, which should in no case be imposed by the State".

927. In accordance with Principle 7 of the Declaration of Principles, "[p]rior conditioning of expressions, such as truthfulness, timeliness, or impartiality is incompatible with the right to freedom of expression recognized in international instruments."

928. On the other hand, the Office of the Special Rapporteur also learned of a bill on media and freedom of expression that would be pending before the House of Representatives<sup>1203</sup>. The initiative would aim to regulate the right to freedom of expression and at the same time guarantee the protection of privacy, honor, and good name of individuals. In this context, it states "professional journalists" are considered to be those who have graduated from university-level journalism or social communication schools and whose main occupation is the search and dissemination of information in the media. In turn, it bans prior censorship and indirect restrictions and establishes the right to source confidentiality. It defines sanctions of imprisonment and fines for cases of insult and defamation, although it exempts from responsibility those who publish information of public interest linked to public officials. It establishes on the other hand the obligation of media directors to give information about the identity of the authors who publish without a signature or under pseudonyms when they have committed "defamation or insult," and regulates the right of rectification and response. As reported, another similar project would be pending in the Senate<sup>1204</sup>.

929. The Office of the Special Rapporteur urges the State to adopt the necessary measures to harmonize the legislative projects mentioned in accordance with the standards of the Inter-American Human Rights System.

930. On the other hand, according to the information received by the Office of the Special Rapporteur, on August 13, Law 33-18 on Political Parties, Groups and Movements, was enacted [*Ley 33-18 de Partidos, Agrupaciones y Movimientos Políticos*]<sup>1205</sup>. Article 44 forbids, during the pre-campaign period, among other things, "all political propaganda that is based on, refers to, or can be perceived in a negative way, disrespectful, or contrary to the principles, customs, and cultural values of the local, regional, or national community, of a religious, racial, sexual preference, or any other nature that contravenes good morals"; and states that "[t]he dissemination of negative messages through social networks that tarnish the image of candidates will be sanctioned in accordance with articles 21 and 22 of Law No. 53-07, on High-Tech Crimes and Offenses".

931. Article 80 establishes that "physical or legal persons who are not political parties, groups, and movements or members of said organizations, independently of other laws and penalties that may be applicable to them, and who commit infractions to this law, will be sanctioned with a fine of five (5) to one hundred (100) minimum wages of the public sector, in accordance with the seriousness of the case".

932. In accordance with the statement made by the Inter-American Press Association in the framework of its general assembly, "[t]he law opens the field to an infinity of cases to typify or qualify an expression about a candidate or to measure the degree of damage to his or her image, since none of these qualifiers are related to

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<sup>1202</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. Serie A No. 5. Para. 33-34.

<sup>1203</sup> República Dominicana. Cámara de Diputados. [Proyecto de ley de Expresión y Medios de Comunicación](#). September 20, 2018.

<sup>1204</sup> República Dominicana. Cámara de Senadores. November 21, 2018. [00876-2018 Proyecto de ley](#). No data.

<sup>1205</sup> República Dominicana. Presidencia. August 13, 2018. [Presidente Danilo Medina promulga Ley 33-18 de Partidos, Agrupaciones y Movimientos Políticos](#).

the veracity of the information or invade the scope of privacy. This runs the risk that any citizen who echoes the information on a social network would be liable to imprisonment for up to two years, plus fines”<sup>1206</sup>.

933. La Relatoría Especial recuerda que “[l]os procesos electorales están íntimamente vinculados a la libertad de expresión e información, ya que para que los ciudadanos puedan llevar adelante sus decisiones en el momento de votar es indispensable que cuenten con la mayor cantidad de información posible. Para esto, es crucial que los hechos, las ideas y las opiniones circulen libremente. Sin lugar a dudas, el modo más común que tienen los ciudadanos de informarse en la actualidad es a través de los medios de comunicación de masas”<sup>1207</sup>.

934. In accordance with the information received by the Office of the Special Rapporteur, other legislative initiatives would be pending study. In this sense, according to the information available, a bill that “regulates internet service companies and hate campaigns on social networks is currently under study”<sup>1208</sup>, which aims to “regulate content on social networks that incites hatred and discrimination.” In that sense, it establishes the civil, criminal, and administrative responsibility of the companies that provide Internet services, platforms, and website administrators as intermediaries of the contents. According to the initiative, search engine providers of content hosted on the Internet must remove the link to certain content hosted on third party sites, when they are manifestly illegitimate, at the request of the affected person. The initiative considers illegitimate those contents that “facilitate the commission of crimes or instigate to commit them; endanger the life or integrity of a person; make apology for genocide, racism, or other forms of discrimination or incitement to violence; disrupt or warn about ongoing judicial investigations that should remain secret; produce serious damage to the honor, privacy, or image of the people; and exhibit child pornography.”

935. In accordance with the 2017 Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, the UN, OSCE, IACHR, and ACHPR Special Rapporteurs stated that “[i]ntermediaries 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.” They also consider that “should be given to protecting individuals against liability for merely redistributing or promoting, through intermediaries, content of which they are not the author and which they have not modified.”

936. Likewise, a draft general advertising law<sup>1209</sup> that seeks to regulate the activity of the advertising industry in the country would be before congress. The initiative would have generated concern in media associations. The Dominican News Journals Society [*Sociedad Dominicana de Diarios*] would have questioned that the law would collide with other current norms and that it would be “a straitjacket of a legal nature” that would limit advertising strategies in the private sector. In turn, representatives of the media, advertising agencies, and related companies would have raised their disagreement in the Permanent Media Commission [*Comisión Permanente de Medios*] of the House of Representatives that is studying the initiative<sup>1210</sup>.

#### **E. Censorship of journalistic material / Prior censorship / Direct and indirect censorship**

937. According to available information, the National Commission of Public Shows and Radio would have banned the publication of certain types of music that, in the opinion of the state institution, violate morality

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<sup>1206</sup> Inter American Press Association (IAPA). 74th General Assembly Report. October 19 - 22, 2018. Salta, Argentina. [Dominican Republic](#). October 17, 2018.

<sup>1207</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>1208</sup> República Dominicana. Cámara de Diputados. [Proyecto de ley que regula las empresas de servicios de Internet y las campañas de odio en las redes sociales](#). September 27, 2018.

<sup>1209</sup> República Dominicana. Cámara de Diputados. [Proyecto de Ley General de Publicidad](#). March 12, 2018.

<sup>1210</sup> Diario Libre. June 14, 2018. [Medios de comunicación rechazan proyecto de Ley General de Publicidad](#); El Nuevo Diario. June 14, 2018. [Medios de comunicación rechazan de forma unánime proyecto Ley General de Publicidad](#); Inter American Press Association (IAPA). 74th General Assembly Report. October 19 - 22, 2018. Salta, Argentina. [Dominican Republic](#). October 17, 2018.

and good manners<sup>1211</sup>. Also, it would have sanctioned and suspended communicators for expressing "bad taste" comments and insults, among other infractions.

938. On May 25, the National Commission of Public Shows and Radio would have suspended broadcaster Alberto Vargas for 20 days of his radio and television appearances due to "the accusations of bad taste, inconsideration, disrespect, and unfortunate insults, besides limiting the freedom of expression of the listeners, by authoritatively and rudely silencing them." On June 19, the Commission would have suspended the radio and television presentations of the albums and videos of the artists Lápiz Consciente, El Alfa, Farruko, Jon Z, BadBunny, MikyWoodz, La Materialista, La Manta, Chimbala, and Bryant Myers, among others, for using in their songs "vulgar" language", "apology of drug trafficking", "obscene words" or show a "behavior contrary to good manners"<sup>1212</sup>. In a statement published on social networks, the Commission said that with these sanctions they aim for the media to be used for its social function of contributing to the strengthening of national integration and to improve human coexistence, and thus avoid unhealthy and disturbing influences in the harmonious development of childhood, youth, in particular and overall"<sup>1213</sup>.

939. On August 6, the National Commission of Public Shows and Radio would have sanctioned journalist John Berry and would have suspended him from making radio and television appearances for 15 days "[f]or having used the radio in an unscrupulous, irresponsible, coarse, and improper manner, when it is a means of marked general interest and that has a determining influence in the conformation of public opinion". The sanction would have occurred because the communicator, in his television program "Bajo la Lupa" of *Supercanal 33*, had repeatedly used "aggressive language and rude attitudes", such as expletives, death threats and " expressions contrary to morality and good manners"<sup>1214</sup>.

940. On May 3, as part of Word Press Freedom Day, the National Union of Press Workers (SNTP) said - through its general secretary - that "five small town television channels have closed for different reasons," among which he cited two in the town of Hato Mayor and one in Villa Altagracia<sup>1215</sup>.

941. Likewise, SFM communicators alleged that the Teleoperadora del Nordeste business group - which would own channels 8, 10, 12, and 14 - unilaterally terminated a lease agreement for the "Adelso Mieses Comenta" program, which was produced by the communicator Adelso Mieses, on Channel 8, for 17 years, because he was critical of the current mayor of the city<sup>1216</sup>.

942. On June 27, at a press conference organized by the Dominican Medical Association [*Colegio Médico Dominicano*], doctors from the Robert Reid Cabral Children's Hospital informed that the center's owner ordered the staff to refrain from declaring, divulging, or informing the media about issues of public interest such as the health problems that affect the healthcare center<sup>1217</sup>.

943. The Office of the Special Rapporteur recalls that article 13.3 of the American Convention establishes that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

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

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<sup>1211</sup> En segundos. May 11, 2018. [Espectáculos Públicos prohíbe las canciones "Ven meneate" "Limonada coco", "Me subo arriba"; entre otras](#); Ciudad RD. June 14, 2018. [9 Canciones Prohibida En Radio y Televisión Por La Comisión Nacional de Espectáculos Públicos](#).

<sup>1212</sup> Facebook account of Comisión Nacional de Espectáculos Públicos y Radiofonía (CNEPR). Available at: <https://es-la.facebook.com/CNEPR/>

<sup>1213</sup> Facebook account of Comisión Nacional de Espectáculos Públicos y Radiofonía (CNEPR). Available at: <https://es-la.facebook.com/CNEPR/>

<sup>1214</sup> Facebook account of Comisión Nacional de Espectáculos Públicos y Radiofonía (CNEPR). August 6, 2018. [Nota de prensa. Cnepr suspende por 15 días comunicador John Berry](#); Diario Libre. August 6, 2018. [Comisión Nacional de Espectáculos Públicos sanciona por 15 días a John Berry](#); Listin Diario. August 6, 2018. [Espectáculos Públicos sanciona a John Berry por "lenguaje agresivo y actitudes groseras"](#).

<sup>1215</sup> La Voz del SNTP. May 3, 2018. [SNTP considera frágil libertad de prensa en República Dominicana](#).

<sup>1216</sup> Acento. May 31, 2018. [Comunicadores de SFM califican al grupo TELENORD de peligro para la libertad de expresión](#).

<sup>1217</sup> Diario Salud. June 27, 2018. [Médicos del Robert Reid Cabral dicen les quieren quitar libertad de expresión](#).

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. Access to public information**

945. According to the official statistics of the Single Portal of Requests for Access to Public Information [*Portal Único de Solicitudes de Acceso a la Información Pública*] (SAIP)<sup>1218</sup>, until December 2018, 13,500 information requests would have been made through the portal since its entry into force in 2017. A high percentage of women would be using the portal and the most requested types of data would be statistics, services, and projects.

946. Despite progress on access to public information with the implementation of the Portal in 2017, there would be a large percentage of institutions that do not comply with the Law on Access to Public Information. According to an investigation of the Pontificia Universidad Católica Madre y Maestra, released in May, 86.37% of state ministries would not comply with Law 200-04 on Free Access to Public Information. The dependencies with the worst rating would be the Ministry of Sports and Recreation, the Ministry of Defense, and the Ministry of Higher Education, Science, and Technology<sup>1219</sup>.

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

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<sup>1218</sup> República Dominicana. [Portal Único de Solicitud de Acceso a la Información Pública](#). No date.

<sup>1219</sup> Diario Libre. May 2, 2018. [Estudio revela que el 86.37% de los ministerios estatales limita el acceso a la información](#); Hoy Digital. May 2, 2018. [Estudio revela 86:37 de los ministerios violan ley de libre acceso a la información](#); Carolina Santana Sabbagh. [Ranking de Facilidad de Acceso a la Información de los Ministerios del Estado](#). Pontificia Universidad Católica Madre y Maestra. Amigos del Hogar. Santo Domingo. 2018.

## 29. SAINT KITTS AND NEVIS

### A. Progress in access to public information

948. On May 3, the Parliament of Saint Kitts and Nevis would have enacted a law on access to public information, the Freedom of Information Act. According to official government information, the law seeks “to promote maximum disclosure of information in the public interest, to guarantee the right of everyone to access to information, to provide for effective mechanisms to secure that right.”<sup>1220</sup> According to the 2015 bill, “every person shall have the right to freedom of information, including the right to access information held by public bodies, subject to the provisions of this Act”; “a person making a request for information to a public body shall be entitled: to be informed whether or not the public body holds a record containing that information or from which that information may be derived; and if the public body does hold such a record, to have that information communicated to him or her.” In addition, it provides that the request must be answered “as soon as is reasonably possible and in any event within twenty working days of receipt of the request”; it also provides that “where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, a response must be provided within 48 hours”; the extension of the term cannot exceed forty business days<sup>1221</sup>.

949. Also, on May 4, the government would have enacted a personal data protection law which<sup>1222</sup>, according to the 2015 draft, would contain exemptions applicable to journalists who collect personal data “processed only for journalistic, literary or artistic purposes,” when “the processing is undertaken with a view to the publication by a person of the journalistic, literary or artistic material,” when “the data user reasonably believes that, taking into account the special importance of public interest in freedom of expression, the publication would be in the public interest”; and when “the data user reasonably believes that in all the circumstances, compliance with the provision in respect of which the exemption is claimed is incompatible with the journalistic, literary or artistic purposes.”<sup>1223</sup>

950. The Office of the Special Rapporteur observes that at the close of the edition of this report, the laws approved are not available for consultation on the official website of the National Assembly of St. Kitts and Nevis<sup>1224</sup>.

951. The Office of the Special Rapporteur recalls that “[t]he State has a duty to implement access laws adequately. This implies 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 implies 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>1225</sup> “Second, the State must adopt laws, policies, and practices to adequately preserve and manage information.”<sup>1226</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>1227</sup>

952. Principle 4 of the Declaration of Principles on Freedom of Expression which states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not

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<sup>1220</sup> Official Website of St. Kitts and Nevis. May 8, 2018. [Team unity government takes good governance agenda seriously with the passage of freedom of information legislation.](#)

<sup>1221</sup> St. Kitts and Nevis Information service. [Freedom of Information Bill, 2015.](#) March 26, 2015.

<sup>1222</sup> St. Kitts and Nevis Information service. [St. Kitts and Nevis' legislators pass data protection bill 2018.](#)

<sup>1223</sup> St. Kitts and Nevis Information service. [Data Protection Bill.](#) March 26, 2015.

<sup>1224</sup> The National Assembly of S. Kitts and Nevis. Available at: <http://www.parliament.gov.kn/publication/>

<sup>1225</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>1226</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>1227</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.

become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

## 30. ST. VINCENT AND THE GRENADINES

### A. Relevant situations

953. According to the information available, following a supposedly offensive statement against the wife of Finance Minister Camilo Gonsalves, who is the son of Prime Minister Ralph Gonsalves, in January Yugge Farrell would have been criminally charged with "abusive language"<sup>1228</sup>. According to the publication, although she had pleaded not guilty, by judicial order of a court in Kingstown she would have been forcibly sent to a mental health center on two occasions<sup>1229</sup>.

954. According to information of public knowledge, the court in Kingstown would have granted bail and would have a hearing scheduled for December 2018<sup>1230</sup>. The events generated a strong repercussion in diverse sectors and protests<sup>1231</sup>, as well as questioning through social networks and repudiation by feminists<sup>1232</sup>. Likewise, the questionings suggest that the Gonsalves family had abused their power to prosecute Farrell and that her due process rights were violated<sup>1233</sup>.

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<sup>1228</sup> IWitness. News. January 5, 2018. [Model charged with calling minister's wife 'dirty b\\*\\*\\*\\*'](#); St. Lucia News Online. January 8, 2018. [Model charged with calling minister's wife "dirty bitch"](#).

<sup>1229</sup> Global Voices. February 1, 2018. [After a Top Model is Sent to a Mental Hospital, Vincentians Fear Politics and Patriarchy Are in Play](#); Observer. January 23, 2018. [Ex-model who 'dissed' minister's wife sent back to mental hospital](#); IWitness News. January 9, 2018. [Model 'succumbed to mental illness' — Storm Gonsalves](#).

<sup>1230</sup> IWitness News. January 29, 2018. [Former model Yugge Farrell granted bail](#); Loop. January 29, 2018. [Vincentian ex-model Yugge Farrell 'relieved' to be granted bail](#).

<sup>1231</sup> Dominica News Online. February 1, 2018. [Gonsalves' faces no-confidence motion, opposition walks out in protest to alleged victimization](#); Global Voices. February 1, 2018. [After a Top Model is Sent to a Mental Hospital, Vincentians Fear Politics and Patriarchy Are in Play](#); Nation News. February 23, 2018. [Gonsalves interrupted by protesters during Cave Hill lecture](#).

<sup>1232</sup> We Change. April 14, 2018. [WE stands with Yugge Farrell](#); Feminist Conversations on Caribbean Life. No date. [Solidarity with Yugge Farrell: Regional Statement](#); Stabroek News. February 5, 2018. [Justice for Yugge Farrell of St. Vincent and the Grenadines](#); Loop. January 30, 2018. [Yugge Farrell case has Barbadian activist 'disappointed'](#); Global Voices. February 1, 2018. [After a Top Model is Sent to a Mental Hospital, Vincentians Fear Politics and Patriarchy Are in Play](#).

<sup>1233</sup> Barbados Underground. January 29, 2018. [The Yugge Farrell story and the RH abuse of political power and the asylum!](#); Caribbean Life. February 14, 2018. [Abuse of state machinery in former top model case](#); Caribbean News Now. February 5, 2018. [Commentary: St Vincent and the Grenadines: Justice compromised – the Yugge Farrell saga](#); IWitness News. January 8, 2018. [Accused model in video 'rant off' from psychiatric hospital](#).

## 31. ST. LUCIA

### A. Stigmatizing statements

955. According to the information published by the Association of Caribbean Media Workers (ACM), on March 30 the aforementioned organization expressed its concern over a statement that would have been expressed by the Minister of Tourism, Information, and Broadcasting, Dominica Fedee, about the intentions of his administration to "impose" additional regulations on private media. The minister would have presented this position in a parliament session on March 21, where also he would have described the panorama of the media as "in a state of chaos" and that, consequently, he would request "additional legislation". Also, when referring to the broadcasting organizations, he would have accused them of producing false, "indecent", and "profane" content<sup>1234</sup>.

956. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."<sup>1235</sup>

### B. Social protest

957. According to available information, on September 9, thousands of people took to the streets to protest against the government of Prime Minister Allen Chastanet, to claim various issues of public interest, and to demand the celebration of general elections. The mobilization would have been organized by the opposition party<sup>1236</sup>. Among the protests, according to the publication of an outlet, they demanded the reopening of the St. Lucia state radio, which due to financial problems would be closed since 2017<sup>1237</sup>.

958. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"<sup>1238</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>1239</sup>

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

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<sup>1234</sup> Association of Caribbean Media Workers. March 30, 2018. [Proposed Media Law in Saint Lucia Concerns ACM](#).

<sup>1235</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>1236</sup> St. Lucia Times. September 10, 2018. [Thousands protest policies of Saint Lucia government, call for fresh elections](#); Kyss. September 11, 2018. [National protest rally in St Lucia attracts record turnout](#); Caribbeans News Now! September 10, 2018. [National protest rally in St Lucia attracts record turnout](#).

<sup>1237</sup> St. Lucia Times. September 10, 2018. [Thousands protest policies of Saint Lucia government, call for fresh elections](#);

<sup>1238</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>1239</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.

exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>1240</sup>

### C. Other relevant situations

960. According to the information available, in January two young people were arbitrarily arrested for expressing a series of criticisms against the administration of Prime Minister Allen Chastanet. The statements of criticism would have been broadcasted through a video on social networks. The arrest had been reported by parliamentarian Vieux Fort South, who would have expressed to the media his rejection and condemnation of the police authorities' actions. Also, according to the parliamentarian, the young people arrested were forced to issue an apology video so that they would not be charged<sup>1241</sup>. After several months, in November a court would have dismissed the case and the young people would have been released without charges<sup>1242</sup>.

961. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression 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.”

### D. Right to privacy

962. According to a judgment of the Eastern Caribbean Supreme Court, “the presence of police officers in the interview room” between the lawyer and his client, transgresses the constitutional right to “private communication”. The event occurred in 2016, at a police station in St. Lucia. According to the information, an arrested person would have been prevented from communicating privately with her lawyer<sup>1243</sup>. According to the Police's arguments, under the current legal provisions, they had the power to supervise the interview when it was “necessary”.

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<sup>1240</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>1241</sup> ST. Lucia Times. January 12, 2018. [An Attack on Free Speech](#); Wic News. January 15, 2018. [A St Lucia MP has expressed disbelief over the arrest of two people from his constituency after they took to social media to criticise the prime minister](#).

<sup>1242</sup> The voice. [Vieux Fort Men With Case Dismissed Say Theirs Was a Victory For Freedom Of Speech!](#). November 20, 2018; *Loop*. [Anthony celebrates dropped charges for 'obscene' Facebook video pair](#). November 14, 2018.

<sup>1243</sup> The Eastern Caribbean Supreme Court. In the High Court of Justice. [Claim N° SLUHCV2016/0408](#). Nina Duncan and Attorney General. January 31, 2018.

## 32. SURINAME

### A. Journalist Arrest

963. According to the information available, independent photojournalist Regilio Derby was arrested on May 18 after taking a photograph of the scene of a fatal shooting by a police officer in Paramaribo. According to the publication, after taking the photograph a police officer would have approached him and physically attacked him. Next, he would have arrested him under the accusation of interfering with the police procedure and resistance; and the officer would have stripped him of his camera<sup>1244</sup>.

964. In a 2013 joint declaration on violence against journalists and media workers in the context of protest, the UN and IACHR Special Rapporteurs indicated that “[t]he State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.”<sup>1245</sup>

### B. Access to public information

965. According to the information available, there’s a context of widespread corruption in Suriname<sup>1246</sup>, characterized by the lack of legal mechanisms that compel officials to be held accountable and provide public information<sup>1247</sup>.

966. The Association of Journalists of Suriname [*Surinaamse Vereniging van Journalisten*] reported on World Press Freedom Day that there is a government practice aimed at centralizing information and restricting journalistic work<sup>1248</sup>. This practice would occur through the National Information Institute [*Nationaal Informatie Instituut*] that acts as “the central point of government information and communication”<sup>1249</sup>. However, the director of the aforementioned institution, Clifton Limburg, said through the media that the idea that officials have that journalists should resort to the institute to obtain information is wrong. He would have pointed out that journalists should not wait for information from the institute but seek it in accordance with their journalistic work. In this regard, he pointed out that the function of the institute is to facilitate the work of the press, but that journalists should be able to interview the ministers<sup>1250</sup>.

967. The IACHR has expressed to States that “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>1251</sup>

968. Principle 4 of the Declaration of Principles on Freedom of Expression which states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not

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<sup>1244</sup> Dwtonline.com. May 18, 2018. [Vluchtende verdachte dodelijk geraakt door politie, fotograaf hard aangepakt](#); May 19, 2018. [Fotojournalist op hondse wijze opgepakt door politie](#); Suriname Herald. May 20, 2018. [Intimidatie van journalisten door politie moet stoppen](#).

<sup>1245</sup> United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

<sup>1246</sup> Freedom House. Freedom in the World 2018. [Suriname](#). No date; nrc.nl. February 23, 2018. [Suriname: a government of thieves](#).

<sup>1247</sup> Freedom House. Freedom in the World 2018. [Suriname](#). No date; Dwtonline.com. November 3, 2018. [Toegang tot overheidsinformatie met de dag moeilijker](#); Suriname Tribune. November 4, 2018. [Overheid is afhankelijk van de media, de media niet van de overhead](#).

<sup>1248</sup> United News. May 3, 2018. [Surinaamse Vereniging hekelt centralisatie van informatie bij herdenking World Press Freedom Day](#).

<sup>1249</sup> Surinam. Nationaal Informatie Instituut. No date. Available at: <https://www.niisuriname.com/>

<sup>1250</sup> Dwtonline.com. November 21, 2018. [Ministers niet verboden pers te woord te staan](#).

<sup>1251</sup> IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018.

become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

### C. Protection of Whistleblowers

969. According to the information available, in March the Suriname Journalists' Association [*Surinaamse Vereniging van Journalisten*] would have publicly questioned the start of a judicial investigation into an information leak to the media on issues related to Suriname Airline [*Surinaamse Luchtvaartmaatschappij*]. The organization would have expressed its concern about the lack of protection guarantees for the informants of acts of corruption and about possible measures of repression, persecution, and punishment<sup>1252</sup>.

970. The IACHR has urged the States to “[f]oster a climate of guarantees for the freedom to report acts of corruption, the development of the practice of investigative journalism and the exercise of the right to seek, receive and impart information related to corruption. This includes guaranteeing the safety of journalists, human rights defenders and activists who investigate and report corruption; repealing so-called “contempt” and criminal defamation laws while ensuring the proportionality of penalties in civil proceedings; ensuring protection for the confidentiality of journalistic sources; and establishing protection systems for corruption whistleblowers.”<sup>1253</sup>

971. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “*desacato* laws,” restrict freedom of expression and the right to information.” Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.<sup>1254</sup>

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<sup>1252</sup> Dwtonline.com. March 14, 2018. [SVJ tegen onderzoek klokkenluider SLM-kwestie](#); Starnieuws. March 15, 2018. [SVJ tegen justitieel onderzoek naar klokkenluiders](#); Dagblad Suriname. March 15, 2018. [SVJ kan zich niet terugvinden in justitieel onderzoek naar klokkenluiders](#).

<sup>1253</sup> IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 16, 2018.

<sup>1254</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.

### 33. TRINIDAD AND TOBAGO

#### A. Stigmatizing statements

972. In a "letter to the editor" published on March 10 in the Trinidad and Tobago News Day<sup>1255</sup>, under the title 'Declare your hand', written by the vice president of the People's National Movement (PNM), current parliamentarian and Minister of Planning and Development<sup>1256</sup>, Camille Robinson-Regis, accuses a group of analysts who criticize the PNM and the government through newspapers columns, to be openly politically biased." "Some of these commentators have the added benefit of newspaper columns through which they spew their biased and so-called independent commentary", the letter states. "They all lack the decency to declare their political hand before making their comments". It also mentions that "the PNM respects the right of these so-called independent political analysts to write and say what they wish, and we will defend their right so to do; but we call on them to at least demonstrate a modicum of decency by either declaring their political bias or publicly disavowing their allegiance to the political parties in which they once found refuge".

973. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."<sup>1257</sup>

#### B. Legal reforms

974. On March 23, the Office of the Special Rapporteur forwarded to the State of Trinidad and Tobago a technical opinion with respect to a draft law on "cybercrimes" presented in 2017<sup>1258</sup>. This Office expressed to the State a series of recommendations with the purpose of adapting the project to international standards. In particular, in the note the Office of the Special Rapporteur expressed concern about some of the definitions formulated in the bill that could unduly interfere with the right to freedom of expression<sup>1259</sup>.

975. The Office of the Special Rapporteur highlights that all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, the Office of the Special Rapporteur indicated that any legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect the free flow of information and legitimate websites and services.<sup>1260</sup> To prevent the criminalization of the use of the Internet, "Cybersecurity" legislations should avoid creating new offences or increasing the penalties of criminal conducts that are not aimed at attacking the integrity, the infrastructure or the confidentiality of the Internet. For example, defamation or fraud should not be considered "computer crimes" and the punishment of those offenses should not be aggravated in exclusive consideration of the technological medium used to carry them out.

#### C. Restriction of journalistic coverage

976. On November 8, the Media Association of Trinidad and Tobago, through a statement posted on its social network, expressed "great concern" over the actions of police agents that would have sought to prevent TV6 journalists from performing their coverage during a flood in "El Socorro" on November 6. After a few days, representatives of the association would have met with the Police Commissioner in order to clarify the

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<sup>1255</sup> Trinidad and Tobago News Day. March 10, 2018. [Declare your hand](#).

<sup>1256</sup> Government of the Republic of Trinidad and Tobago. [The Honourable Camille Robinson-Regis, MP](#). No date.

<sup>1257</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>1258</sup> IACHR. [Annual Report 2017](#). Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II. Doc. 210/17. December 31, 2017. Para. 1098.

<sup>1259</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the State of Trinidad and Tobago. March 23, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1260</sup> The UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [Joint Declaration](#).

situation. In this context, the commissioner would have expressed his "apologies" for the incident and would have expressed the intention to reiterate the need to treat journalists with respect, and that of the media to cover the events that take place in public places without obstacles<sup>1261</sup>.

#### **D. Subsequent liability**

977. According to the information available, two radio presenters would have been sentenced to more than \$400,000 for expressing defamatory statements on a More FM Limited radio program in 2015 against an entrepreneur and his business group. The presenters would have accused the contractor of obtaining public contracts in a dishonest manner<sup>1262</sup>.

978. Principle 10 of the IACHR Declaration of Principles on Freedom of Expression 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."

979. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as "the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a 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>1263</sup>

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<sup>1261</sup> S.T. Lucia News Online. November 9, 2018. [MATT condemns attacks on media workers](#). Loop. November 8, 2018. [MATT to meet with Top Cop on attempt by police to obstruct media](#); Trinidad & Tobago Guardian. November 13, 2018. [Don't tussle with media workers](#); Media Association of Trinidad & Tobago/Facebook. November 8, 2018. Available at: <https://www.facebook.com/MediaAssociationTT/>; Tobago/Facebook. November 13, 2018. Available at: <https://www.facebook.com/MediaAssociationTT/photos/pcb.2018865801493407/2018873008159353/?type=3&theater>

<sup>1262</sup> Daily Express. July 20, 2018. [Junior Sammy awarded \\$450,000 in defamation case](#); News Day. July 19, 2018. [Radio to pay Junior Sammy \\$.4m for 'talk show' libel](#).

<sup>1263</sup> I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

### 34. URUGUAY

980. During 2018, the Office of the Special Rapporteur took cognizance of the complaints filed by journalistic unions, indicating the complex working situation that journalists and media workers faced in the country because of the sector's precarious working conditions, the continuity of dismissals, and the unfulfillment of agreements. In another context, this Office was informed about the use of the information in the State's power on the part of the Government, regarding people who have protested against the latter. In this sense, it was reported that the use of information allegedly constitutes a strategy in order to inhibit criticism against the government on public interest matters. Furthermore, the Office of the Special Rapporteur continued observing that the Freedom of Information Act kept on being clearly utilized by different media and journalists so as to access public interest information, and that the Access to Public Information Unity positively decided on the delivery of required information on multiple occasions. Finally, the Office of the Special Rapporteur was informed about delays in the implementation of the Audiovisual Communication Services Act and some related questioning.

#### A. Progress

981. On March 22, the Government of Canelones informed that in the framework of the act regarding access to public information, the municipality decided to establish a competent office so as to comply with this act's provisions.<sup>1264</sup> On a note dated March 16, the municipality requested the Special Rapporteurship to provide technical assistance in order to implement the said act and the transparency policies. On March 20, the Office of the Special Rapporteur issued a reply note expressing its willingness to provide assistance and spread the Inter-American standards.<sup>1265</sup>

982. On April 16, the Judiciary informed that a criminal justice magistrate decided to dismiss the prosecution of a comedian, due to a series of social media comments against the Uruguayan Football Referees Association (Asociación Uruguaya de Árbitros de Fútbol, AUDA). According to what was made public, the magistrate highlighted that the "thought manifestations regarding the refereeing of a soccer match do not express the realization of a concrete act by a particular referee [...] nor the AUDA but show generic comments regarding the referees' performance from the personal view of a soccer fan when his team is playing a match." The judge also mentioned that "the defendant has not displayed the behavior foreseen in Article 333 of the Criminal Code," since "by making use of his freedom of expression, he expressed his thoughts, his feelings about the soccer referees' performance." "Furthermore, soccer referees are exposed to the public opinion," she added, among other statements.<sup>1266</sup>

983. On July 10, the House of Representatives passed a bill regulating the allocation of official publicizing. Pursuant to a report by the Committee on the Constitution, Codes, General Legislation and Administration, the bill includes contributions by CAinfo and the recommendations of the Special Rapporteurship for Freedom of Expression, under the consideration that "the States shall adopt clear and transparent rules to regulate official publicizing, while this legitimate legal authority of the States might be used to punish or reward the media depending on their editorial line." Among other provisions, the bill foresees a 30% reserve from the publicizing spending for "means of communication, shows, or informative, journalistic, commercial or community programs that have their own direction and production and are located in the interior, and their service or main distribution area is within their location or other cities in the interior."<sup>1267</sup> At the closing this report's edition, the bill is still pending the Senate's approval.

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

984. According to the annual report "Journalism and Freedom of Expression in Uruguay," between April 1, 2017 and March 31, 2018, 20 threats to freedom of expression regarding the practice of journalism were

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<sup>1264</sup> República Oriental del Uruguay. Gobierno de Canelones. March 22, 2018. [ORSI anunció la creación de una oficina de acceso a la información pública.](#)

<sup>1265</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the State of Uruguay. March 20, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1266</sup> República Oriental del Uruguay. Poder Judicial. April 16, 2018. [Jueza de Salterain archivó denuncia de asociación de árbitros por difamación.](#)

<sup>1267</sup> República Oriental del Uruguay. Cámara de Representantes. Informe de la Comisión de Constitución, Códigos, Legislación General y Administración. No date. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

registered in the country.<sup>1268</sup> The seriousness level in most cases was “medium”,<sup>1269</sup> while the study did not show “highly” serious facts during the indicated period, i.e. serious damages and murders, The Special Rapporteurship takes cognizance that, according to the report, “the attack suffered by the journalist Isabel Prieto, from *Caras y Caretas* magazine, in February 2017 in Montevideo is still unpunished.” Throughout 2018, the Office indicated that several journalists reported having been pressured so as to cut short their journalistic work.<sup>1270</sup> The Uruguayan Press Association issued different rulings rejecting the reported facts. The APU indicated that “unfortunately, these kinds of attacks are being reproduced in a rare frequency.”<sup>1271</sup> The organization required “all organizations and institutions, as well as their officials, not to fall into this kind of behavior undermining Freedom of Expression and risking the job of those who cover the news day by day.”<sup>1272</sup>

985. On November 15, the National Human Rights Institution (Institución Nacional de Derechos Humanos, Inddhh) reported on the “damages caused in the wiring and transmission equipment of Canelones Radio Station, 1570 AM, located on route 5, kilometer 44, on November 12, 2018, early in the morning.” According to what was published, the Inddhh “requires the competent authorities to conduct an urgent investigation so as to promptly identify the culprits of this act and clarify his/her motivations.”<sup>1273</sup>

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

### C. Social protest

987. During this year, many peaceful social protests were carried out in different locations of the territory, demanding measures to improve public safety, and rallies organized by the self-summoned movement “Un solo Uruguay,” asking for measures for the productive sector.<sup>1274</sup> According to the information available, a protest carried out on May 27 in the Department of Salto, demanding safety measures, in which people burned tires and blocked the road, the police showed up and required all demonstrators to grant free circulation. After a negotiation, the blocking of the road was terminated by the protesters.<sup>1275</sup>

988. On April 3, the Inddhh, by means of a resolution, recommended the Presidency of the Republic to adopt measures protecting the rights of a person who peacefully protested against the president and the government, and who was the object of a communication by the government institution, which disclosed his identity and a series of data on his debtor condition regarding the National Colonization Institute. According to the resolution, the Presidential Communication Division expressed that “a member of the settlers’ table accused the President of the Republic of lying; in order to assess and clear the offense, it was considered as pertinent to clarify the offender’s condition, from the public data, so that the citizens reach to their own conclusions.” Among the considerations dealt with by the Inddhh, based on principles disseminated by the

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<sup>1268</sup> CAinfo. [Periodismo y libertad de expresión en Uruguay Cuarto informe anual de monitoreo de amenazas](#). May 3, 2018.

<sup>1269</sup> According to the methodological description of the study, this level covers the following types of threats: intimidation of journalists, their families and the media in order to prevent the publication of journalistic content (or as a consequence thereof) through death threats, physical attacks, loss of employment, lawsuits, defamatory or insulting campaigns as well as any other type of reprisal.

<sup>1270</sup> El País. April 26, 2018. [El intento de callar a un periodista “metiéndole el peso”](#); APU. April 27, 2018. [APU repudia intento de limitar libertad de prensa](#); CAinfo. [CAinfo rechaza presiones de edil de San José a periodista](#). May 31, 2018; Asociación de la Prensa Uruguaya. June 22, 2018. [Periodista denuncia presiones por parte de colectivos feministas](#); Journalist Georgina Mayo. Twitter account. @gerobina\_mayo. [June 21, 2018](#).

<sup>1271</sup> APU. April 27, 2018. [APU repudia intento de limitar libertad de prensa](#).

<sup>1272</sup> Asociación de la Prensa Uruguaya. [Periodista denuncia presiones por parte de colectivos feministas](#). June 22, 2018

<sup>1273</sup> Inddhh. November 15, 2018. [Comunicado por el atentado a Radio Canelones](#).

<sup>1274</sup> El Observador. June 4, 2018. [Un solo Uruguay vuelve a las rutas por falta de respuestas](#); El País. June 11, 2018. [Un Solo Uruguay se moviliza por todo el país](#); El País. May 28, 2018. [Movilización sin precedentes en Salto por inseguridad](#); Canal 12/Telemundo. June 11, 2018. [Cientos de vecinos de Neptunia se movilizaron por tercera vez en la Interbalnearia en reclamo de seguridad](#).

<sup>1275</sup> El País. May 27, 2018. [Manifestantes levantaron corte de ruta; Policía negocia con representantes](#); El País. May 28, 2018. [Movilización sin precedentes en Salto por inseguridad](#); El Observador. May 28, 2018. [El reclamo al jefe de Policía de Salto: “¡No nos están cuidando, nos están matando!”](#).

Special Rapporteurship for Freedom of Expression, it highlighted that “if a public worker feels his/her honor is being offended in relation to his/her role’s fulfillment, his/her protection shall be carried out through civil judicial means, given that any kind of punishment or retaliation might inhibit the public function’s control [...] and turn into a useful mechanism to silence pluralistic and democratic debate regarding public management.” Moreover, the Inddhh showed its concern for the fact that the Presidency might use its institutional web page to “issue a press release informing on the identity of the person who accused President Tabaré Vázquez of lying in a public protest.” The Inddhh concluded that the Presidency “inappropriately disseminated public information” that could inhibit the right to freedom of expression and peaceful protesting. Both recommended measures were about removing the information and publication from the web page.<sup>1276</sup> Pursuant to what was informed, the Presidency removed the press release.<sup>1277</sup> Added to another situation caused in the end of March, in which it was stated that the government had “disclosed” to the media the criminal records of a person who filed public complaints against the Ministry of Social Development, the case led to the filing of public complaints by opposition’s legislators and other claimants, regarding the government’s inappropriate use of information of the State in order to discredit those who critically protest in a public manner.<sup>1278</sup>

989. According to the information available, during a public event in which authorities of the country were participating, on November 26 in Artigas, a group of demonstrators tried to show a sign aiming at expressing a message to the authorities present. According to a video posted and disseminated through social networks and the media, the Minister of Interior, Eduardo Bonomi, proceeded to cover and later take the sign down, as soon as he saw it. Moreover, according to the video, after struggling, one protester was forcibly taken out of the place by security officers.<sup>1279</sup> Furthermore, by means of an announcement, the Inddhh indicated that “even though it is the legal authority of the Executive to adopt measures tending to achieve the conservation of domestic order and peace [...], it shall be applied in a harmonious manner, with the country’s total legal system in force, especially with the domestic and international generation rules establishing the State’s obligations regarding human rights’ respect, protection, remedy, and promotion.” Likewise, it adds in the announcement that “the rights to freedom of expression and freedom of peaceful assembly, included in rules and principles on human rights, were affected in this incident.”<sup>1280</sup> Through the press release regarding the incident, the Ministry of Interior indicated that the police proceeding “was carried out according to the safety protocols” “taking into consideration the recent threats against [the Ministry of Interior] and his family.” Likewise, by means of the communication, the State’s portfolio disclosed information about the identity of a person who was forcibly taken out of the place, and a series of criminal records.<sup>1281</sup> Once again, in the light of the State’s portfolio’s communication, the Inddhh expressed “its utmost concern regarding the repetition of communicational practices by the Executive, which, at the time, were the object of specific recommendations by the Inddhh.” “This Institution reiterates that the dissemination of information relative to the people involved in the events (names, background, etc.) does not help in any way regarding the issue referred to by the matter’s merits.” Finally, it indicated that the measure does not “comply with the principle of necessity,

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<sup>1276</sup> Inddhh. [Resolución 593/ 2018](#). April 3, 2018; El País. February 19, 2018 *Entre gritos de “¡mentirosos!”, Vázquez se enfrentó con los productores rurales*. ; La Diaria. February 20, 2018. [Encaró](#).

<sup>1277</sup> Canal 10/Subrayado. April 4, 2018. [Presidencia retiró de su web datos sobre colono que tuvo entredicho con Vázquez](#); El Observador. April 4, 2018. [Presidencia cumplió con pedido de institución de Derechos Humanos y despublicó la información sobre deudas de colono](#).

<sup>1278</sup> La Diaria. February 22, 2018. [Cainfo advierte que comunicado que Presidencia hizo de colono que insultó a Vázquez es “inadecuado” y puede inhibir la libertad de expresión](#). El País. April 3, 2018. [En el “Mes de los Cuidados” el Mides sale a defenderse](#); El País. April 7, 2018. [Escrachos del gobierno](#); El País. El Observador. April 3, 2018. [Dos casos de personas que criticaron al gobierno y fueron escrachados con información estatal](#).

<sup>1279</sup> “Frente Amplio activists and Minister Eduardo Bonomi tried to conceal a banner carried by tobacco workers, who protested the government’s anti-tobacco policies. This situation caused arguments and some struggle”. Twitter account of Telemundo @TelemundoUY. [November 26, 2018 – 12:35 PM](#); Ecos. November 27, 2018. [Viera hará pedido de informes por incidente de Bonomi y manifestantes](#).

<sup>1280</sup> Inddhh. November 27, 2018. [Declaración de la Institución Nacional de Derechos Humanos y Defensoría del Pueblo ante los hechos acaecidos el día 26 de noviembre del 2018 en el departamento de Artigas](#).

<sup>1281</sup> República Oriental del Uruguay. Ministerio del Interior. [Comunicado sobre incidente en Artigas](#). November 28, 2018.

since it does not contribute to the broad discussion of ideas and opinions, and is not the adequate means to solve the controversies put forward.”<sup>1282</sup>

990. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>1283</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>1284</sup>

991. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>1285</sup>

#### **D. Subsequent liability**

992. On its previous annual report, the Special Rapporteurship showed its concern for the increase in criminal complaints of defamation and slander filed by public workers against journalists, who were allegedly affected by publications on public interest topics related to their management. In 2018, the Office released a case in which a journalist was sued for these crimes, and it had a positive outcome for him. In this sense, according to the information available, on March 1, the journalist from *Carmelo portal*, Elio García, had to appear before the court of the said city in Colonia Department, after being sued for defamation and slander by the owner of an ambulance company hired by the State Health Services Administration (ASSE) and his wife, who works at the public hospital. According to what was informed by *Carmelo Portal*, on the same day the Carmelo Judge of the Third Circuit, Dr. José Vera Gatebled, dismissed the journalist.<sup>1286</sup>

993. The Office of the Special Rapporteur has emphasized that the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.

#### **E. Censorship**

994. During this report’s period, the National Institution on Human Rights assumed competence on its own motion regarding the public complaints about illegal restrictions to the right to freedom of expression’s enforcement. In two cases, it verified that the reported conducts constituted censorship acts. In this sense, on December 28, 2017, the institution indicated that the National Broadcasting Directorate carried out an “unusual censorship act” against “De diez a doce” program of *Radio Uruguay* public station. The Inddhh

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<sup>1282</sup> Inddhh. November 28, 2018. *Sobre el comunicado del Ministerio del Interior de fecha 28 de noviembre de 2018*.

<sup>1283</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>1284</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>1285</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>1286</sup> CAinfo. [Periodismo y libertad de expresión en Uruguay. Cuarto Informe de Monitoreo de Amenazas](#). May 3, 2018; Carmelo Portal. March 5, 2018. [Periodista de Carmelo Portal sobreseído en denuncia por difamación](#); Asociación de la Prensa Uruguaya. [Periodista carmelitano sobreseído en denuncia por difamación](#). March 2, 2018.

observed that on November 22, 2017, the Directorate committed an “unduly interference and pressure regarding freedom of expression” aimed at the programs’ producers, operators, presenters-journalists, and audience, since it did not allow the continuation of reading of messages on air, which were relative to the medium’s decision of canceling the program as of 2018. The resolution recommended the National Broadcasting Directorate to adopt measures in order to insure the non-recurrence of this kind of conducts.<sup>1287</sup>

995. In March 2018, the Inddhh decided to act on its own motions regarding the public complaints on the alleged discriminatory and censorship treatment against the band of street musicians “Cayó la cabra,” when carrying out the TV coverage of the contest “Concurso Oficial de Agrupaciones de Carnaval” held by the VTV television company. On April 3, the organization issued a resolution, in which it was determined that, since its members were not interviewed and the presentation on VTV was deferred due to the criticism made by the carnival band to Tenfield company, which has exclusive rights of broadcasting through signal, it was possible to verify a conduct containing “discriminatory and censorship components” which also affected the audience’s rights. The Inddhh’s resolution was based on the Audiovisual Communication Services Act’s provisions and cited Inter-American standards on freedom of expression.<sup>1288</sup>

996. Article 13.3 of the American Convention establishes that “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” In addition, Principle 5 of the IACHR Declaration of Principles of 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.

#### **F. Legal reforms**

997. According to the public information available, on October 24, the Uruguayan Senate passed an act creating the “National Intelligence System of the State.” According to what was informed to the Special Rapporteurship, this act allegedly included regressive provisions regarding the right to access public information.<sup>1289</sup>

998. According to the information available, parliamentary discussions are being held on a bill aiming at considering as criminal felonies the dissemination of news regarded as “fake,” in view of the general elections of 2018. The measure allegedly seeks to penalize the lack of information, before or after the elections.<sup>1290</sup>

#### **G. Access to public information**

999. The Special Rapporteurship observes that the access to public information act keeps on being clearly used by different media and journalists so as to access public interest information. Likewise, on December 22, 2017, the Civil Court of Appeals of the Sixth Circuit revoked a first instance judgment, which dismissed an action of access to public information carried out by a substitute council member of “Frente Amplio” in Maldonado, who requested the manager’s office of the said department to inform on the details of the direct purchase of a video surveillance system made by a foreign enterprise at USD 18 500 000.<sup>1291</sup> After re-affirming the principle of maximum disclosure, the Court analyzed and restricted information that might strictly remain reserved due to security reasons (according to the ruling: Technological design aspects, a software containing intelligence aspects for the citizens’ safety) and information that could not be denied in

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<sup>1287</sup> Inddhh. [Resolución 568/2017](#). December 28, 2017; La Diaria. November 23, 2017. [No renuevan “De diez a doce”, periodístico de Radio Uruguay; APU responsabiliza a la dirección de la radio por censura.](#)

<sup>1288</sup> Inddhh. [Resolución 592/2018](#). April 3, 2018

<sup>1289</sup> El Observador. October 24, 2018. [Servicios de Inteligencia tendrán control parlamentario y actuarán coordinados](#); República. October 25, 2018. [Parlamento aprobó creación del Sistema Nacional de Inteligencia.](#)

<sup>1290</sup> Telesur. October 31, 2018. [Discuten proyecto de ley contra noticias falsas en Uruguay](#); El País. October 25, 2018. [Proyecto de ley propone cárcel para quienes difundan noticias falsas a los electores.](#)

<sup>1291</sup> La Diaria. January 4, 2018. [Muestre](#); El País. January 4, 2018. [Justicia obliga a Antía a mostrar detalles de la contratación de cámaras de vigilancia.](#)

any way, as the one regarding economic and contractual aspects stemming from the purchase. The Court ordered the departmental government to provide the information required within 10 days. Notwithstanding this progress, the Special Rapporteurship released complaints about the persistence of obstructions regarding the access to public information by administrative means on different matters, from the statement of reserve or confidentiality made by some organizations.<sup>1292</sup>

1000. According to public knowledge information, the Executive Council of the Access to Public Information Unity (UAIP) published a series of resolutions within the framework of claims against denials of access to public information. For instance, on March 16, it stated that the National Administration of Electric Installations and Transmissions (UTE) had to provide all the partially replied information. The request aimed at “having access to the investments made in the framework of meetings among assistant managers and commercial managers from 2010 to 2016.”<sup>1293</sup> Likewise, on March 16, it decided that regarding a request made to the Social Insurance Bank (BPS) and its silence at the time of the expiration of this period, it had to provide the information “as long as the information was in its possession and did not violate confidentiality.” The request aimed at accessing, among others, “concrete statistics information on the medical certificates issued during the past six months in Colonia Department, classified by city and health center (private and public) in Colonia Department and their relation to the national average.”<sup>1294</sup>

1001. Moreover, according to the series of resolutions published by the UAIP, the Rapporteurship observes that, in most cases, the resolute decisions are based according to the “positive silence” occurred as a consequence of the lack of response by the public institutions in view of the public information requests.<sup>1295</sup> Likewise, in other cases, it was decided to carry out the partial delivery of the information<sup>1296</sup> regarding the design and execution of public works;<sup>1297</sup> generic reserves prohibition;<sup>1298</sup> reserved information;<sup>1299</sup> personal information of the interested party.<sup>1300</sup>

1002. Furthermore, the Presidency of the Republic passed a resolution on August 6, through which it disqualified the reserved information included in a case file relative to the “Valentines y Aratirí” project.<sup>1301</sup>

1003. On April 24, Decree No. 115/18 was enacted, which regulates fishing and aquaculture act.<sup>1302</sup> The regulations include provisions incompatible to Inter-American standards of freedom of expression and access to public information. Among its provisions, it regulates previous permits and authorizations to conduct and publish scientific investigations on matters related to fishing investigation or investigation with environmental aims. For instance, the obligation of assuming the “commitment of not publicizing any kind of information, especially the data obtained, without an express authorization by the National Directorate of Aquatic Resources,” and the prohibition of disclosing data provided to this agency “without having the express authorization of the person who delivered them.” According to public information, on August 27, the regulations were widely modified; however, the provision of “not publicizing” remained with an addition regarding the “data obtained that might influence or affect the development of fishing exploitation or

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<sup>1292</sup> See: Búsqueda. January 4, 2018. [MEF declaró “confidencial” cuánto canon paga cada zona franca](#); CAInfo. [Gobierno no explica datos que sustentan que nueva UPM generará puestos de trabajo e incremento del PBI de la región](#). May 7, 2018; El Observador. May 13, 2018. [Cuatro casos en los que Presidencia se amparó en la confidencialidad para negar información](#).

<sup>1293</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 03/18](#). March 16, 2018.

<sup>1294</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 04/18](#). March 16, 2018.

<sup>1295</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 06/18](#). June 14, 2018; República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 07/18](#). June 22, 2018; República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 15/18](#). August 24, 2018; República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 16/18](#). August 24, 2018; República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 17/18](#). August 24, 2018; República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 18/18](#). August 24, 2018; República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 19/18](#). August 24, 2018.

<sup>1296</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 09/18](#). July 13, 2018.

<sup>1297</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 10/18](#). July 13, 2018.

<sup>1298</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 11/18](#). July 26, 2018.

<sup>1299</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 12/18](#). July 26, 2018.

<sup>1300</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Resolución N° 20/18](#). August 24, 2018.

<sup>1301</sup> República Oriental del Uruguay. [IE/592](#). August 6, 2018.

<sup>1302</sup> República Oriental del Uruguay. Ministerio de Ganadería, Agricultura y Pesca. [Decreto N° 115/18](#). April 24, 2018.

management, without express authorization of the National Directorate of Aquatic Resources." Likewise, it indicates that "the results and data obtained regarding the competences of the National Directorate of Aquatic Resources shall be made available to this body before their utilization or dissemination in any medium." Finally, it expresses that the provision mentioning "the data delivered to the National Directorate of Aquatic Resources will be used for fishing management aims and it will not be allowed to disseminate them in any publication without having the express authorization of the person who provided them."<sup>1303</sup>

1004. Principle 4 of the Declaration of Principles 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." Likewise, in accordance with the principle of maximum disclosure, the law must guarantee that access to public information is effective and as wide as possible; and in case of exceptions, these should not become the general rule. In addition, the regime of exceptions must be interpreted restrictively, and any doubt must be resolved in favor of transparency and access.

#### H. Audiovisual Communication Services Act

1005. Some pieces of information related to the implementation and application of the Audiovisual Communication Services Act (LSCA) passed in December 2014, about which the Special Rapporteurship released information, are systematized below.

1006. Based on a protection action initiated by the Uruguayan Institute for Children and Adolescents (INAU), in which the violation of rights protected by Article 31 of the LSCA<sup>1304</sup> was alleged, on February 26, the Magistrate's Civil Court of First Instance of the Nineteenth Circuit warned the communications company Monte Carlo TV S.A for having violated the rights to privacy and to their own image of two girls who were the victims of sexual abuse, and whose testimonies were disseminated in the program "Santo y Seña." The person responsible for the program denied that the violation of the girls' rights and disputed the judicial ruling's scope.<sup>1305</sup>

1007. On March 5, the Supreme Court of Justice issued a judgment reiterating its jurisprudence in relation to the Audiovisual Communication Services Act (Act 19307). The ruling was issued regarding an unconstitutionality action carried out by the Tenfield S.A. company and dismissed in a majority decision the unconstitutionality pretention of Articles 39 (paragraphs 1 and 2) and 40, and unanimously declared the unconstitutionality of paragraph 3 of Article 39. When analyzing the provisions indicated aimed at insuring that the events that included official activities of the national soccer and basketball teams at defining stages of international competitions and at qualifying stages be broadcast on network television, the superior judicial body determined that the provisions did not present the alleged violation of the right to property (Articles 7, 32, and 72 of the Constitution).<sup>1306</sup>

1008. In March, the Coalition for a Democratic Communication observed that the regulations' proposal of the LSCA submitted by the Executive in 2017 under discussion of the Honorary Advisory Commission of the Audiovisual Communication Services (CHSCA) "aimed at reducing the competence of the Audiovisual Communication Council (CAA) and restricting the autonomy levels of the new unconstitutionality, in this way undermining the law's scope and spirit."<sup>1307</sup>

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<sup>1303</sup> República Oriental del Uruguay. Available at: [https://medios.presidencia.gub.uy/legal/2018/decretos/08/mgap\\_404.pdf](https://medios.presidencia.gub.uy/legal/2018/decretos/08/mgap_404.pdf)

<sup>1304</sup> República Oriental del Uruguay. Ley 19307. Art. 31 "(Right to privacy) .- Children and adolescents have the right to the respect of the privacy of their lives. They have the right of non-use of their image in a harmful way, nor the publication of any information that harms them and may lead to their identification (...)"

<sup>1305</sup> República Oriental del Uruguay. Juzgado Letrado de Primera Instancia en lo Civil de 19 Turno. [Sentence 9/2018 of February 26, 2018](#); La Diaria. March 1, 2018. [Tras apercibimiento judicial, Álvarez advirtió que Santo y Seña continuará exponiendo situaciones de abuso.](#)

<sup>1306</sup> República Oriental del Uruguay. Suprema Corte de Justicia. Sentence 138/2018 of March 5, 2018 in the case titled "TENFIELD S.A. C/ PODER LEGISLATIVO - ACCIÓN DE INCONSTITUCIONALIDAD ARTS. 38, 39, 40 Y 68 LITERAL Y DE LA LEY N° 19.307", IUE 1-2/2017. Available at: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/busquedaSelectiva.seam?cid=119060>

<sup>1307</sup> Infocym.org. No date (accessed on March, 2018). [Comunicado de la Coalición por una Comunicación Democrática. Ante inicio de selección de integrantes del Consejo de Comunicación Audiovisual.](#)

1009. On March 16, the Parliamentary Special Commission for the Appointment of the Members of the Audiovisual Communication Council made a public call for candidacies to fill positions in the Audiovisual Communication Council, the body in charge of the compliance and audit of the new regulation. On June 6, the General Assembly met with the objective of appointing the members of the Council. However, dissimilar opinions related to the mechanism to be followed for voting and regarding the proposed candidacies caused the retreatment of the opposition from the room without being able to carry out the elections.<sup>1308</sup> At the time of the end of this report's edition, a new call is still pending.

1010. In May, the Executive remitted to parliament a bill including changes to Articles 56, 117, and 139 of the Audiovisual Communication Services Act (LSCA). The project reaffirmed the prohibition for natural persons or private legal entities that provide audiovisual communication services regulated by the allocation of telecommunications telephone or data transmission services act. The project modifies the publicizing calculation regime for the media located in the country's interior, increasing the number of minutes.<sup>1309</sup>

#### **I. Diversity and pluralism / Concentration of means of communication/Community broadcasting**

1011. A study published in December 2017 reaffirms the persistence of a historical concentration of media in the country, characterized by a media oligopoly. The study analyzes the reconfiguration of three big media groups in the country created considering the commercial TV channels of Montevideo: The Villar/De Feo group from Channel 10; Romay group, historically associated to Channel 4, and group Cardoso/Scheck from Channel 12. At the same time, it focuses on the concentration cases of the ownership of media in Durazno, Lavalleja, and Rocha Departments. Article 189 of the LSCA regulates the "adequacy to the anti-concentration regulations."<sup>1310</sup> In that sense, it indicates that "in the case of current situations that, by the entry into force date of this act, exceeded the established concentration limits, the title holders of the audiovisual communication services shall transfer the necessary authorizations or licenses so as to not exceed the established concentration limit; to do so they will have four years from the entry into force date of the present act in order to effectively finish the transference." The deadline is January 2019.

1012. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that "monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

#### **J. Government advertising**

1013. The Special Rapporteurship received information on some 2016 proposals submitted by the World Association of Community Radio Broadcasters, Chapter Uruguay regarding the bill of official publicizing allocation, which is currently under discussion at parliament and has preliminary approval. In the remitted document, it indicates that the community media constitute "more than 30% of the broadcasting media," but they "receive 0% of official publicizing." Likewise, the document states that "the unity for the allocation of official publicizing shall not depend on AGESIC, since it is external to its duties, and that it shall depend on the Government Purchasing Agency." Pursuant to the concrete proposals: "The resources allocation [should be] carried out through public, open, transparent, and non-discriminatory tenders, in which at least 50% of the resources [should be] allocated to community media," "at least 15% (fifteen percent) of the total amount allocated to official publicizing of public bodies [should be] given to community means of communication, whether they are located in the interior or the country's capital."<sup>1311</sup>

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<sup>1308</sup> República Oriental del Uruguay. Poder Legislativo. [Comunicado](#). March 16, 2018; La Diaria. May 30, 2018. [Comisión eligió a precandidatos para el Consejo de Comunicación Audiovisual](#); La Diaria. June 7, 2018. [Asamblea General no pudo votar integrantes del Consejo de Comunicación Audiovisual](#).

<sup>1309</sup> Presidencia de la República Oriental del Uruguay. [CM 643](#). May 7, 2018.

<sup>1310</sup> Observacom. December 6, 2018. ["En pocas manos": nuevo libro revela mapa de concentración en Uruguay](#)"; Radio Uruguay. May 7, 2018. [Gómez: la estructura de medios no cambió pese a tres gobiernos del FA](#).

<sup>1311</sup> Proyecto de Ley de Asignación de la Publicidad Oficial. Aportes y consideraciones de AMARC Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

## K. Other relevant situations

1014. On December 20, 2017, the Coalition for a Democratic Communication issued a press release expressing its concern for the announcement of the future assignment of Ernesto Kreimerman as Director of National Television of Uruguay (TNU) and President of the National Audiovisual Communication Service (SECAN), which, according to the organization, might constitute a violation of the Audiovisual Communication Services Act (LSCA), since at the time of the announcement's publication it was a stockholder of other media. The transference of actions was approved and authorized by the Executive on December 28, 2017. Kreimerman was formally appointed Director on December 29, 2017, and assumed the channel's management on January 1, 2018.<sup>1312</sup>

1015. The Uruguayan Press Association (APU) reported "mass dismissals" carried out in El Observador newspaper, after it was disclosed that 10 workers were dismissed,<sup>1313</sup> and in June, it issued an alert due to trade union persecution of two workers from Channel 7 of Tacuarembó.<sup>1314</sup> Likewise, on May 10, many of the written press media published an announcement requesting the State's support so as to be sustainable.<sup>1315</sup> They indicated that this would allow them "to grant support to the press while going through this difficult period, so that it keeps on carrying out its social and cultural function and maintaining plurality of expressions and opinions" and "in order to achieve occupational stability of the workforce, which has recently decreased, risking the work's accuracy and journalistic investigation." The APU claimed the openness to dialogue of this sector's entrepreneurs and the search for solutions considering respect for workers' rights.<sup>1316</sup>

1016. On February 23, 2018, the Broadcasters' National Association (ANDEBU) issued a press release expressing its concern for the decision made by the Presidency of the Republic on hiring a media surveillance service so as to get to know, among others, "the tone" used when dealing with the Government's interest news, according to what it said. On February 27, the General Directorate of the Presidency of the Republic issued a communication indicating that the Presidency of the Republic "does not assess the media's and the journalists' work at all" and announced that in view of the "doubts" generated by the "utilization of a misinterpreted term and with the aim of removing any doubts in this regard" it would eliminate it.<sup>1317</sup>

1017. According to the information available, in August, the Ministry of Interior allegedly conducted a project called "Línea Verde 911," which consists in a service provided by the Police with the aim of taking prevention measures against fake news disseminated on social media.<sup>1318</sup> As stated by the Ministry of Interior on the web page, "Línea Verde 911" is the first official service allowing to counteract doubtful information, turning into a reference point for Uruguayan society, providing the possibility of checking information before sharing it."

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<sup>1312</sup> Coalición por una Comunicación Democrática. December 20, 2017. [Ante el anuncio de nombramiento de nuevo director en TNU y el sistema de medios públicos](#); El País. December 31, 2017. [Asume el nuevo director de Canal 5](#); Presidencia de la República. Ministerio de Educación y Cultura. Resolución 821. December 29, 2017; Poder Ejecutivo. [Resolución 1248/2017](#). December 28, 2017; Poder Ejecutivo. [Resolución 1247/2017](#). December 28, 2017.

<sup>1313</sup> APU. February 9, 2018. [APU denuncia el despido de 10 trabajadores del diario El Observador](#).

<sup>1314</sup> International Federation of Journalists (IFJ). June 6, 2018. [Uruguay: denuncian persecución sindical a trabajadores de Canal 7](#); La otra voz de Tacuarembó. June 6, 2018. [Persecución sindical: Canal 7 envió a seguro de paro a dos delegados sindicales](#).

<sup>1315</sup> World Association of Newspapers and News Publishers. May 10, 2018. [Prensa en Uruguay destaca necesidad de apoyo al sector en tiempos de transición digital](#); Caras y Cartetas (on line). May 12, 2018. [La prensa escrita en transición](#).

<sup>1316</sup> Asociación de la Prensa Uruguaya. [La crisis de la prensa no se resuelve sin el aporte de los trabajadores](#). May 23, 2018.

<sup>1317</sup> Andebu. February 23, 2018. [Comunicado de ANDEBU](#); Presidencia de la República Oriental del Uruguay. February 27, 2018. [Comunicado de la Dirección General de la Presidencia de la República](#); El Observador. February 27, 2018. [Tras la polémica, Presidencia eliminará la palabra "tono" de llamado para monitoreo de medios](#).

<sup>1318</sup> República Oriental del Uruguay. Ministerio del Interior. No date. [Línea Verde 9-1-1... Antes de compartir, verificá](#); El País. August 16, 2018. [Blancos cuestionan "línea verde" de Interior](#).

## 35. VENEZUELA<sup>1319</sup>

1018. In 2018 the deterioration of the situation of freedom of expression in Venezuela was deepened due to the start of criminal proceedings against journalists investigating acts of corruption, the practice of arbitrary arrests of communicators covering protests, and the arrests of opposition leaders, as well as citizens who express criticism or disagree with the government through social networks. The so-called Anti-Hate Law was applied to demonstrators and citizens, as well as to sanction and warn the media.

1019. The IACHR and its Office of the Special Rapporteur were also informed of the violence exercised against journalists and media workers by members of the security forces while covering protests, many of whom were forced to destroy their recordings by the agents or they were prevented from approaching to cover these events. The government maintained the practice of arresting and expelling correspondents and foreign press correspondents.

1020. In parallel, the government continues to develop new strategies to try to control messages on the Internet by blocking websites and monitoring of citizens' communications on social networks. The situation of provision of paper by the state company who monopolizes this was also aggravated, this caused 35 newspapers to see their editions, prints, and page numbers reduced. Several of them stopped circulating in paper format.

### A. Exercise of journalism and freedom of the press

#### 1) Attacks, threats, intimidation and arbitrary detentions

1021. Throughout 2018, the IACHR and its Office of the Special Rapporteur received information on episodes of physical aggression, threats, detentions, thefts or dispossessions of journalists' work equipment, perpetrated by security forces, armed civilian groups, or individuals, with the intention to silence journalists, intimidate them, or limit their coverage in different contexts<sup>1320</sup>. In addition, the IACHR learned that the practice of arbitrarily detaining journalists while carrying out their informative work has continued<sup>1321</sup>. Reporters are temporarily detained and prevented from performing their work under unjustified pretexts, such as being in areas of public access without authorization. There were also multiple cases in which reporters were prevented from approaching certain areas where there were protests or events of high public interest, and of collecting testimonies from the people involved or taking photographs<sup>1322</sup>.

1022. The IACHR was informed of incidents in which public officials or private individuals threatened journalists, stripped them of their work equipment, or forced them to erase images<sup>1323</sup>. The IACHR is

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<sup>1319</sup> This section corresponds to a broader version of the section on freedom of expression in Venezuela, included in Chapter IV of Volume I of the Annual Report 2018 of the IACHR, assigned to the Office of the Special Rapporteur for Freedom of Expression.

<sup>1320</sup> Espacio Público. January 19, 2018. [Sebin detiene a director de emisora radial en El Vigía](#); Espacio Público. March 9, 2018. [Periodista del Diario Católico acude a la Fiscalía tras ser amenazada](#); Espacio Público. April 13, 2018. [Sebin detiene a periodista y lo vincula con el caso Rodríguez Torres](#); Espacio Público. April 11, 2018. [Periodista de Televen es hostigada durante protesta por falta de agua](#); Twitter account of El Pitazo (@ElPitazoTV). [April 2, 2018](#); Espacio Público. April 10, 2018. [Agreden a fotoperiodista de El Pitazo durante cobertura en Catia](#).

<sup>1321</sup> Colegio Nacional de Periodistas Venezuela. February 27, 2018. [Comisión de medios rechaza agresiones contra periodistas y canal de televisión](#); NTN24. February 25, 2018. [Retuvieron a dos periodistas paraguayos que cubrirían evento deportivo en Venezuela](#); ABC. February 25, 2018. [Retuvieron a periodistas paraguayos en Venezuela](#); El Impulso. January 22, 2018. [Retienen a camarógrafo por tomar fotos en la Emergencia del HCAMP](#); Twitter account of Luis González (@luisgonzaloprz). [April 26, 2018](#); Espacio Público. April 27, 2018. [GNB retiene a periodista de Venemundo durante protesta en Miraflores](#).

<sup>1322</sup> Espacio Público. February 22, 2018. [Agredidos periodistas durante cobertura en un Hospital en Catia](#); Espacio Público. March 23, 2018. [GNB amenaza a periodista durante la cobertura de una protesta](#); Espacio Público. March 14, 2018. [Impiden cobertura periodística en operativo de captura de Rodríguez Torres](#); Twitter account of Andrea Tosta (@AndreTostaM). [April 2, 2018](#); Twitter account of El Pitazo (@ElPitazoTV). [April 2, 2018](#); Espacio Público. April 11, 2018. [Efectivos de la GNB retienen a equipo de prensa de El Pitazo](#); Instagram account of Amira Muci (amiramucic). [April 22, 2018](#); Espacio Público. April 23, 2018. [Agreden a periodista en el Mercado Libre de Maracay](#); Espacio Público. April 26, 2018. [Gobernador de Vargas desaloja a periodista durante una rueda de prensa](#); Espacio Público. April 26, 2018. [Gobernador de Vargas desaloja a periodista durante una rueda de prensa](#).

<sup>1323</sup> 800 Noticias. April 18, 2018. [¡EL COLMO! Supuestos colectivos asaltaron a periodistas en Maracaibo](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [April 17, 2018](#) and [April 17, 2018](#); Espacio Público. May 6, 2018. [Grupos violentos atacan a periodista durante recorrido de Henri Falcón](#).

concerned about the information that security forces allegedly assaulted journalists while they were covering events<sup>1324</sup>.

1023. The IACHR and its Office of the Special Rapporteur received information on journalists René Méndez, of NTN24 and Reuters, and Daniel Cáceres, of AFP, who were held for four hours by officials of the General Directorate of Military Counterintelligence [*Dirección General de Contrainteligencia Militar*] (Dgcm) in the municipality of Lobatera, Táchira state, during the coverage of the military exercises events convened by the national government. In addition to being interrogated, they were forced to erase the material recorded during the day<sup>1325</sup>. In another episode, officials of the Bolivarian National Intelligence Service [*Servicio Bolivariano de Inteligencia Nacional*] (Sebin) detained and confiscated the equipment of several journalists while covering events in the vicinity of the house of the leader of Voluntad Popular, Leopoldo López, under house arrest<sup>1326</sup>. Likewise, National Guard officers would have prevented coverage of the journalistic teams of *El Pitazo*, *Diario Final* and *Televen* while reporting on the situation in the Paraguachón area, in the Colombian Guajira. The troops alleged that it was forbidden to record at the border<sup>1327</sup>.

1024. Daniel Hernández, a photojournalist on the *El Estímulo* website, would have been detained for two hours by National Guard officials in charge of the security of the Ministry of Foreign Affairs when he was taking pictures of the queues of Venezuelans carrying out proceeding to leave the country. The photographer was released after the agents erased the photographic material<sup>1328</sup>. Also, the Yaracuy State Police would have arrested Gabriel Oñate, a contributor of the digital media *El Pitazo*, after he took testimonies in the market of the municipality of Independencia on the fainting of a child allegedly due to hunger. Oñate was released after he agreed to delete the videos he had recorded with his phone<sup>1329</sup>.

1025. German journalist Billy Six was reportedly arrested on 17 November in Paraguaná, Falcón state. According to the information, intelligence officials would have transferred him without a warrant to the Sebin headquarters, El Helicoide, in the city of Caracas. Additionally, he would have been charged before a military court on charges of "espionage", "rebellion" and "violation of security areas"<sup>1330</sup>.

1026. The IACHR also received information on cases of journalists who were victims of assault, intimidation, and harassment after publishing investigations and reports on corruption or infractions related to the activity of public officials<sup>1331</sup>. In turn, the IACHR learned of various attacks against media facilities and damage to infrastructure and work equipment<sup>1332</sup>.

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<sup>1324</sup> Espacio Público. April 4, 2018. [PoliCarabobo agrade a periodistas durante cobertura de un motín](#); Twitter account of *El Pitazo* (@ElPitazoTV). [April 18, 2018](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [April 17, 2018](#).

<sup>1325</sup> Colegio Nacional de Periodistas. February 27, 2018. [COMUNICADO CNP TÁCHIRA](#); Efecto Coyuyo. February 24, 2018. [Dgcm retuvo por varias horas a periodistas de NTN24 y AFP en Táchira](#); IPYS. March 6, 2018. [Periodistas y medios fueron objeto de intimidación, censura y abuso de poder](#); NTN24. February 24, 2018. ["Nunca supimos por qué nos detuvieron": Daniel Cáceres, reportero detenido por militares en Venezuela](#).

<sup>1326</sup> IPYS. March 6, 2018. [Periodistas y medios fueron objeto de intimidación, censura y abuso de poder](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [March 1, 2018](#); Espacio Público. March 2, 2018. [El SEBIN detuvo a periodistas para evitar cobertura fuera de la casa de Leopoldo López](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [March 1, 2018](#); Twitter account of Lexys Rendón (@lexysrendon). [March 1, 2018](#).

<sup>1327</sup> IFEX. February 19, 2018. [Guardia Nacional impide cobertura periodística en la frontera](#).

<sup>1328</sup> Espacio Público. March 13, 2018. [Retenido fotógrafo de El Estímulo mientras cubría el proceso de apostilla](#).

<sup>1329</sup> Espacio Público. April 4, 2018. [Policía de Yaracuy detiene a infocudadano mientras grababa en el mercado](#).

<sup>1330</sup> Espacio Público. Information sent by e-mail on December 10, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1331</sup> Twitter account of Maibort Petit (@maibortpetit). [March 6, 2018](#); Espacio Público. March 9, 2018. [Funcionario de PDVSA amenaza a periodista](#).

<sup>1332</sup> Colegio Nacional de Periodistas. February 17, 2018. [Atentado en Radio Mundial crimen en Táchira contra "Libertad de Expresión"](#); Colegio Nacional de Periodistas. February 20, 2018. [Colegio de Periodistas y SNTP rechazan ataques a emisora Visionaria 104.7](#); Espacio Público. February 17, 2018. [Visionaria 104.7 FM es atacada por tercera vez en este mes](#); Espacio Público. February 17, 2018. [Fuera del aire Radio Mundial 860 AM de Táchira](#); Colegio Nacional de Periodistas. February 10, 2018. [Colegio de Periodistas y SNTP rechazan ataques a emisora Visionaria 104.7](#); Espacio Público. February 17, 2018. [Visionaria 104.7 es atacada por tercera vez este mes](#); February 17, 2018. [Atacan la sede del Canal 11 NCTV en el Zulia](#); Espacio Público. April 18, 2018. [Civiles armados atacan antigua sede de El Nacional](#); Espacio Público. May 17, 2018. [Bomberos ordenan cierre temporal de emisora de radio en el Zulia](#).

1027. 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."

### 2) *Stigmatizing statements*

1028. In 2018, the IACHR and its Office of the Special Rapporteur learned of stigmatizing expressions on the part of public authorities against the work of the media and journalists<sup>1333</sup>. The IACHR was informed of accusations by public authorities against the *Transparencia Venezuela* organization<sup>1334</sup>. On April 18, the web portal of the Ministry of the Popular Power of the Office of the Presidency and Monitoring of Government Management [*Ministerio del Poder Popular del Despacho de la Presidencia y Seguimiento de la Gestión de Gobierno*], published an article in the state newspaper *Correo del Orinoco*, on the occasion of the Summit of the Americas, in which it would point to the organization as "subversive" and one of the most dangerous in the country. In November 2017, President Nicolás Maduro had stated during an interview with a Spanish media that the organization was financed by the United States and that it should not be "trusted"<sup>1335</sup>.

1029. On September 10, President Nicolás Maduro allegedly affirmed on national television that his government is the victim of a campaign of "global defamation, of global insult against Venezuela," and reportedly affirmed that there is "a great worldwide operation, of the media, to position an alleged humanitarian crisis that justifies the crazy plans that these sectors have of a military intervention in Venezuela"<sup>1336</sup>.

1030. 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>1337</sup>.

### 3) *Indirect restrictions*

1031. According to the information received by the IACHR, the lack of supply and governmental control of newsprint continued to affect the free functioning of the written press in 2018. This problem has persisted for years and has severely aggravated the possibility of the media to continue informing the population about the national events. Due to the lack of supplies provided by the Editorial Complex Alfredo Manerio [*Complejo Editorial Alfredo Manerio*] (CEAM), the state company that owns the legal monopoly of the import of newsprint and is responsible for distributing it, the media have been forced to reduce the number of its pages, to reduce its circulation and its frequency, or have had to interrupt indefinitely the edition of their paper versions. According to the information available, the circulation of around 35 written media would have been affected in 2018 due to the scarcity of newsprint or the economic difficulties to acquire printing plates or ink. Of them, 26 would have stopped circulating permanently, and 9 would have done so in an interrupted manner<sup>1338</sup>. Some of those affected are the newspaper *La Nación* of Táchira state, *Versión Final* of Zulia state, *El Informador*, *El Diario* and *La Prensa* of Lara state, *Yaracuy al Día* and *El Tiempo* of Anzoátegui state, *Visión*

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<sup>1333</sup> Espacio Público. May 6, 2018. [Jacqueline Farías intentó retirar a la prensa de protesta y manifestantes se negaron](#).

<sup>1334</sup> *Transparencia Venezuela*. Alerta de incidencia contra la directora ejecutiva de la Asociación Civil *Transparencia Venezuela*. September 13, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1335</sup> *Transparencia Venezuela*. Alerta de incidencia contra la directora ejecutiva de la Asociación Civil *Transparencia Venezuela*. September 13, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1336</sup> *El Universal*. September 11, 2018. [Maduro: Venezuela solicitará indemnización por atención de migrantes colombianos](#); *Diario Las Américas*. September 11, 2018. [Maduro pedirá "indemnización" por colombianos que viven en Venezuela](#).

<sup>1337</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>1338</sup> IPYS Venezuela. Registros de crisis de medios impresos en Venezuela | Datos IPYSVe. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

*Apureña* of Apure state, *Última Hora* of Portuguese state, and *El Universal* from Caracas, which had to reduce the frequency of circulation, lower the number of pages, or temporarily suspend their impressions. The media *La Verdad de Monagas* and *El Oriental* of Monagas state, *El Impulso* of Lara state, *La Prensa de Barinas* of Barinas states, *La Región de Oriente* of Sucre state, and *Tribuna Popular* of Caracas, indefinitely suspended printing of their editions<sup>1339</sup>. In this context, the IACHR learned that the newspaper *El Nacional*, after 75 years of operation, stopped circulating on December 14<sup>1340</sup>.

1032. During the hearing on human rights defenders, journalists, and the media in Venezuela, held on May 11 in the framework of the 168th session of the IACHR, the petitioning organizations denounced the "persecution of public officials for reporting or expressing dissatisfaction due to the crisis within State institutions" and expressed concern about these "patterns of intimidation and censorship that seek to silence critical voices, especially when they denounce the serious crisis that the country is going through and the violation of economic, social, and cultural rights"<sup>1341</sup>.

1033. On the other hand, the IACHR received information that the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel) issued warnings and initiated administrative procedures against media and journalists based on expressions that the organization considered as violent, disturbing, or questioning of the official discourse<sup>1342</sup>.

1034. 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."

1035. Principle 7 of the Declaration of Principles states that "prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments."

1036. 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

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<sup>1339</sup> Colegio Nacional de Periodistas Venezuela. February 26, 2018. [Cinco medios de Lara afectados por la falta de papel](#); El Carabobeño. February 28, 2018. [Censura gubernamental afectó a cinco periódicos en Lara](#); El Informador. February 15, 2018. [#ATENCIÓN El Informador cambia sus días de circulación por falta de insumos](#); Espacio Público. March 12, 2018. [El Tiempo de Anzoátegui no circulará los fines de semana](#); Espacio Público. February 15, 2018. [Diario El Impulso deja de circular luego de 114 años de trayectoria](#); Espacio Público. January 10, 2018. [Crisis del papel forzó la salida de circulación del Diario La Nación](#); Espacio Público. March 2, 2018. [Diario La Región paraliza sus rotativas a partir del 1ro de Marzo](#); Espacio Público. March 8, 2018. [Diario Versión Final circulará hasta el domingo](#); Espacio Público. May 25, 2018. [Versión Final dejará de circular todos los días](#); Espacio Público. May 7, 2018. [Diario El Tiempo de Puerto La Cruz pasa a ser semanario](#); Espacio Público. May 28, 2018. [Visión Apureña se convierte en el 5to impreso que deja de circular en mayo](#); Espacio Público. May 31, 2018. [Última Hora de Portuguesa reduce su circulación por falta de insumos](#); Espacio Público. May 19, 2018. [Diario La Prensa de Barinas deja de circular por falta de papel](#); Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [May 30, 2017](#); Efecto Cocuyo. August 25, 2018. [El Universal dejará de circular hasta el mes de septiembre](#); El Nacional. August 19, 2018. [El Nacional dejará de circular dos días a la semana](#); Transparencia Venezuela. No date. [Censura financiera acaba con medios impresos venezolanos](#).

<sup>1340</sup> Excelsior. December 13, 2018. [Periódico venezolano 'El Nacional' deja de circular por falta de papel](#); RCN Radio. December 13, 2018. [Histórico diario El Nacional deja de circular en papel en Venezuela](#).

<sup>1341</sup> IACHR. 168 Period of Sessions. Dominican Republic. May 11, 2018. [Denuncias de hostigamiento contra personas defensoras de derechos humanos, periodistas y medios de comunicación en Venezuela](#).

<sup>1342</sup> Twitter account of Arnoldo Benítez (@arnoldobenitez). [May 25, 2018](#); Espacio Público. May 31, 2018. [La censura llega a Radio Arauca mediante un exhorto de Conatel](#); El Impulso. February 24, 2018. [CONATEL abrió procedimiento sancionatorio contra Televen #24Feb](#); Contrapunto. February 24, 2018. [Conatel abrió procedimiento sancionatorio contra Televen](#); Colegio Nacional de Periodistas Venezuela. February 27, 2018. [Comisión de medios rechaza agresiones contra periodistas y canal de televisión](#); Colegio Nacional de Periodistas Venezuela. February 27, 2018. [Comisión de medios rechaza agresiones contra periodistas y canal de televisión](#); Crónica Uno. May 25, 2018. [Conatel exhorta a Globovisión a no difundir mensajes que desconozcan a las autoridades](#). Committee to Protect Journalists (CPJ). May 24, 2018. [Venezuela opens investigation into independent newspaper](#); NTN24. May 22, 2018. [Conatel abrió procedimiento contra El Nacional Web por "incitar al desconocimiento de las autoridades"](#); Conatel. May 22, 2018. [Conatel inicia procedimiento administrativo sancionatorio al medio electrónico "El Nacional Web"](#); El Nacional. May 25, 2018. ["Medida Contra El Nacional cercena la libertad"](#); Efecto Cocuyo. May 22, 2018. [Conatel abre procedimiento sancionatorio a El Nacional Web](#); Espacio Público. April 6, 2018. [Prohíben a Bomberos de Iribarren declarar a los medios de comunicación](#).

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”.

#### 4) *Subsequent liabilities and criminalization of freedom of expression*

1037. Throughout 2018, the IACHR and its Office of the Special Rapporteur continued to receive information on the start of criminal proceedings against journalists and the media, doctors, members of the Army or other public officials, and citizens in general, aimed at punishing and inhibiting expressions critical of the actions of state authorities or on matters of public interest<sup>1343</sup>.

1038. The IACHR was informed of the investigation initiated against four reporters and editors of the portal specialized in investigative journalism *Armando.info* following a complaint by the Colombian businessman Alex Saab for the crimes of defamation and libel. The lawsuit was filed on September 8, 2017 after the publication of a report that revealed alleged irregularities in the state import of food to Venezuela through negotiations involving President Nicolás Maduro and other public officials, as well as Colombian businesspersons investigated for alleged drug trafficking crimes<sup>1344</sup>. After the judiciary accepted the request to initiate an investigation, journalists Roberto Deniz, Joseph Poliszuk, Alfredo Meza, and Ewald Scharfenberg decided to leave Venezuela and since then, they have been exiled in Colombia<sup>1345</sup>.

1039. According to the information received by the IACHR and its Office of the Special Rapporteur, on July 30, the Eleventh Court of First Instance of the Metropolitan Area of Caracas would have accepted a complaint and barred the four journalists from leaving the country, which would leave them exposed to a possible international arrest warrant for being abroad<sup>1346</sup>. Also, on September 8, the National Telecommunications Commission (Conatel) would have informed journalists that the aforementioned Court issued, on August 15, an official notice in which it established as a precautionary measure the prohibition to "publish and disseminate through the digital media, specifically the site called *Armando.info*, [content] that goes against the honor and reputation of the citizen Alex Nain Saab Morán" until the criminal process ends<sup>1347</sup>. In addition, Conatel would have notified the measure to Venezuela's Internet service providers<sup>1348</sup>. Journalists informed that it would be "an unprecedented decision, in which a central government body, and not a court, ensures a ban on the mention of a citizen in electronic media." Journalists announced in turn that they would continue reporting on the case<sup>1349</sup>. Organizations defending freedom of expression in Venezuela expressed concern about the order of prior censorship issued by the court and executed by Conatel. They pointed out that

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<sup>1343</sup> El Informador. February 5, 2018. [Detienen a tres oficiales del Cicpc por averiguar registros policiales de Maduro y Cabello](#); Runrunes. February 5, 2018. [Detenidos tres oficiales del Cicpc por averiguar registros policiales de Nicolás Maduro y Diosdado Cabello](#); Espacio Público. February 6, 2018. [Detienen a 3 Cicpc por investigar antecedentes penales de Maduro y Cabello](#); El País. June 6, 2018. [Diosdado Cabello obliga a pagar a 'El Nacional' una demanda por daño moral](#); Semana. June 6, 2018. [Diosdado Cabello ganó demanda contra el diario El Nacional](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [September 26, 2018](#); Diario Las Américas. September 27, 2018. [Cabello dice que portal venezolano La Patilla debe pagarle \\$32 millones por daños morales](#); El Comercio/AFP. September 26, 2018. [Cabello dice que ganó demanda contra La Patilla y que el medio deberá indemnizarlo](#);

<sup>1344</sup> Amnesty International. March 21, 2018. [Venezuela: periodistas de armando.info perseguidos por investigar corrupción](#); El Mundo. February 7, 2018. [Cuatro periodistas huyen de Caracas y se unen al exilio venezolano](#); El País. February 6, 2018. [La persecución del chavismo obliga a cuatro periodistas de Armando.info a abandonar Venezuela](#)

<sup>1345</sup> Amnesty International. March 21, 2018. [Venezuela: periodistas de armando.info perseguidos por investigar corrupción](#); El País. February 6, 2018. [La persecución del chavismo obliga a cuatro periodistas de Armando.info a abandonar Venezuela](#).

<sup>1346</sup> Letter by journalists Roberto Deniz, Joseph Poliszuk, Alfredo Meza and Ewald Scharfenberg, addressed to the Office of the Special Rapporteur for Freedom of Expression. Ref: Manifestación ante la Corte Interamericana de Derechos Humanos. Persecución de periodistas venezolanos. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1347</sup> Letter by journalists Roberto Deniz, Joseph Poliszuk, Alfredo Meza and Ewald Scharfenberg, addressed to the Office of the Special Rapporteur for Freedom of Expression. Ref: Manifestación ante la Corte Interamericana de Derechos Humanos. Persecución de periodistas venezolanos. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1348</sup> Efecto Cocuyo. September 12, 2018. [Conatel ordena a proveedores de internet en Venezuela censurar al portal Armando.info](#); Instituto Prensa y Sociedad (IPYS). September 16, 2018. [Las ambigüedades normativas rodean la medida de censura contra periodistas de Armando.info](#); El Tiempo. September 13, 2018. [Maduro extiende la censura de los medios a los portales informativos](#).

<sup>1349</sup> Armando.info. September 12, 2018. Nota de Prensa. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

according to the Organic Law of Telecommunications, the regulation of the content of the transmissions and communications of the telecommunications media would not be part of the agency's attributes<sup>1350</sup>.

1040. On February 6, three officers assigned to the Agency of Scientific, Criminal, and Criminalistic Investigation [*Cuerpo de Investigaciones Científicas Penales y Criminalísticas*] (CICPC) were arrested in San Cristóbal, Táchira state, for investigating the police records of President Nicolás Maduro and the president of the National Constituent Assembly (ANC), Diosdado Cabello. The 6th Court of Control ordered pre-trial detention against the three officers, charged with undue disclosure of data or personal information, insult against persons invested with public authority, and conspiracy to enter "without authorization to the system and researching the lives of executive branch officials"<sup>1351</sup>.

1041. On the other hand, the IACHR received information on the decision of the Third Court of First Instance in Civil, Commercial, Transit, and Banking of Caracas to accept the complaint that the president of the Constituent Assembly, Diosdado Cabello, filed against the *El Nacional* newspaper in 2015 following the publication of an investigation of the Spanish newspaper *ABC* in which Cabello was linked to drug trafficking and illicit businesses. Judge Gustavo Hidalgo ruled that the newspaper committed moral damage against Cabello and sentenced it to pay a fine of 1,000 million bolivares (about US \$ 12,500 according to the official rates)<sup>1352</sup>. Likewise, the IACHR and its Office of the Special Rapporteur were informed that the Court would also have accepted the lawsuit that Cabello filed against *La Patilla*, also for reproducing the *ABC* newspaper's investigation. On September 26, on his program on the state television *VTV*, Cabello would have read fragments of the court ruling that accepted his claim, which had not yet been notified to the digital media<sup>1353</sup>.

1042. The IACHR also received information on the cases of threats to implement the "Anti-Hate Law" against Monsignor Antonio López Castillo and Víctor Hugo Basabe, bishop of the Diocese of San Felipe; auxiliary bishop of Caracas, Tulio Ramírez; and against the parish priest of the Church of Our Lady of La Candelaria, Miguel Acevedo<sup>1354</sup>. Likewise, the IACHR was informed of other cases in which individuals would have been warned of the implementation of the regulations<sup>1355</sup>, and other criminal regulations in a case regarding the disclosure of exchange rate information that would have been considered false<sup>1356</sup>; and, on the other hand, the IACHR also received information on the sentencing of four years and 10 months in prison to a soldier who, during a protest in the Táchira state on May 18, 2017, broke his "card of the fatherland" and criticized the high military command and national government policies<sup>1357</sup>.

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<sup>1350</sup> Instituto Prensa y Sociedad (IPYS). September 16, 2018. [Las ambigüedades normativas rodean la medida de censura contra periodistas de Armando.info](#); Espacio Público. September 11, 2018. [Prohíben a Armando.info publicar sobre Alex Nain Saab](#).

<sup>1351</sup> El Informador. February 5, 2018. [Detienen a tres oficiales del Cicpc por averiguar registros policiales de Maduro y Cabello](#); Runrunes. February 5, 2018. [Detenidos tres oficiales del Cicpc por averiguar registros policiales de Nicolás Maduro y Diosdado Cabello](#); Espacio Público. February 6, 2018. [Detienen a 3 Cicpc por investigar antecedentes penales de Maduro y Cabello](#);

<sup>1352</sup> El País. June 6, 2018. [Diosdado Cabello obliga a pagar a 'El Nacional' una demanda por daño moral](#); Semana. June 6, 2018. [Diosdado Cabello ganó demanda contra el diario El Nacional](#).

<sup>1353</sup> Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [September 26, 2018](#); Diario Las Américas. September 27, 2018. [Cabello dice que portal venezolano La Patilla debe pagarle \\$32 millones por daños morales](#); El Comercio/AFP. September 26, 2018. [Cabello dice que ganó demanda contra La Patilla y que el medio deberá indemnizarlo](#).

<sup>1354</sup> Conferencia Episcopal Venezolana. No date. [Comunicado de la Presidencia de la CEV ante las palabras emitidas por el Sr. Presidente en la alocución del 15 de enero](#); Espacio Público. January 17, 2018. [Maduro amenaza con la "ley" del odio a Obispo de Barquisimeto](#); Espacio Público. February 20, 2018. [Ministerio de Interior y Justicia cita a dos sacerdotes por "incitar al odio"](#).

<sup>1355</sup> Espacio Público. Casos de violaciones del derecho a la libertad de expresión e información en los que se ha aplicado la "Ley" contra el odio. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Committee to Protect Journalists (CPJ). May 24, 2018. [Venezuela opens investigation into independent newspaper](#); NTN24. May 22, 2018. [Conatel abrió procedimiento administrativo sancionatorio al medio electrónico "El Nacional Web"](#); Conatel. May 22, 2018. [Conatel inicia procedimiento administrativo sancionatorio al medio electrónico "El Nacional Web"](#); El Nacional. May 25, 2018. ["Medida Contra El Nacional cercena la libertad"](#); Efecto Coyuyo. May 22, 2018. [Conatel abre procedimiento sancionatorio a El Nacional Web](#).

<sup>1356</sup> Versión Final. May 29, 2018. [Será enjuiciado el propietario de Dólar Pro por ilícitos cambiarios](#); Espacio Público. May 31, 2017. [Ministerio Público acusó a propietario del portal Dólar Pro](#); El Pitazo. May 15, 2018. [Fiscalía ordena averiguación penal contra diario La Verdad de Vargas](#); Espacio Público. May 16, 2018. [Fiscalía ordena averiguación penal contra diario La Verdad de Vargas](#).

<sup>1357</sup> El Nacional. May 25, 2018. [Sentenciado teniente a 4 años por romper carnet de la patria](#); Espacio Público. May 30, 2018. [Condenan a cuatro años de cárcel al teniente que rompió el carnet de la patria](#); YouTube/Lo más trinado. May 18, 2017. [Discurso de Militar que se rebeló contra Maduro rompiendo su carnet de la patria en Venezuela](#).

1043. On May 15, the Attorney General's Office started a criminal investigation against the newspaper *La Verdad* for the alleged crime of "fraudulent dissemination of prices" established in the Organic Law of Fair Prices, for publishing an article on the price of urban transportation fairs. The investigation would have started after the governor of the state, Jorge Luis García Carneiro, requested it at a public ceremony, in which he questioned the media for "creating anxiety in the Varguense people by publishing the cost of the fair, that has not been authorized by local authorities"<sup>1358</sup>.

1044. In another episode, the IACHR was informed that officials of the Bolivarian National Intelligence Service (Sebin) arrested Twitter user Pedro Patricio Jaimes Criollo on May 10, administrator of the @AereoMeteo account, after he published information on the presidential flight route that transported Nicolás Maduro to the Aragua state. Jaimes Criollo would have been accused of attacking the nation's security and has been subjected to pre-trial detention. For one month, relatives and human rights organizations did not know his whereabouts and the State denied information on his detention. On June 15, after being detained for 33 days, Jaimes Criollo communicated by telephone with his family and informed that he was being held at Sebin's headquarters, El Helicoide, and that he had been the victim of mistreatment and beatings. The legal team of the Espacio Público organization filed a Habeas Corpus to ensure his safety, but the Third Control Court would have declared it inadmissible. The NGO also requested that Jaimes Criollo be allowed to take the oath so they could assume his defense. However, the State would not have authorized it and would not have allowed access to the investigation files<sup>1359</sup>. Finally, on October 16, Espacio Público would have been sworn in before the courts as the defense of the detainee. The preliminary hearing of Jaimes Criollo was scheduled for July 25, but was postponed five times by the Court, the last time on November 22, according to the information received by the IACHR<sup>1360</sup>.

1045. On October 4, the IACHR granted precautionary measures in favor of Jaimes Criollo, because his situation meets the prima facie the requirements of gravity, urgency, and irreparability contained in Article 25 of the Rules of Procedure. The Commission requested the State of Venezuela to adopt the necessary measures to guarantee the rights to health, life, and personal integrity of Jaimes Criollo, to provide adequate medical attention and ensure that his detention conditions are compatible with international standards<sup>1361</sup>.

1046. On the other hand, on 29 August, graphic journalist of *Dolar Today*, Jesús Medina Ezaine, was reportedly detained when he was reporting on the situation of a hospital in Caracas with a team of international journalists<sup>1362</sup>. Two days later, the Caracas 13 Control Court would have ordered a pre-trial detention against him for the alleged crimes of money laundering, association to commit a crime, illegal profit of acts of the administration, and instigation to hatred. Medina would have been detained in the Military Jail of Ramo Verde<sup>1363</sup>. The reporter had already been detained in November 2017, after receiving threats for photographing the Aragua prison. He was detained for three days and would have been beaten and threatened. He was released along a road, half-naked and with signs of violence. The reporter does not know who was responsible for his detention<sup>1364</sup>.

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<sup>1358</sup> Journalists Amy Torres, information director of the newspaper, and José Ángel Prada, writer of the article, were reportedly summoned by the Office of the Prosecutor to appear before the Criminal Investigation Service of the Vargas State Police. El Pitazo. May 15, 2018. [Fiscalía ordena averiguación contra diario La Verdad de Vargas](#); Espacio Público. May 16, 2018. [Fiscalía ordena averiguación penal contra diario La Verdad de Vargas](#).

<sup>1359</sup> NTN24. June 17, 2018. [Confirman que tuitero desaparecido se encuentra detenido en El Helicoide](#); Espacio Público. June 16, 2018. [Tras un mes desaparecido, Pedro Jaimes se comunicó con su familia](#); Twitter account of Madelein Garcia (@madeleintlSUR). [May 13, 2018](#); IFEX. June 21, 2018. [IFEX-ALC condemns arbitrary detention of Venezuelan Twitter user Pedro Jaimes Criollo](#).

<sup>1360</sup> Twitter account of VIVO Play (@vivoplaynet). [November 22, 2018](#); El Pitazo. November 22, 2018. [De 20 a 30 años es la pena que podría enfrentar tuitero que publicó ruta de avión presidencial](#); Crónica Uno. November 23, 2018. [Difieren por quinta vez la audiencia preliminar del tuitero Pedro Jaimes](#).

<sup>1361</sup> IACHR. [Resolución 78/2018. Medida cautelar No. 688-18](#). October 4, 2018.

<sup>1362</sup> NTN24. August 29, 2018. [Funcionarios del Servicio Nacional Bolivariano de Inteligencia \(Sebin\). Efecto Cocuyo. August 29, 2018. Jesús Medina Ezaine es detenido en Caracas junto a reporteros internacionales](#).

<sup>1363</sup> CNN. September 2, 2018. [Venezuela: detienen a periodista y lo envían a prisión militar](#); Efecto Cocuyo. August 31, 2018. [Jesús Medina Ezaine queda privado de libertad, tras dos días desaparecido](#); Committe to Protect Journalists (CPJ). September 7, 2018. [Venezuelan freelance photographer detained, sent to military prison](#).

<sup>1364</sup> Committee to Protect Journalists (CPJ). September 7, 2018. [Venezuelan freelance photographer detained, sent to military prison](#); CNN. September 2, 2018. [Venezuela: detienen a periodista y lo envían a prisión militar](#).

1047. The IACHR was informed of the detention of firefighters Carlos Varón and Ricardo Prieto on September 12 for conducting a satirical video comparing President Nicolás Maduro to a donkey<sup>1365</sup>. The firefighters would have been charged for the offenses set forth in articles 20 and 21 of the "Anti-Hate Law", but these would have been later changed for the crime of offense against the President and public incitement to hatred, established in articles 147 and 285 of the Criminal Code, which could carry a penalty of up to 9 years in prison. On October 31, both were placed on probation with periodic presentation every 30 days and a ban on leaving the state of Merida<sup>1366</sup>.

1048. The IACHR has sustained that "[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy."<sup>1367</sup> Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, "[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official." That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

1049. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information." Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.<sup>1368</sup>

### **5) Social protest and public demonstrations**

1050. The IACHR received information on various manifestations that continued to take place in various parts of Venezuela, in general in protest of the situations of shortages and economic difficulties faced by the population<sup>1369</sup>. According to the information received by the IACHR, within this context of continuous protests and critical expressions against the Government, protesters and journalists have been arbitrarily detained by security forces<sup>1370</sup>. The IACHR is concerned about the climate of restriction in Venezuela and the possible reprisals against officials who participate in demonstrations, disseminate critical information, or express themselves against the Government<sup>1371</sup>. In this context, as mentioned, the IACHR received

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<sup>1365</sup> Clarín. September 17, 2018. [Detienen a dos bomberos en Venezuela por comprar 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>1366</sup> Twitter account of Observatorio de Derechos Humanos de la Universidad de Los Andes (@Uladdhh). [October 31, 2018](#); IPYS Venezuela. [Balance semanal](#). November 6, 2018.

<sup>1367</sup> IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

<sup>1368</sup> ACHR. 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>1369</sup> Observatorio Venezolano de Conflictividad Social (OVCS). November 13, 2018. [Conflictividad social en Venezuela durante octubre de 2018](#); El País. July 18, 2018. [Venezuela, 30 protestas diarias](#);

<sup>1370</sup> IPYS. August 6, 2018. [Detenciones arbitrarias y ataques a portales web marcaron el inicio de agosto | Balance semanal](#); IPYS. July 25, 2018. [Abusos de poder impiden cobertura informativa de denuncias ciudadanas | Balance semanal](#); Espacio Público. October 10, 2018. [Septiembre: Sentencias, detenciones y amenazas](#); Efecto Cocuyo. September 25, 2018. [Detenciones arbitrarias, censura y cierre de medios, septiembre negro para el periodismo venezolano](#); Knight Center for Journalism in the Americas. [Venezuelan journalists suffer arbitrary detentions and problems with passports](#). September 26, 2018.

<sup>1371</sup> Espacio Público. February 21, 2018. [PDVSA controla el uso que sus trabajadores le dan a las redes sociales](#); Espacio Público. October 10, 2018. [CICPC detiene a tres enfermeras por protestar en el estado Anzoátegui](#); Espacio Público. May 8, 2018. [Situación del derecho a la libertad de expresión enero – abril 2018](#); Espacio Público. February 16, 2018. [Detienen a Sindicalista de Corpoelec por denunciar el colapso eléctrico](#); IPYS. April 5, 2018. [Balance semanal | El abuso de poder limitó la labor periodística durante la última semana](#).

information on episodes in which reporters were prevented from approaching certain areas where protests take place and to collect testimonies from the persons involved or to take pictures<sup>1372</sup>.

1051. According to the organization Espacio Público, between January and October 2018, at least 55 people from the public sector were persecuted, threatened, or detained for protesting or denouncing critical situations in their workplaces<sup>1373</sup>.

1052. The IACHR was informed that health workers who have publicly denounced the lack of supplies and other critical situations in the hospital centers have experienced harassment, acts of intimidation, and even arrests by State officials<sup>1374</sup>. Also, officials from different state agencies were detained by the security forces due to their critical expressions<sup>1375</sup>.

1053. The IACHR received information on the arrest of Erika Palacios and Ronald Sevilla on January 3, during a protest against the national Government, and a week later they were convicted by the Control Court of the Criminal Judicial Circuit of Carabobo State for the presumed commission of the crimes of possession of incendiary substances and explosive devices, public instigation, instigation of hatred, and obstruction of public roads, provided for in the Criminal Code and in articles 20 and 21 of the so-called "Anti-Hate Law"<sup>1376</sup>.

1054. On the other hand, at least 29 people have been detained during a protest over the electricity service failure in front of the headquarters of the National Electric Corporation [*Corporación Eléctrica Nacional*] (Corpoelec) in Maracaibo, Zulia state. Likewise, Dayana Fernández and Érika Gutiérrez, journalists of the opposition Primero Justicia party, were arrested while covering a protest in front of the residence of the governor of Zulia state, Omar Prieto, due to problems in the electricity service. The journalists were allegedly beaten and stripped of their cell phones by officials of the Regional Police of Zulia. Journalist Leonel Reyes, media chief of the Municipal Chamber of Maracaibo, would have also been detained<sup>1377</sup>.

1055. Dr. Domingo Rodríguez, Chief of Traumatology at the Venezuelan Institute of Social Security [*Instituto Venezolano de Seguros Sociales*] (IVSS) in La Owallera, Aragua state, was arrested along with two other workers for participating on April 20 in a protest over the lack of medical supplies<sup>1378</sup>. Later, four IVSS workers would have had administrative proceedings opened against them for protesting and making statements to the press, while protesting the arbitrary detention of Rodríguez and Yan Sandoval, a pathologist technician<sup>1379</sup>.

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<sup>1372</sup> Espacio Público. February 22, 2018. [Acredidos periodistas durante cobertura en un Hospital en Catia](#); Espacio Público. March 23, 2018. [GNB amenaza a periodista durante la cobertura de una protesta](#); Espacio Público. March 14, 2018. [Impiden cobertura periodística en operativo de captura de Rodríguez Torres](#); Twitter account of Andrea Tosta (@AndreTostaM). [April 2, 2018](#); Twitter account of El Pitazo (@ElPitazoTV). [April 2, 2018](#); Espacio Público. April 11, 2018. [Efectivos de la GNB retienen a equipo de prensa de El Pitazo](#); Instagram account of Amira Muci (amiramucic). [April 22, 2018](#); Espacio Público. April 23, 2018. [Agreden a periodista en el Mercado Libre de Maracay](#); Espacio Público. April 26, 2018. [Gobernador de Vargas desaloja a periodista durante una rueda de prensa](#); Espacio Público. April 26, 2018. [Gobernador de Vargas desaloja a periodista durante una rueda de prensa](#).

<sup>1373</sup> Espacio Público. [Persiguen a trabajadores públicos que denuncian la crisis](#). November 6, 2018; Espacio Público. Opacidad y persecución por informar. 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1374</sup> Espacio Público. February 5, 2018. [Médicos son acosados por denunciar crisis hospitalaria en Nueva Esparta](#); El Pitazo. April 23, 2018. [Directora de La Owallera abrió procedimientos contra cinco trabajadores por protestar](#); Espacio Público. May 1, 2018. [Abren procedimientos contra cinco médicos y enfermeras por protestar](#); Espacio Público. February 17, 2018. [Sebin hostiga a médico tras alertar sobre muertes por intoxicación alimentaria](#).

<sup>1375</sup> Espacio Público. February 16, 2018. [Detienen a Sindicalista de Corpoelec por denunciar el colapso eléctrico](#); Espacio Público. January 17, 2018. [Cuatro Guardias Nacionales son llevados a Dacim por protestar](#); El Pitazo. April 27, 2018. [Dictan orden de captura contra ingeniero Ciro Portillo](#).

<sup>1376</sup> Contrapunto. January 10, 2018. [Érika Palacios y Ronald Sevilla fueron condenados por la comisión de los delitos de detención de sustancias incendiarias y artefactos explosivos](#); Noticiero Digital. January 3, 2018. [Protestas en Naguanagua dejaron dos detenidos este miércoles](#); Espacio Público. January 11, 2018. [Condenados dos ciudadanos mientras manifestaban en Carabobo](#).

<sup>1377</sup> Twitter account of Sindicato Nacional de Periodistas de Venezuela (@sntpvenezuela). [April 24, 2018](#); Espacio Público. April 26, 2018. [Detienen a periodistas mientras cubrían protesta frente a la casa del Gobernador del Zulia](#); El Pitazo. April 24, 2018. [Detienen a presidente de la Cámara Municipal de Maracaibo y a tres periodistas en protesta por fallas de luz](#); Espacio Público. April 26, 2018. [Detienen a 29 personas, entre ellos dos periodistas, durante una protesta en Zulia](#).

<sup>1378</sup> Crónica Uno. April 20, 2018. [Detienen al jefe del servicio de traumatología del IVSS La Owallera](#); Última Hora. April 23, 2018. [Dictan arresto domiciliario a médico del IVSS por participar en protesta](#); Tal Cual. April 22, 2018. [Dictan casa por cárcel a traumatólogo del IVSS por participar en protestas](#).

<sup>1379</sup> Espacio Público. [Situación del derecho a la libertad de expresión e información](#). January-April 2018.

1056. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”<sup>1380</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>1381</sup>

1057. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”<sup>1382</sup>

### **6) Access to public information and restrictions on press coverage in public spaces**

1058. The IACHR observes a persistent omission on the part of state agencies to clearly inform the population about the situation in health centers and the shortage of medicines that would be affecting the response of the health system. In that sense, during the hearing on human rights defenders, journalists, and media in Venezuela, held on May 11 in the framework of the 168 Period of Sessions of the IACHR, the petitioning organizations denounced the lack of “proactive” attitude by the State in the preparation and dissemination of information on matters of high public relevance, such as, for example, data on inflation or other economic indicators<sup>1383</sup>.

1059. On the other hand, the IACHR received information about obstacles faced by journalists to access sites that should be publicly accessible, such as voting centers or sessions of the National Assembly. Thus, during the presidential elections of May 20, several restrictions to the media to enter polling stations would have been reported. Likewise, acts of harassment against journalists by persons in motorcycles<sup>1384</sup> and prohibition of taking photographs in various voting centers would have been reported<sup>1385</sup>. On the other hand, journalists from all over the country have reported the delay in the delivery of press credentials by the National Electoral Council [*Consejo Nacional Electoral*] (CNE). According to a monitoring carried out by the organization Espacio Público, 63% of the media consulted would not have obtained the accreditation in time to enter the polling centers and 25% of those who were accredited would have received incomplete accreditations<sup>1386</sup>.

1060. On at least five occasions journalists would have been prevented from entering the National Assembly to cover the sessions. For example, on April 24 officials of the Bolivarian National Guard (GNB)

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<sup>1380</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para. 197.

<sup>1381</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>1382</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>1383</sup> IACHR. 168 Period of Sessions. Dominican Republic. May 11, 2018. [Denuncias de hostigamiento contra personas defensoras de derechos humanos, periodistas y medios de comunicación en Venezuela](#).

<sup>1384</sup> Espacio Público. May 20, 2018. [20M: que nadie sepa lo que pasó](#); Espacio Público. May 20, 2018. [Reporte preliminar 20M: prensa sin acceso](#).

<sup>1385</sup> Espacio Público. May 20, 2018. [20M: que nadie sepa lo que pasó](#); Espacio Público. May 20, 2018. [Reporte preliminar 20M: prensa sin acceso](#).

<sup>1386</sup> Espacio Público. May 20, 2018. [20M: que nadie sepa lo que pasó](#); Espacio Público. May 20, 2018. [Reporte preliminar 20M: prensa sin acceso](#).

responsible for the custody of the assembly would have prevented access to international press<sup>1387</sup>. On May 15, members of the GNB would have attacked and blocked journalists who tried to enter to cover the session. Some legislators would have tried to mediate for them to be allowed access, but the situation turned violent, resulting in several people injured and damaged equipment<sup>1388</sup>.

1061. Likewise, members of the Bolivarian National Guard (GNB) would have prevented the press from accessing the Federal Legislative Palace during the special session where the decision of the Supreme Court of Justice (TSJ) in exile, on a request for a preliminary merit hearing against President Nicolás Maduro would be discussed. The president of the National Assembly, Omar Barboza, would have tried, without success, to mediate so that the press could enter the Palace<sup>1389</sup>.

1062. During the coverage of the electoral simulation called by the government of Nicolás Maduro, members of the *Plan República* who were guarding the facilities of the Andrés Bello high school in Caracas, would have blocked access to Héctor Luis Caldera, journalist of Venezolanos por la Información (VPItv), who was doing a tour of the main voting centers in Caracas to gather impressions on the development of the process<sup>1390</sup>.

1063. Principle 4 of the Declaration of Principles on Freedom of Expression which states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

### **7) Internet and freedom of expression**

1064. According to a study conducted by IPYS Venezuela and the Internet data laboratory MLAB, the quality of Internet access for Venezuelans deteriorated in the last two years. The average of navigation between January and February of 2018 was 1.6 megabits per second (Mbps). This figure reflects a worsening of the conditions compared to 2016, when citizens had an average speed of 1.9 Mbps<sup>1391</sup>.

1065. Another investigation developed by IPYS Venezuela in August 2018 revealed the existence of intermittent blockades by public and private Internet providers -CANTV, Molvinet, Movistar, and Digitel- to certain websites, especially the information portals. For four days IPYS Venezuela entered almost 700 times to 53 web pages. The results showed that, on average, it was only possible to access the contents in less than half of the tests due to some type of intermittent blocking. The websites studied showed an intermittent functioning in all the regions, although the highest frequency was concentrated in Táchira, Mérida, Monagas, and Caracas. The type of blocking through the domain of the website, known as Bloqueo por DNS, was identified as the most common obstacle. The news portals had the highest blocking frequencies in the four main Internet providers in the country. The information portals that registered the most access difficulties were *elpitazo.info* and *NTN24*, since more than 90% of the attempts to access them were blocked during the

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<sup>1387</sup> Espacio Público. April 24, 2018. [GNB impide el paso de la prensa al Parlamento por tercera vez esta semana](#); Asamblea Nacional. Comisión Permanente del Poder Popular y Medios de Comunicación. Deputy Olivia Lozano, vicepresidente. Censura al Parlamento. Report to the United Nations High Commissioner for Human Rights and 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>1388</sup> Twitter account of Asamblea Nacional (@AsambleaVE). [May 15, 2018](#); Espacio Público. May 16, 2018. [GNB agrade a periodistas y diputados frente a la Asamblea Nacional](#); Asamblea Nacional. Comisión Permanente del Poder Popular y Medios de Comunicación. Deputy Olivia Lozano, vicepresidente. Censura al Parlamento. Report to the United Nations High Commissioner for Human Rights and 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>1389</sup> Twitter account of Elyangelica González (@ElyangelicaNews). [April 17, 2018](#). Twitter account of Gabriela Gonzalez (@GabyGabyGG). [April 17, 2018](#); El Impulso/YouTube. April 17, 2018. [Presidente de la Asamblea Nacional rechaza prohibición de la prensa al Hemiciclo](#).

<sup>1390</sup> YouTube/VPItv. May 6, 2018. [Venezuela - Bloquean acceso a las cámaras de VPITV en el simulacro electoral -VPItv](#); Espacio Público. May 7, 2018. [Bloquean acceso a las cámaras de VPITV durante la cobertura del simulacro electoral](#).

<sup>1391</sup> Instituto Prensa y Sociedad de Venezuela. February 27, 2018. [Navegación a la mínima expresión | Condiciones de la calidad de internet en Venezuela](#).

four days of study. The case of the *El Pitazo* media is even more serious, since it linked its website to three different sites, and all showed a blockage of more than 90% of the tests performed. The next website with the highest censorship was the Internet TV service *VPI TV (Venezolanos Por la Información)*, with 88% of blocked attempts, followed by *El Nacional* and *Armando.info*. "These restrictions to access the monitored pages - which included media and portals of equestrian information and parallel dollar exchange rates - violate constitutional principles and international standards on freedom of expression and the right to information," the study says<sup>1392</sup>.

1066. According to a report prepared by the House Representatives members of the Permanent Commission of People's Power and the Media [*Comisión Permanente de Poder Popular y Medios de Comunicación*] of the National Assembly of Venezuela, which analyzes the difficulties of access to certain news media that have an editorial line independent of the Government, it was concluded the regulator National Telecommunications Commission "refrained from initiating investigations into the practice of blockades despite having been required to do so"<sup>1393</sup>.

1067. In addition, several mass media would have been victims of computer attacks during 2018, both in their web pages and in their accounts on social networks. Among the affected media were *El Pitazo*<sup>1394</sup>, the *Runrunes* portal<sup>1395</sup>, and the data portal of the civil association *Vendata*<sup>1396</sup>. The organization *Transparencia Venezuela* would have suffered attacks on its website and on social networks and team members emails<sup>1397</sup>. Likewise, the social networks accounts of the National Assembly and *Capitolio TV*, on Twitter, Instagram and YouTube, would have been hacked, which would have prevented users from accessing Parliament's live sessions<sup>1398</sup>.

1068. On the other hand, access to some media would have been blocked for users of Internet services provided by the state company. The news portal *El Pitazo* repeatedly reported the impossibility of accessing its website using the *ABA-Cantv* connection, and also the *La Patilla* portal would have been blocked for users of said service<sup>1399</sup>.

1069. The German television channel Deutsche Welle (DW) would have seen its transmission interrupted, allegedly by order of the National Telecommunications Commission, minutes before it issued the documentary *Venezuela - The Flight of a Failed State*. Approximately one hour later the signal would have started working normally in the different paid TV service operators<sup>1400</sup>.

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<sup>1392</sup> A study by Instituto Prensa y Sociedad de Venezuela searched the same 53 webpages almost 700 times each for four days. See: Instituto Prensa y Sociedad. [Intercortados. Bloqueos intermitentes en Venezuela](#). August, 2018.

<sup>1393</sup> Asamblea Nacional. Comisión Permanente de Poder Popular y Medios de Comunicación. August 13, 2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1394</sup> Noticiero Digital. April 23, 2018. [El Pitazo recibió nuevo ataque informático](#).

<sup>1395</sup> Espacio Público. March 6, 2018. [Página web de Runrunes es víctima de ataque informático](#).

<sup>1396</sup> Twitter account of Vendata (@Vendata\_org). [May 8, 2018](#); Espacio Público. May 16, 2018. [Vendata fue víctima de un ataque DDos en su servidor](#).

<sup>1397</sup> Transparencia Venezuela. Cronología incidencias contra la Asociación Civil Transparencia Venezuela 2017/2018. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1398</sup> Asamblea Nacional de la República Bolivariana de Venezuela. January 15, 2018. [Hackearon redes sociales del canal de la Asamblea Nacional. El Capitolio TV](#).

<sup>1399</sup> Twitter account of El Pitazo (@ElPitazoTV). [April 11, 2018](#); Espacio Público. April 11, 2018. [ABA-Cantv bloquea acceso a El Pitazo](#); Noticiero Digital. April 23, 2018. [El Pitazo recibió nuevo ataque informático](#); Twitter account of Seccional Caracas del Colegio Nacional de Periodistas de Venezuela (@CNPCaracas). [June 6, 2018](#); Twitter account of Alberto Ravell (@AlbertoRavell). [June 6, 2018](#); Espacio Público. June 6, 2018. [CANTV bloquea portal de noticias La Patilla](#).

<sup>1400</sup> La Patilla. August 4, 2018. [Conatel censura al gobierno alemán: Saca del aire documental de la DW](#); Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela (@sntpvenezuela). [August 4, 2018](#).

### 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 an increase in violence against journalists for reasons related to the work they perform. At least 31 journalists and press workers were killed in the region in 2018 for reasons allegedly related to the exercise of journalism, which represents an increase in relation to 2017. There were murders of journalists in Mexico, the United States, Brazil, Guatemala, Colombia, and Nicaragua. These crimes demonstrate the persistence of patterns of violence in several States of the region, while in others they have been accentuated in the face of increasingly polarized contexts that have seriously deteriorated the environment in which journalists can perform their jobs.

3. Likewise, this Office notes with concern the disappearance of a journalist in Haiti and another in Mexico, and the lack of progress in the investigations related to these cases, in addition to others reported in previous years. Likewise, the Office of the Special Rapporteur received information on the continuity of acts of violence, aggression, threats, intimidation, and various types of harassment against journalists and the media.

4. To the foregoing, it should be added the hundreds of deaths of protesters in contexts of social protests, and the harassment of the press in this framework, especially in Nicaragua and in smaller amounts in other countries such as Haiti, Colombia, and Bolivia. Likewise, several countries have gone through electoral processes in which the press has faced hostilities by political leaders and alike, candidates, or government sectors, especially in Mexico where there have been more than a hundred crimes related to the electoral process.

5. Once again, the Office of the Special Rapporteur expresses its 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.

6. Although some countries, such as Colombia and Mexico, have made progress in taking measures to prevent violence and protect journalists, as well as policies for prosecution, for the Office of the Special Rapporteur the trend of impunity in several countries in the region regarding these attacks is alarming; this seriously jeopardizes any policy or action on the part of the States. The murder of the three members of *El Comercio's* journalistic team, who were kidnapped on the border between Colombia and Ecuador, demonstrates the imperative need for States to cooperate more and more with each other in order to implement common standards and collaborate in the prosecution of these cases.

7. In this context, the Office of the Special Rapporteur expresses its serious concern about the persistent stigmatization and discredit proffered against journalists by high-ranking authorities. Despite repeated recommendations by the IACHR and its Office of the Special Rapporteur, high-ranking authorities continue to maintain speeches that seek to disqualify and stigmatize the journalistic work of some communicators, the media, and non-governmental organizations, for reasons related to the exercise and defense of the right to freedom of expression. In particular, this Office is concerned about an increasingly critical context in the United States, as a result of constant statements against the press that seek to undermine its fundamental role of informing and transmitting opinions about the government.

8. The Office of the Special Rapporteur 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.

9. 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**

10. In 2018 there were numerous social protests and citizen demonstrations in different countries of the region. The Office of the Special Rapporteur notes with concern that in several of these cases the excessive use of force by elements of the Police was verified, particularly in Nicaragua, Venezuela, Chile, Haiti, Argentina, Brazil, Colombia, Cuba, Ecuador, Puerto Rico, and Bolivia.

11. The IACHR and its Office of the Special Rapporteur followed the situation in Nicaragua with extreme concern, following the wave of repression unleashed since April 18, 2018, in response to protests against the social security policies implemented by the Government. The Office of the Special Rapporteur condemns these repressions and the government's strategies to prevent the exercise of social protests.

12. Likewise, in the framework of these protests, journalists were subjected to physical attacks and faced various types of impediments, either by the actions of the police or by third parties, and their equipment and work items were also violated, suffering confiscations, destructions, or robberies

13. This Office expresses again 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 must 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 more traditional forms of mass communication, public protest can become the only means that really allows discontented sectors of the population, not aligned with political parties, and groups discriminated or marginalized from the public debate, to make their point of view heard and to influence the public debate.

14. 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.
- F. Adopt special measures to protect journalists who are reporting on situations of armed conflict and social unrest, and guarantee that they are not detained, threatened, attacked or have their rights limited in any way for the exercise of their profession; that their work materials and tools are not destroyed nor confiscated by the authorities, according to what was laid out in this report; and create special protocols to protect the press in circumstances of social unrest.

**C. Criminalization of expression and proportionality of subsequent liabilities**

15. Despite the fact that several countries in the region have made significant progress with regulatory adjustments according to inter-American standards, the Office of the Special Rapporteur notes that in some countries there are still regulations that seek to disproportionately protect the honor and reputation of public officials, which opens the way for the criminalization of the right to freedom of expression. In several cases registered by the Office of the Special Rapporteur, these regulations have been used as mechanisms to silence the press or prosecute journalists. For example, in the case of Panama, the existence of a series of lawsuits in different areas against various media, their directors, and journalists, was verified through reports on topics of public interest, which also puts at risk the economic sustainability of the media. Likewise, in Peru,

Colombia, Chile, Brazil, and Venezuela journalists were subject to lawsuits, while in the Dominican Republic journalists in criminal trials for defamation and slander were convicted. In addition, in the United States and Canada, information was received on threats of lawsuits against journalists on issues related to criticism and opinions on matters of public interest.

16. Likewise, the use of these regulations in electoral contexts, such as the case of Antigua and Barbuda, is worrisome. Although it eliminated the criminalization of defamation in 2015, civil actions were presented among political actors within the electoral context, which could inhibit free and public debate on topics of public interest. On the other hand, this Office highlights that some States of Mexico have eliminated the criminalization of insult or defamation.

17. Finally, the Office of the Special Rapporteur observes with concern the trend to use offenses such as incitement to terrorism to prosecute journalists and opponents in countries where systematic practices of persecution of journalists and dissidents, such as Nicaragua and Venezuela, were installed; and the presentation of legislative projects on the subject in countries such as Brazil that could criminalize the right to protest or freedom of expression.

18. 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**

19. The Office of the Special Rapporteur learned of actions and judgments that suspended or prohibited the publication of information of public interest, based on the right to privacy, as in the case of Paraguay. Likewise, situations have been verified in the Dominican Republic, where administrative sanctions have been imposed based on broad and ambiguous provisions based on "morals" or "good customs" that censored certain contents. In other countries, illegitimate restrictions were observed, either through interference by regulatory bodies or impediments of interviews or public interest coverage.

20. The Office of the Special Rapporteur emphasizes that only in Venezuela, Cuba and Nicaragua was an attack articulated by the State against journalists, the media and political opponents. In these States, different forms of censorship against national and foreign media, arbitrary arrests of journalists and human rights defenders, as well as different forms of website blocking are verified. In addition, the Office of the Special Rapporteur noted the stigmatization of the independent press.

21. The Office of the Special Rapporteur is concerned that some countries are resorting to direct censorship through the closure of media or interference in the broadcasting of subscription channels, as in the case of Nicaragua, where the police also raided and occupied the editorial offices of the media; and the control through the distribution of paper by the Venezuelan government that has generated that more than 30 written press media suspend their editions. It has been observed that Telecommunications regulatory

bodies eliminated or interrupted cable television channels perceived as critical. Member States must take into account that Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship.

22. On the other hand, the Office of the Special Rapporteur 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 Mexico, a law was passed regulating the allocation of government advertising, which does not comply with inter-American standards; it was also the case of Peru, although the approved law was later declared unconstitutional. In Uruguay, progress has been made to approve a law that regulates the allocation of government advertising in accordance with inter-American standards.

23. 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.

24. 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. Internet**

25. The Office of the Special Rapporteur again observed that several States in the region have promoted attempts to regulate some aspect of Internet use and access or have adopted decisions in this area, in response to the need to prevent crime and protect the fundamental rights of third parties. A critical context is verified in Venezuela, where the government constantly blocks Internet sites or carries out cyber-attacks on pages that it perceives as opposing. Also, in Argentina judges have ordered the blocking of pages or applications for conflicts between suppliers of certain services through these pages with sectors allegedly affected. On the other hand, it is worrying that in some States initiatives have been presented to seek to regulate hate speech on social networks or protect honor, without considering inter-American standards, such as the case of Honduras and Costa Rica, as well as the opening of criminal proceedings in Venezuela through the Anti-Hate Law.

26. In relation to this point, as in previous years, the Office of the Special Rapporteur recommends Member States to:

- A. Abstain from applying regulatory approaches to the Internet that have been developed for other communications media – such as telephony or radio and television – and design an alternative regulatory framework specifically for this medium, addressing its particularities, pursuant to currently-in-effect international standards in the field of freedom of expression.
- B. Encourage self-regulation as an effective tool to deal with defamatory expressions that could be disseminated on the Internet.

- C. Protect the actors who participate as Internet intermediaries and provide technical services from any responsibility for contents generated by third parties and which are disseminated through these services, pursuant to international standards on the matter.
- D. Promote universal Internet access to guarantee universal and effective enjoyment of the right to freedom of expression through this medium.
- E. Ensure that the processing of data and Internet traffic is not subject to any discrimination based on factors such as devices, content, author, source and / or destination of the material, service or application, in accordance with the principle of net neutrality.

**F. Surveillance programs and source confidentiality**

27. Despite the fact that the Office of the Special Rapporteur did not receive information on a trend in the region of practices aimed at monitoring those who manifest themselves through social networks, some countries such as Cuba, Nicaragua, and Venezuela implement control strategies and surveillance of citizens' communications in social networks. In addition, there is concern about the information that the State of Guatemala would have acquired software and technical equipment in previous years which have the ability to intercept mobiles, as well as social network accounts.

28. With regard to source confidentiality, in Peru and Paraguay, investigative journalism was endangered by measures taken by judicial authorities that sought to identify the sources of journalistic material that served as the basis for uncovering alleged corruption plots. Likewise, situations would have been recorded in Bolivia, Chile, and Colombia. In the United States, journalists were cited as witnesses. Meanwhile, in Canada at least two cases were observed in which the disclosure of the source was judicially required, one in which the highest court ordered the disclosure of a series of private communications between a journalist and his source.

29. 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.

**G. Access to public information**

30. During this period, the Office of the Special Rapporteur observed measures that have sought to strengthen the regime of access to public information and the incorporation of inter-American system standards, as well as the strengthening of surveillance bodies. This Office sees progress in countries such as Paraguay, Peru, Argentina, and Canada. In addition, this Office highlights judicial decisions in several States of the region.

31. Despite the progress made in most countries, challenges persist in overcoming the culture of secrecy and having greater access to information held by the State, statistics, figures, and data in these and other countries in the region. In addition, the Office of the Special Rapporteur notes that some provisions of the Access to Information Law enacted in 2017 entered into force in the Bahamas; and in Saint Kitts and Nevis a law on access to public information would have been approved.

32. However, this Office also 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.

33. 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.

#### **H. Diversity and pluralism in Broadcasting**

34. Throughout 2018, the Office of the Special Rapporteur noted that the lack of 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.

35. 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.

36. 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."
- D. Ensure that respect for freedom of expression, including media diversity according to editorial position or type of property, is ensured in the digital terrestrial transition process. To that aim, States should ensure that decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard.

# ANNEXES



**JOINT REPORT OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AND THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION ON THEIR MISSION TO MEXICO**

**I. Introduction**

1. The Special Rapporteur for Freedom of Expression of the Inter-American Commission for Human Rights (IACHR) undertook an official visit to Mexico from 27 November to 4 December 2017 at the invitation of the Government. The mission, led by Special Rapporteur Mr. Edison Lanza, and conducted jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, was a follow-up to the 2010 joint visit by the rapporteurs' predecessors, Mr. Frank La Rue and Ms. Catalina Botero. The Special Rapporteurs visited five states: Mexico City, Guerrero, Veracruz, Tamaulipas and Sinaloa.

2. The Special Rapporteurs are grateful to the Government for its invitation and cooperation and for facilitating government meetings. The Special Rapporteurs met with, at the federal level, the President of the Supreme Court; the Undersecretary for Human Rights of the Ministry of Foreign Affairs; the Undersecretary for Human Rights of the Ministry of Interior; the head of the Federal Institute on Telecommunications; the chairperson of the National Commission on Human Rights; the Head of the National Commission on Prevention of Discrimination; a Counsellor of the National Electoral Institute; the Deputy Prosecutor on Human Rights; the Specialized Prosecutor on Freedom of Expression; the Protection Mechanism for Human Rights Defenders and Journalists; the National Security Commission; the Army; the Navy; members of the Senate; members of the Chamber of Representatives; the National Institute on Access to Information; and the Executive Commission on Attention to Victims. Additionally, at the state level, the Special Rapporteurs met representatives of the governments of Mexico City, Guerrero, Sinaloa, Tamaulipas and Veracruz; the State Attorney General's Office of Mexico City, Guerrero, Sinaloa, Tamaulipas and Veracruz; the Human Rights Commissions of Mexico City; Guerrero and Veracruz; and the Commission on Attention and Protection of Journalists of Veracruz.

3. The Special Rapporteurs met with over 250 journalists and civil society representatives from 21 different states. They would like to thank all the authorities, journalists, civil society representatives and victims and victims' relatives who met with them, providing detailed information and powerful testimony about the situation for freedom of expression in the country. The Special Rapporteurs would like to remind the State of its obligation to guarantee the safety of all persons and organizations that participated in meetings and provided information, testimony or evidence of any kind during the course of the mission.

4. The Special Rapporteurs also met with media outlets and representatives of diplomatic missions and greatly appreciate the support and assistance provided by the Mexico Office of the UN High Commissioner for Human Rights. The team at OHCHR Mexico exemplify why it is essential for the Office to have expert and committed staff at State and regional locations.

5. Mexico faces a profound security crisis severely affecting the human rights of its people. At the heart of the crisis is a breakdown in the rule of law and governance at local levels across the country, simultaneously leading to and exacerbated by murders, disappearances and torture. The suffering is widespread, yet the violence has often singled out those most essential to telling the story of conflict and insecurity, corruption and criminality: journalists. It is violence seeking to undermine public debate and civic participation, a widespread attack on the roots of democratic life in Mexico, at local, state and national levels. During the visit, the Special Rapporteurs heard repeated stories of killings and disappearances, physical and psychological attacks on the media, and other forms of interference designed not only to harm individual journalists but the public's right to know.

6. Any fair-minded assessment must acknowledge that addressing such violence is not simple. Organized crime has deeply infiltrated the public life of the country, especially at the level of states and municipalities, as the Special Rapporteurs heard from dozens of government officials, journalists, and non-governmental organizations repeatedly throughout the visit. In addition to the use of violence in all its forms, criminal actors and public authorities attempt to co-opt journalists for their purposes and coerce them to disseminate information favourable to the criminal groups or against their opponents. Organized crime has generated hybrid ways to interfere with journalism, generating division and distrust among journalists, and between journalists and local officials. Some regions of the country are "silenced zones", highly dangerous

areas for the exercise of freedom of expression, where journalists are not only limited regarding what they can publish, they are also forced to publish messages from said criminal groups.

7. The pervasive assault on journalists and journalism present the most immediate and challenging threat to freedom of expression in Mexico today. However, that does not exclude consideration of other factors, for there is a broader environment in which deep challenges to press freedom and individual expression persists. In part, this environment involves a historic transition from past authoritarian practices in government to emerging political pluralism and demands for democratic standards. That transition has not done away with the problematic and intimidating practices of the past, such as the expectations of good coverage under official advertising; the dismissal of critical journalists by media outlets at the demand of authorities; and the lack of pluralism in the property and the editorial line of the media system. The well-documented examples of digital surveillance of journalists and human rights defenders, among others, seem to be both a relic of the approaches of the past and an example of the challenges journalists face in the digital age.

## **II. Legal framework**

### ***International legal standards and domestic legal framework***

8. Article 19(1) of the International Covenant on Civil and Political Rights (ICCPR), acceded by Mexico on 21 March 1981, guarantees everyone's right to hold opinions without interference. Article 19(2) protects everyone's right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media. In accordance with Article 19(3), any restriction imposed on this right must be provided by law and be necessary and proportionate to protect the rights or reputations of others, national security or public order, or public health and morals.

9. Mexico is also State Party to the American Convention on Human Rights, which guarantees freedom of expression, including the right to information, in articles 13. Article 13(2) provides that freedom of expression "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability", which must be provided by law, pursue a legitimate aim and be necessary and proportionate to achieve that goal. Article 13(3) provides 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".

10. The Constitution of Mexico recognizes the country's international human rights obligations: "all persons shall enjoy the human rights recognized in the Constitution and in the international treaties to which the Mexican State is a party" (Article 1). In July 2011, constitutional reforms established the obligation to comply with international human rights law in state and federal law making and adjudication (Articles 1 and 133). The reform requires that on occasions where there is contradiction between the Constitution and international human rights treaties, the norm most favourable to the protection of the person shall be applied. The process of harmonizing domestic legislation with this constitutional advance has been slow. The Special Rapporteurs urge that new legislation be adopted and that existing legislation be revised to comply with the constitutional reform.

11. The Constitution of Mexico provides a comprehensive and detailed protection for freedom of expression in articles 6 and 7. Constitutional amendments in 2015 sought to elaborate and strengthen the legal protections available for freedom of expression.

12. The Constitution establishes that Government authorities have the obligation to promote, respect, protect, and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness. It also highlights that the State must prevent, investigate, punish and redress human rights violations established by the law (Article 1).

13. In 2012, the Law for the Protection of Human Rights Defenders and Journalists was adopted, creating the Protection Mechanism at the federal level. During the visit, the Special Rapporteurs learned that nine states have enacted similar legislation at state level, and 15 initiatives are currently being considered. However, many of the laws have a restrictive definition of "journalists". A narrow approach to defining "journalists" may exclude them from protection or from statistics concerning attacks against journalists. The Special Rapporteurs welcome the comprehensive definition of journalist provided in General Comment 24 by the National Human Rights Commission, which includes anyone who collects, generates, processes, edits,

comments, expresses, disseminates, publishes or provides information through any means of dissemination and communication, whether in an eventual or permanent manner, that includes the communicators, the media and their facilities, as well as their workers. The Special Rapporteurs urge all authorities at federal and state level to comply with this definition.

14. A country's legal framework must guarantee exercise of freedom of expression and ensure against arbitrary or disproportionate restrictions. During the visit, Congress was considering several pieces of legislation of which the Special Rapporteurs took note.

15. The bill on Internal Security was approved by the Senate on the day after the official visit and signed into law by the President on 21 December 2017. Pursuant to protests by civil society and the formal request by a number of institutions, the law is now under review by the Supreme Court. Also, according to information provided by the State, local judges in Guanajuato and Mexico City ruled the law unconstitutional in two separate proceedings. The authorities have justified the law by arguing that it is a critical tool to combat drug-related violence and that it would lead to a regulation of the use of Armed Forces in a legal framework. The Special Rapporteurs are concerned about provisions that could negatively impact access to information, the level of oversight for intelligence gathering, and the use of force during demonstrations.

16. Granting the Armed Forces power to gather domestic intelligence raises serious concerns about the limitations on civilian and judicial oversight as required by international standards. The law appears to permit the automatic classification of information gathered by the Armed Forces on national security grounds. The Special Rapporteurs note with concern that the law detracts from the progress achieved in the past fifteen years in terms of transparency and access to information. It would also run counter to the authorities exercised by the National Institute for Transparency, Access to Information and Personal Data Protection (INAI) to ascertain what information should be protected for national security purposes. It may prevent disclosure of information relating to serious human rights violations, countering standards on victims' right to truth and access to information. The law also contains ambiguous wording on the role of the Armed Forces in the context of social protests and the use of force against "acts of resistance". These provisions may open the door for the Armed Forces to carry out policing functions, with a different set of rules regulating the use of force, in context of social protest.

17. The Special Rapporteurs welcome the abolition of criminal defamation at the federal level in 2007. However, criminal defamation continues to exist at the state level in five states, while five others maintain other types of crimes against honour on their penal codes. The Special Rapporteurs call upon authorities in these states to take steps to repeal such provisions in order to bring their legal framework in line with the national and international framework. In addition, civil defamation is used to pressure journalists, often in lawsuits brought by public officials. Several journalists throughout the country have faced frivolous lawsuits demanding that they pay exorbitant amounts for alleged damage caused in relation to their reporting. The lack of regulations on the use of frivolous lawsuits may deter journalists from conducting rigorous public interest reporting. The Special Rapporteurs call upon the legislative and judicial branches to ensure that this practice will be regulated, either through laws sanctioning strategic lawsuits against public participation (SLAPP) or the adoption of criteria for judges to be able to exclude frivolous claims after careful consideration. In this context, the Special Rapporteurs are concerned with the amendments proposed for the Law of Telecommunications and Broadcasting (article 304) and the Federal Criminal Code (article 172 TER). If adopted, these amendments could restrict freedom of expression in ways incompatible with international human rights law.

## **II. Attacks on journalists**

18. Attacks on journalists, in the context of generalized violence, require a targeted form of recognition, attention and response. Since the previous visit in 2010, Mexico has put in place legislation and institutions at federal and state levels dedicated to the protection of journalists. The Special Rapporteurs welcome these advances, among which are FEADLE (Fiscalía Especial Para la Atención de Delitos Cometidos contra la Libertad de Expresión), established in 2010 to conduct criminal investigations and prosecutions; the Mechanism for the Protection of Human Rights Defenders and Journalists (the Protection Mechanism), established in 2012 to provide protection and preventive measures; and CEAV (Comisión Ejecutiva de Atención a Víctimas) established in 2014 to promote attention to victims. Several states have also recently implemented similar mechanisms.

19. Physical threats and intimidation constitute the most widespread form of attack against journalists. In addition, physical attacks and kidnappings are common forms of aggression. The Special Rapporteurs also found examples of stigmatization, discrimination and poor working conditions that exacerbate the vulnerability of journalists. Digital attacks against journalists and their sources, social media harassment, and unsupervised secret surveillance have emerged as new and troubling challenges. In addition, structural obstacles within the judiciary and government institutions often prevent journalists from seeking redress, which may lead to a re-victimization of journalists subject to intimidations. Journalists and media owners voiced their concern regarding Government's use of the law and legal proceedings as tools to harass and silence critical reporting, for example by conducting unsubstantiated tax audits and bringing groundless criminal and civil suits. In a number of cases, attacks are not reported out of fear that the situation may worsen or simply because of mistrust.

#### ***Murder and other physical assaults and threats against journalists***

20. There is no single system that obtains and collects data on attacks against journalists, and the criteria and methodology for obtaining such data differs between and among federal and state institutions. Data gathered by the National Human Rights Commission present a catastrophic picture concerning the situation of journalists in Mexico. Since 2010, the National Human Rights Commission has registered 73 journalists killed; 12 journalists subject of enforced disappearances, and 44 attempted killings. Since 2006, the National Human Rights Commission has registered 52 attacks against media outlets. In 2017, at least 12 journalists were registered killed. They are Cecilio Pineda, Ricardo Monlui, Miroslava Breach, Maximino Rodríguez, Filiberto Álvarez, Javier Arturo Valdez, Salvador Adame, Héctor Jonathan Rodríguez, Cándido Ríos, Juan Carlos Hernández Ríos, Edgar Daniel Esqueda Castro and Gumaro Pérez Aguilando. In 2018 and until the time of the writing of this report, five journalists were killed: Carlos Domínguez, Pamela Montenegro, Leobardo Vázquez, Juan Carlos Huerta and Alicia Díaz; one journalist, Agustín Silva, remains disappeared. Many of the attacks have been carried out against journalists reporting on corruption, drug trafficking, collusion of public officials with organized crime, police violence and matters related to elections.

21. Kidnapping of journalists continues to be a widespread form of aggression, often used as a form of intimidation, to scare off those intending to investigate and inform on certain issues. In the majority of such enforced disappearances the journalist is later found killed. Despite the recently approved General Law on Disappearances and the existence of a specialised investigation protocol on the matter, investigations are launched with delay even when suspects are identified. The Special Rapporteurs call upon authorities to make it a priority to immediately begin investigations in such cases.

22. Internal displacement of journalists has become a major feature of the national situation. Though data does not indicate the numbers of displaced journalists nationwide, the Special Rapporteurs found that many come to Mexico City, while some are displaced in other states or even other countries. Many leave families behind and are unable to find employment. The Special Rapporteurs learned from journalists who have protection measures that such measures are often inadequate and lack comprehensive attention to their family situation. Internally displaced journalists have been killed in the new state of refuge. No comprehensive strategy protects displaced journalists, let alone one with a strategy for safe return or adequate relocation. Many journalists also avoid filing claims for protection out of fear that this will place them at further risk. Few receive assistance from local authorities, and temporary measures generally seem insufficient. All of these problems apply to the families of journalists as well. The lack of coordination among and between federal and state level authorities leads to inadequate attention to their health situation, educational needs for their children and employment, leaving them in a constant situation of insecurity. As a result, many journalists do not see displacement as a realistic alternative; many simply avoid filing claims for protection.

23. In this connection, the Special Rapporteurs welcome the report and recommendation issued by the National Human Rights Commission about internally displaced persons in Mexico and urge that its recommendations are implemented<sup>1</sup>.

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<sup>1</sup> National Human Rights Commission, Recommendation No. 39/2017. The Special Rapporteurs further recognize the importance of the work that the National Human Rights Commission has carried out to address the situation of internally displaced persons in Mexico, including its Special Report on Forced Internal Displacement (2016); the elaboration and publication of the Protocol for Attention to and

24. Mexico has a strong tradition of social protest. With upcoming elections scheduled for July 2018 – simultaneous at national, state and municipal levels, the most extensive in Mexico’s history – special attention should be given to ensuring that persons can assemble and protest without risk to their personal integrity and life, without disproportionate bureaucratic requirements and that police forces are adequately trained in controlling large gatherings. The adoption, both by the Federal Police and by Mexico City authorities, of protocols on the use of force, including in contexts of protests, are welcome developments. However, certain aspects of these, and a series of bills and laws that have been presented at federal and state-level (including in Jalisco, Mexico City, Quintana Roo and San Luis Potosi) raise serious concerns. In particular, these regulations have provisions that allow the use of lethal weapons in the close perimeters of protests, impose a series of administrative hurdles that de facto restrict the rights in question, and increase penalties for those who commit certain felonies within protests. These aspects must, as a matter of urgency, be reviewed to ensure conformity with international human rights standards.

25. The Special Rapporteurs underline the importance of journalism in the context of elections, in particular as it is a condition for the public’s right to information and subsequent political participation in the electoral process. As a result of this function, journalists are in the midst of competing interest and are likely to become targets of threats and physical attacks by both political actors and non-state actors. The Special Rapporteurs call on the Government to publicly encourage full and efficient disclosure of information to journalists covering the electoral process, and to adopt a particular strategy to ensure their safety during this process.

#### ***Special risks faced by women and indigenous journalists***

26. In the context of severe violence and insecurity in general, many journalists face additional vulnerabilities in their work because of their gender or ethnicity. There is no centralized data on attacks against indigenous journalists. The Special Rapporteurs note that community journalists and journalists belonging to indigenous groups often are the only channels of bringing information to their communities, and have the additional function of informing in their own language and bringing attention to cultural and social issues in their community which would otherwise not be covered by other media. They often face harassment and stigmatization on part of public officials and particularly difficult conditions due to working in remote areas, with few resources and rudimentary equipment. They often find themselves in regions involving extraction industries, with additional threats and restrictions imposed by non-state actors, sometimes in cooperation with local authorities.

27. While Mexico has played a leading role in the UN Declaration on the Rights of Indigenous Peoples, the reality faced by indigenous journalists falls short of the commitments made at the international level. Indigenous journalists reported to the Special Rapporteurs their experiences of racial discrimination, often in conjunction with physical threats, and general inaccessibility to justice due to distance, lack of adequate legal assistance, language barriers and fears of reprisals. Many cases of attacks against indigenous journalists are not reported to the authorities. The Special Rapporteurs underline the urgency to consider the specific needs of indigenous journalists at state and federal levels, including by the Protection Mechanism and the Law for the Protection of Human Rights Defenders and Journalists.

28. Women journalists face specific threatening environments. There is no centralized data on attacks against women journalists. In the State of Guerrero, members of civil society reported that they had registered at least 23 cases of serious aggressions against women journalists since 2014. Online harassment expands the threats against women and yet several organizations reported a lack of public documentation of online violence against women journalists. Women journalists reported about harassment, often by public authorities and sometimes even physical attacks by police or public security officers during their reporting. Additional vulnerabilities come from their work as investigative journalists, and the fact that they are often paid less than their male colleagues. While there are many women reporters, they continue to be a minority in editorial positions. Many women journalists reported to the Special Rapporteurs about particularly threatening and infantilizing meetings with male public authorities.

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Protection of Victims of Forced Internal Displacement in Mexico (2017); the International Forum regarding Forced Internal Displacement (August 2017); and the Declaration of Mexico regarding Forced Internal Displacement (August 2017).

29. Moreover, the lack of gender perspective in investigation, prosecution or protection stage, lead to inadequate attention to the particularity of the situation of women journalists. The Special Rapporteurs highlight that in 2012, in its concluding observations to Mexico, the Committee on the Elimination on All Forms of Discrimination against Women recommended that the Protection Mechanism and the Law for the Protection of Human Rights Defenders and Journalists include a gender approach and that the authorities take concrete, adequate and effective measures to prevent, investigate, prosecute and punish attacks and other forms of abuse perpetrated against women human rights defenders and journalists.

### **III. Institutional framework for the protection of journalists**

30. The systematic and multi-faceted nature of the violence described above demands the strengthening of national institutions responsible for fulfilling State obligations for the protection of journalists, and the implementation of a set of urgent, comprehensive and coherent strategies for prevention, protection and accountability.

#### ***Protection of Journalists***

##### ***The Mechanism for the Protection of Human Rights Defenders and Journalists***

31. With the strong contribution of Mexican civil society, the Government adopted in 2012 the Law for Protection of Human Rights Defenders and Journalists, which created the Mechanism for the Protection of Human Rights Defenders and Journalists (the Mechanism), the most important public policy for protection of journalists in Mexico. Since its creation the Mechanism has provided protection for at least 310 journalists, from a total of 370 who have requested protection.

32. The Government has taken important steps to strengthen the Mechanism's operation and effectiveness and to implement recommendations made by civil society and experts in the field, and that has helped to build more confidence among beneficiaries and journalists. However, many of its challenges have yet to be adequately addressed. Coordination between the Mechanism and local authorities for the implementation of preventive and protective measures continues to be a challenge. The Special Rapporteurs welcome the adoption in 2017 of protocol to standardize operational procedures and facilitate coordination. The Government should ensure that local personnel are trained on how to perform their obligations under the protocol and fully understand the importance of the role of journalists in a democratic society. The Government should give priority to strengthening the Federal Mechanism over state mechanisms, not only to ensure effective coordination with local authorities but to provide it with the ability to operate locally in a sustainable way. Coordination between the Mechanism and other federal agencies and national institutions, such as the PGR, CEAV and CNDH should also be strengthened. In particular, the fulfilment of PGR's responsibilities ensuring the risks facing beneficiaries are identified and duly investigated should be seen as an essential aspect of any protection program.

33. Risk assessment methodologies still need to effectively include a differentiated approach taking into consideration specific risks facing certain groups of journalists, including women and indigenous journalists. The Government should take further steps to include the digital safety of journalists in the risks assessments conducted by the Mechanism and provide, when appropriate, digital protection measures, including the secure management of personal communications data. Additionally, physical attacks perpetrated by state officials and other forms of institutional violence against journalists (i.e. discrediting campaigns and criminalization) should be effectively addressed by the Mechanism.

34. The Mechanism lacks sufficient resources to fully perform its mandate. It needs resources to add significantly the number of personnel; to protect its staff and ensure their retention; to ensure timely analysis of threats; and to train its personnel on gender and indigenous specific issues. The Mechanism should be provided with resources to deliver comprehensive psychological support to displaced journalists and their families. It should provide support to enable journalists to continue working in their new location and pursue strategies to enable the return of journalists under necessary security conditions. An ambitious Government effort to increase the Mechanism's capabilities and budget will serve the goal of better protection and would also send a message of political will to make journalist safety a national priority.

35. International law requires that the Mechanism be transparent to ensure its efficacy is open to oversight and promote trust among stakeholders, subject to limitations narrowly construed for legitimate purposes, such as the protection of the privacy and safety of the affected individuals. The Mechanism should, at a minimum, be transparent about its legal framework, its rules and procedures, its policies for risk

assessment, its budget (allocated and spent) and all data necessary to monitor implementation. Restrictions on information should not be applied in a way to shield the Mechanism from oversight and conceal wrongdoing.

### ***The Role of Media Companies***

36. Very few journalists under threat expressed a sense that their media employers offered sufficient, if any, support. The Special Rapporteurs hope that media support will change and urge media companies to improve working conditions on an urgent basis and in addition to provide support – ideally in the form of work, permanent or freelance – to journalists displaced in their cities. They stress that the role of media companies complements, but does in no way substitute for, the State obligation to prevent crimes against journalists and to ensure their safety.

37. The Special Rapporteurs reiterate their support to the Solidarity Protocol presented by 39 media outlets, which recognizes their role in advocating for protection and accountability for crimes against journalists, as well as providing adequate capacity building schemes, social security, fair salaries and life insurance policies for journalists whose coverage implies an obvious risk.

### ***Collective Self-Protection Initiatives***

38. The importance of solidarity extends to the journalists themselves. The Special Rapporteurs observed how journalists and civil society organizations are able to work in networks to demand justice, advocate for advances on government protection, share best practices, and establish their own collective protection schemes. The current context fuels mistrust among journalists and hinders solidarity and collaboration among peers. The Special Rapporteurs especially welcome collective self-protection efforts in which journalists, informal groups and civil society organizations cooperate to identify, register, analyse and prevent threats.

39. During the meetings with journalists, the Special Rapporteurs realised how in many cases it was the intervention of informal groups of journalists that allowed colleagues at risk to discover different possibilities for protection and prosecution of justice. Such groups play a fundamental role in sharing tools and strategies for self-protection. It is important that authorities recognise the importance of these structures and contribute to their strengthening.

### ***Prevention of attacks against journalists***

40. The Special Rapporteurs emphasize the importance of a comprehensive policy to combat violence against journalists, which includes the adoption of prevention measures to address its root causes and promote an enabling environment for freedom of expression.

41. The Special Rapporteurs welcome the Mechanism's adoption of early warning systems for Veracruz and Chihuahua. Nonetheless, the existence of these plans has not deterred subsequent journalist killings in Veracruz and Chihuahua during 2017. The actions put forth so far – especially in Veracruz – are insufficient to generate the changes that the current situation requires. The Special Rapporteurs encourage the Mexican Government to strengthen efforts of preventive measures, consistent with its international obligations, taking into account the specific nature of the risks and its particular contexts, such as security situation in conflict zones, during election periods, and at public demonstrations. The Contingency Plan in Chihuahua, if developed properly and in a transparent manner, has the potential of becoming one of the best practices in the region regarding prevention measures for HRDs and Journalists.

42. Prevention also implies ensuring journalists' ability to contribute effectively to public debate, without being subject to criminal prosecution or civil lawsuits. Therefore, it is important that the Mechanism assumes a leading role regarding the promotion of legislative initiatives to combat censorship, considering it is within its faculties and attributions.

### ***Accountability for crimes against journalists***

43. The Special Rapporteurs found that Mexico has made little if any progress in eradicating impunity since 2010. The impunity for killings and other attacks against journalists has been documented by government institutions and civil society organizations, suggesting that at least 99.6% of these crimes remain unsolved. It is unconscionable that the Mexican Government has continued to fail to fully investigate these crimes and prosecute those responsible. During the visit, the Special Rapporteurs heard several stories that

reveal the significant levels of fear and self-censorship caused in journalists and their communities by impunity and the profound lack of trust in public authorities to achieve justice and protect the rule of law.

44. The Special Rapporteurs recognize that at the federal level, legal and institutional reforms were made to strengthen FEADLE's authority to investigate and prosecute these crimes. The Special Rapporteurs were informed about recent efforts made to improve FEADLE's capabilities to perform its mandate, including appointing a new special prosecutor, adopting an investigation protocol, reinforcing investigation strategies and training, reorganizing its internal structure, improving communication with victims and increasing coordination with local authorities. Also, they were informed of actions recently taken by FEADLE and local prosecutors to bring to justice public officials involved in cases of harassment and attacks against journalists. The Rapporteurs welcome FEADLE's decision to exercise jurisdiction regarding the investigations of the murders of journalists Javier Valdez and Miroslava Breach in 2017.

45. However, the fact remains that over the last eight years FEADLE has not been able to contribute in an appreciable way toward ending impunity in Mexico and rebuilding public confidence. The Special Rapporteurs are particularly concerned by the complete lack of progress in the investigations concerning the disappearance of journalists as well as in most emblematic cases of killings of journalists<sup>2</sup>. According to official data, of the 84 killings of journalists committed in Mexico since 2010, FEADLE declined to exercise jurisdiction in 37 cases on finding they were not motivated by the journalistic activities of the victims. In the 47 crimes where FEADLE found a link to the victims' journalism work, 28 investigations are pending, 16 investigations have been closed or suspended, and criminal prosecutions have been launched in only 3 cases. Throughout these years, FEADLE's personnel and material capacities have been inadequate. Between 2014 and 2018 the office's budget has been reduced in over 50%, undermining even modest attempts to carry out the office's legal mandate.

46. Journalists, victims, civil society organizations and the National Human Rights Commission led the Special Rapporteurs to conclude that FEADLE lacks effective investigative plans, does not exhaust all lines of inquiry, does not identify all individuals responsible for the crimes (including masterminds and accomplices), and does not analyse the context in which the crimes took place, particularly the way in which political and criminal power operate at the local level and other local realities. The Special Rapporteurs learned about failure to protect the security of witnesses and effectively collect and preserve police and forensic evidence. The Special Rapporteurs received with great concern information about ineffective investigations of threats and harassment of journalists online and offline, stalled by burdensome legal requirements, such as psychological tests of the victims, and lack of real coordination between the protection mechanisms. The Special Rapporteurs also learned about obstacles for the participation of victims in the investigation and stigmatization. FEADLE has not included a gender perspective on its work to better deal with crimes against women journalists, who often go underreported as a result of discrimination. They are also concerned about the institution's failure to use its legal power to assert jurisdiction over cases of killings, kidnapping or disappearance of journalists in states with the highest levels of violence and impunity.

47. At the local level, journalists expressed profound distrust with local authorities in charge of investigations, many of which are believed to have colluded with organized crime. In meetings with the Special Rapporteurs, several local journalists expressed fear and frustration with local judicial authorities and emphasized that filing claims before them is "useless" and will only increase their risks.

48. Given the severity and scale of the current crisis and the lack of independence of many local authorities, the Special Rapporteurs believe it is imperative for Government authorities to reinvigorate FEADLE's use of legal authority to investigate and prosecute crimes against journalists and adopt far-reaching measures to ending impunity. With that aim, FEADLE should be provided with all the necessary human, material and financial resources to implement its mandate. Investigators and law enforcement officials should be appropriately equipped and receive specialized training in all aspects of the investigation of crimes against freedom of expression. Clear and objective criteria for FEADLE's authority in carrying out

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<sup>2</sup> According to information provided by the State, investigations are still pending regarding the killings and disappearances of Roberto Mora (2004), Bradley Roland Will (2006), José Antonio García Apac (2006), Armando Rodríguez Carreón, (2008), Mauricio Estada Zamora (2008), José Vladimir Antuna (2009), María Ester Aguilar Casimbe (2009), Ramón Ángeles Alpa (2010), Pedro Arguello y Miguel Ángel Rodríguez (2010), José Luis Romero (2010), Fabián Ramírez López (2010), Humberto Millán (2011).

investigations of crimes against journalists that do not fall in its “original jurisdiction” should be established, in order to prevent undermining criminal investigations with unreasonable delays and confusion over jurisdiction. This is particularly important with regard to the investigation of killings and disappearances of journalists. In these cases the Special Rapporteurs call on FEADLE to effectively exercise its jurisdiction whenever it appears that local authorities or powerful criminal gangs are involved, and the capacity of state level law enforcement authorities to conduct an independent and impartial investigation is reasonably questioned. Moreover, FEADLE should adopt a specific protocol that outlines the principles and legal obligations of those in charge of investigating crimes against freedom expression and sets a common standard on how to conduct prompt, diligent, independent and transparent investigation of these cases, consistent with international standards and in consultation with civil society<sup>3</sup>.

49. The judiciary should play a central role in combating impunity and the Special Rapporteurs stress the importance that in addition to being independent and impartial, the judiciary should be equipped with appropriate material and human resources and training to provide, within a reasonable time, access to justice and reparation to victims.

50. The Special Rapporteurs are particularly concerned about the lack of oversight mechanisms of the progress of the investigations and the effectiveness of accountability measures in place. These mechanisms can draw the attention to failures and remedial action when necessary. Oversight can be greatly increased by improvement of criminal statistics on violence against journalists and the criminal prosecutions of these crimes. Mexico should guarantee, in law and practice, that public officials that do not meet their legal obligations to duly investigate crimes against journalists are subject to sanctions.

51. The Special Rapporteurs urge the Mexican Government to replace this paradigm of impunity with one of effective investigation, prosecution and monitoring consistent with its international obligations.

#### **IV. Surveillance of journalists, public figures and others**

52. A series of well-documented reports in 2017 demonstrated that the Government of Mexico and a number of state governments purchased or deployed software designed to monitor individuals through their mobile phones. Those reports have shown, compellingly, that targets of the spyware – produced by the Israel-based NSO Group and called “Pegasus” – included, among others, politicians, journalists, human rights defenders, lawyers, public health and anti-corruption experts, and even the international body established to investigate the mass disappearances of students in Iguala in 2014.

53. The Special Rapporteurs met with victims of surveillance and attempted surveillance in order to understand the way in which the use of the technology threatened their work and their feelings of safety. Indeed, surveillance technology has profound implications for the exercise of freedom of expression, undermining the ability of individuals to share or receive information and establish contacts with others. It creates incentives for self-censorship and directly undermines the ability of journalists and human rights defenders to conduct investigations and build and maintain relationships with sources of information. Only under the very strictest rules in the context of law enforcement, publicly available and publicly adopted, operating on principles of necessity and proportionality and providing for close judicial supervision, should surveillance ever be an option for governments.

54. In June 2017, President Peña Nieto acknowledged that the Government had purchased software providing it with the capacity to conduct digital surveillance. Though he denied that the Government directed the use of Pegasus, the Government thereafter established an internal investigation, led by FEADLE. In the Special Rapporteurs’ discussions with FEADLE, they learned that FEADLE has initiated that investigation,

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<sup>3</sup> The protocol should be able to provide detailed guidance to investigators on all aspects of the investigative process necessary to pursue lines of inquiry related to the journalistic activities of victims. These may include specific guidance on conducting a crime-scene investigation and collecting physical evidence; finding, interviewing and protecting witnesses; collecting digital evidence; evaluating political and social context; identifying a motive for the crime; and facilitating international technical assistance. The protocol should include policies concerning the protection of journalistic sources during the investigation. This tool should help investigators to be familiar with the functional definition of journalists provided for in the national legislation and international standards, so as to prevent stigmatization and exclusion of non-traditional media journalists, such as bloggers and citizen journalists. The protocol should also offer concrete guidance on how to identify and conduct diligent investigations of sexual and gender-based crimes against journalists. The protocol should include policies regarding the participation and protection of victims, the transparency of the investigations and the oversight mechanisms available to ensure FEADLE meets its goals and responsibilities.

aiming to identify governmental purchasers, and to review individual targets of surveillance. In Guerrero, one state government official, when asked by a Special Rapporteur about allegations of the purchase and use of Pegasus, denied such activity categorically.

55. The Special Rapporteurs are concerned that FEADLE, even with a good faith effort, lacks the independence to investigate this very serious issue. Indeed, the Procuraduría General de la República (Prosecutor General's Office), of which FEADLE is part, is alleged to be one of the purchasers of Pegasus. In July 2017, UN experts, including the UN Special Rapporteur, called upon Mexico to establish an independent and impartial investigation into the deployment of Pegasus. The Special Rapporteurs underline that any investigation should be independent of the federal and state governments alleged to have purchased or used the spyware and include experts from academic and civil society organizations, including potentially from outside of Mexico. Such a step would demonstrate an understanding of the principles of due process and rule of law that must govern law enforcement in a democratic society. In the meantime, any ongoing investigation must respect the rights of targets of surveillance, including their security and privacy. It must also comprehensively examine and query all potential purchasers and users of Pegasus (and any other potential spyware products), all sources of information that may demonstrate the use of the spyware, and provide regular public updates on the status of the investigation. In this connection, the Special Rapporteurs strongly support the order given by INAI on 31 January 2018 to the Procuraduría General de la República (PGR) to make public the contracts related to the acquisition of the Pegasus spyware.

#### **V. Access to information**

56. Mexico has an admirable legal and institutional framework for the protection and promotion of access to information held by public authorities, an essential element of freedom of expression. The General Law on Transparency and Access to Public Information entered into force in May 2015. In discussions with INAI, the public authority responsible for implementing Mexico's access to information laws and commitments, the Special Rapporteurs were impressed with the knowledge and commitment of the institution to ensure proactive access as well as open processes for requesting information.

57. In discussions with civil society organizations, the Special Rapporteurs found significant concerns about how access to information operates in the context of allegations of serious human rights violations. Researchers appear to have difficulties obtaining full information, with significant amounts of data redacted and no reasons given for non-disclosure. Adding to this problem is the lack of accessible Government provided data concerning such crimes as disappearances or information in the languages of indigenous communities.

58. Experts voiced particular concern regarding article 27 of the Federal Law on National Archives, which allows for historical documents to be kept confidential for 30 or 70 years on grounds of data protection. According to the information received, this provision has been used by the authorities to withhold or redact the names of public officials and other information concerning past abuses and serious human rights violations in ways inconsistent with the requirement of necessity and proportionality. A bill to reform the national archives legislation, approved by the Senate in December 2017, maintains these restrictions. The Special Rapporteurs urge Congress to review the proposed legislation to ensure compliance with international human rights standards. The public has the right to access historical archives, including those regarding human rights violations.

59. In the wake of the earthquake in September 2017, Government and civil society organizations were afforded a real-time test of access to information mechanisms during natural disasters. Many organizations expressed dissatisfaction about the speed, reliability and lack of information available before and after the earthquake. As far as the Special Rapporteurs understand, the country lacks a publicly available national register of people missing during natural disasters – in spite of the recent adoption of a General Law on Disappearances – nor is there a database that collects information about damage needed for access to information during rebuilding to ensure accountability. The Special Rapporteurs strongly urge the Government to work with civil society to identify gaps in the information available to all individuals in the context of natural disasters.

## VI. Media diversity

60. Democratic societies rest in part upon the access individuals have to diverse sources of news, opinion, ideas and debate. The Special Rapporteurs' predecessors noted in 2010 that Mexico's media environment lacked some of the necessary elements of diversity and pluralism.<sup>4</sup> They noted problems in the broadcast media's legal framework, concentration of media ownership particularly in broadcast media, the lack of an independent regulatory body, and deficiencies in the support of community radio. The Special Rapporteurs note continuing problems of diversity and pluralism, in particular the following areas:

### *Media concentration and community radio*

61. First, while according to the OECD, Mexico has achieved progress in development of the broadcast and telecommunications markets, there remain problems of concentration in the media that undermine the competition necessary for pluralism to thrive. According to information received during the visit, Mexico remains among the countries with the highest level of media concentration, in broadcast, print and online. Laws adopted since the 2010 visit have sought to address competition concerns. In particular, the Special Rapporteurs welcome the creation of the Telecommunications Institute (IFT) established in 2013 – thus complying with the Recommendations of their predecessors – which has begun to take steps to strengthen diverse access to broadcast spectrum and broadband.

62. In the radio market, an estimated 70% of privately operated radio stations are still owned by roughly 10 media conglomerates. Many are still said to be hostile against community stations that require space on the radio spectrum. Despite changes in the legislation that required IFT to maintain and update public registries with relevant information on broadcast spectrum management, civil society organizations assert that information regarding media ownership is available only in formats difficult to use and understand, turning it inaccessible. The Special Rapporteurs also learned the IFT ruled in March 2018 to reverse an earlier decision in which it found that one of the major broadcasting companies in Mexico has “substantive market power” in Pay TV, thus needed to be subject to specific regulations. The decision was reversed following a ruling of the Supreme Court that stroke it down on procedural grounds. The Special Rapporteurs will continue to monitor the steps being taken by the Government to counter media concentration and promote its diversity.

63. Second, while Mexico has been making efforts to expand access, there are significant gaps in community radio coverage. This is unfortunate, as community radio offers indigenous communities access to information that they would not otherwise obtain, particularly one that is tailored to them. Community radio enables the development of local means of sharing and disseminating information and, indeed, the development of local forms of professionalization. According to information received during the visit, only four of sixty-eight indigenous languages in Mexico are reflected in the concessions available to them to exploit radio spectrum. Information from the Oaxaca Indigenous Community, for instance, suggested significant barriers to community radio development, including high fees for the use of radio spectrum. For community radios that are run as a community service – and not as commercial radio – such fees represent a barrier for their sustainability. The Special Rapporteurs heard from journalists in Guerrero of the difficulty of navigating the process for obtaining concessions for spectrum and permission to broadcasting, which includes costs that can be significant among poor communities. The Special Rapporteurs understand that only three concessions have been granted to indigenous radio since the adoption of legislation four years ago to expand such availability.

64. Third, access to the internet varies in strength and reliability across the country, and yet broad access from all corners of Mexican society is critical to the development of diversity online. The IFT has made efforts to expand internet access, but major barriers remain. For instance, in rural and indigenous communities, the lack of reliable broadband infrastructure often shunts people into mobile access, which lacks the strength available through fixed access.

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<sup>4</sup> A/HRC/17/27/Add.3, para.78.

### ***Government advertising***

65. Proposed legislation to regulate official advertising was introduced in Congress in March 2018, following a landmark ruling by the Supreme Court. In a fast-track process the Senate passed the proposed legislation, later signed into law by the President on 11 May 2018, without any changes.

66. The Special Rapporteurs are concerned that the new legislation fails to meet basic principles and recommendations of international human rights bodies and experts. In particular, the law does not establish clear rules regarding its objectives, allocation criteria and procedures, and oversight mechanisms, leaving a wide margin for Government discretion and abuse. The IACHR's report "Guiding Principles on the Regulation of Government Advertising and Freedom of Expression" (2012) finds that the establishment of specific, clear, and precise laws is essential to prevent abuse and excessive spending. The Special Rapporteurs call on the Mexican Government to amend the legislation, according to these principles and best practices.

## **VII. Conclusion and recommendations**

### ***Safety of journalists***

#### **67. The Special Rapporteurs call on authorities to**

#### ***Prevention***

68. **Compile and publish detailed and disaggregated statistics of attacks against journalists and human rights defenders, including data concerning the criminal prosecution of these crimes.**

69. **Continue to recognize, at the highest levels of the State, the legitimacy and value of the work of journalists and condemn at all times crimes committed against them.**

70. **Continue to provide appropriate training on safety of journalists, including gender and culturally sensitive training, to relevant law enforcement officials and ensure all their operation manuals and guidelines comply with international human rights law standards on freedom of expression.**

71. **Provide training for journalists who may be at risk of becoming victims of attacks and promote safety of journalists forms part of the school of journalism and communications' curriculum.**

72. **Ensure the implementation of the contingency plans in Chihuahua and Veracruz includes an effective participation of civil society, journalists, and federal and state level authorities, and guarantee the sustainability of these plans. Identify other regions and periods of particular risk for journalists, particularly in cases of social protest or political changes, and adopt adequate measures or new contingency plans to prevent attacks. Identify other regions and periods of particular risk for journalists, particularly in situations of social protest, and during elections or political changes, and adopt adequate measures or new contingency plans to prevent attacks.**

73. **Adopt measures to prevent the repetition of crimes against journalists in Guerrero, Tamaulipas, Sinaloa and Veracruz, and promote policies to restore public trust among journalists and media of such states, and regularly consult civil society.**

#### ***Protection***

74. **Continue to strengthen the Federal Mechanism for Protection of Journalists and Human Rights Defenders and ensure effective implementation of its decisions and measures.**

75. **Adopt legal reforms necessary to ensure effective cooperation and coordination between the federal and state level to protect journalists and human rights defenders. In the meantime, all states should count with functioning units to coordinate and implement in a compelling manner the protection measures for journalists and human rights defenders established at the federal level. To ensure an adequate implementation of protection measures, a system that includes administrative sanctions to public officials who disregard their duties should be put in place and accessible to the beneficiaries.**

76. **Provide the federal protection mechanism with the necessary human and material resources to carry out its mandate. In particular, increase the number of risk analysts working within the federal protection mechanism as well as the number of officers in charge of monitoring the implementation of measures. With adequate resourcing, the Mechanism should aim to place analysts**

on a more regular basis in the states where the situation shows most seriousness and urgency. Analysts and other officers who carry out field work should be provided with adequate working conditions and protection.

77. Enhance the capacity of the federal mechanism to monitor the situation of journalists who are beneficiaries of protection measures and critically assess their effectiveness. The Special Rapporteurs welcome the plan to carry out a diagnosis of the implementation of measures and stress the need to include civil society in its design and evaluation. Particular attention should be given to the risks and threats experienced by displaced journalists and include measures for a safe return or, when unfeasible, reintegration in a new community.

78. Adopt all necessary measures to guarantee transparency of the federal protection mechanism to ensure its efficacy is open to oversight and promote trust among stakeholders, subject to limitations narrowly construed for legitimate purposes, such as the protection of the privacy and safety of the affected individuals. The Mechanism should, at a minimum, be transparent about its legal framework, its rules and procedures, its policies for risk assessment, its budget (allocated and spent) and all data necessary to monitor implementation.

### *Accountability*

79. Adopt a series of substantive and sustainable measures to strengthen FEADLE's capacity to address the structural situation of impunity in which crimes against journalists continue, including:

a) Increase FEADLE's financing and ensure that its budget lines are allocated in accordance with its main obligation to investigate violations of freedom of expression. In particular, this should involve a significant increase in the number of investigators and police personnel under its jurisdiction;

b) Adopt a protocol that outlines the principles and legal obligations of those in charge of investigating crimes against freedom expression and sets a common standard on how to conduct a prompt, diligent, independent and transparent investigation on these cases, consistent to international human rights standards and best practices and in consultation with civil society;

c) Establish clear, objective and transparent criteria for FEADLE's authority in carrying out investigations of crimes against journalists that do not fall in its "original jurisdiction", in order to prevent undermining criminal investigations with unreasonable delays and confusion over jurisdiction;

d) Prioritize the investigation of a series of cases of journalists whose contribution was fundamental to their communities;

e) Strengthen the capacity of investigators and prosecutors to handle criminal cases concerning violence against journalists and take them to court, including by establishing a program with the participation of external experts aimed at advising and training FEADLE's investigators, designing plans for investigation of priority cases of attacks against journalists on account of their exercise of the right to freedom of expression. With a view to ensure accountability, follow up measures should be adopted in cooperation with national and international actors, including the participation of the UN and IAHR Special Rapporteurs and the OHCHR;

f) Establish, within FEADLE, a witness protection program that also includes protection of sources;

g) Establish a gender focal point/unit or specialists on violence against women journalists and establish a training program within the FEADLE focusing in particular on attacks suffered by women journalists;

h) Compile and publish detailed statistics regarding the activities of the FEADLE, namely number of investigators, available budget, number of cases under its jurisdiction, type of crimes investigated, status of the investigation, type of suspected perpetrator, and successful convictions.

80. Ensure that FEADLE remains a specialized prosecutor's office in the organization chart/structure in the autonomous framework of the new General Attorney's Office and ensure its independence.

81. Ensure all investigations of crimes against journalists at the local level are carried out in a prompt, independent, impartial and transparent manner by specialised law enforcement officials that have received adequate training in international human rights law principles and standards.

82. Guarantee the application of appropriate sanctions against public officials who obstruct the investigation or prosecution of those responsible for crimes against journalists or other media actors.

83. Ensure judges and other law enforcement officials use a functional definition of journalism that is consistent with international human rights standards and case law. In particular, it is fundamental that judges do not decline competence due to a narrow understanding of the definition of journalist.

84. Train members of the judiciary on international human rights norms and standards regarding freedom of expression and develop guidelines and protocols that strengthen their capacity to implement those standards in practice.

#### *Attention to Victims*

85. Strengthen CEAV's capacities to guarantee comprehensive legal and psycho-social assistance to victims and next of kin of victims' having suffered crimes pertaining to violations against freedom of expression. When dealing with victims and family members, CEAV must take care to minimize the potential harm of their procedures on their mental well-being and train their officials accordingly.

86. Create a working group between CEAV, SEGOB and PGR, with the participation of civil society, to ensure coordination – and particularly avoid confusion – within their separate mandates regarding the assistance to victims, protection and prosecution of justice. Information regarding the roles and functions of each institution should be made available to victims in a clear manner so they can proceed to address their cases to the corresponding authority.

#### *Journalists and media actors*

87. Establish networks to strengthen cooperation with the federal protection mechanism to ensure effective implementation of protection measures.

88. Provide adequate training on security and self-protection to their employees, both permanent ones and freelancers, providing adequate security equipment, adequate working and life insurance.

#### *Surveillance*

89. The Special Rapporteurs call on the authorities to:

a) Conduct an independent investigation into the purchase and use of malware (including "Pegasus") to monitor journalists, activists, and human rights defenders. Such an investigation should be conducted independent of the federal and state governments alleged to have purchased or used the spyware and include experts from academic and civil society organizations, including potentially from outside of Mexico. In the meantime, any ongoing investigation must respect the rights of targets of surveillance, including their security and privacy;

b) Establish a legal framework to protect people from arbitrary and/or clandestine interferences in their privacy, including the protection of journalistic sources according to international standards on the matter. Guarantees and judicial oversight of state agencies engaging in surveillance should be established, within the permissible limitations of a democratic society. Mexico should consider creating an independent body to effectively oversee the State's surveillance tasks.

#### *Access to information*

90. The Special Rapporteurs call on authorities to continue to strengthen the framework for access to information, including through:

a) Continue to strengthen the capacities of the national institution for access to information (INAI), ensuring its autonomy, adequate budget and effectiveness of its decisions;

b) Guaranteeing access to public information by communities at risk, especially indigenous peoples;

c) Facilitating access by victims and their representatives to the judicial files of gross human rights violations, in line with international human rights law;

d) Ensure the pre-eminence of public interest in the classification of information involving human rights violations, corruption cases and public interest information, assuring that personal data identifying persons involved should not be deleted in public versions;

e) Ensure that the classification of historical archives is based on the principle on maximum publicity and right to truth, bearing in mind the no harm principle.

#### *Government advertising*

91. The Special Rapporteurs call upon authorities to:

a) In consultation with civil society and experts, amend the law regulating government advertising (*Ley de Comunicación Social*) to ensure compliance with international human rights principles and standards. Official advertisement resources should be assigned according to pre-established, clear, objective and transparent criteria;

b) Enforce the legal obligation to proactively publish relevant information on hiring criteria, reasons to assign budgets, expenses and advertisement contracts of public entities.

#### *Diversity and pluralism in media*

92. The Special Rapporteurs call upon competent authorities to:

a) Collect and make public all information necessary to identify the ownership of media outlets, and ensure all information submitted to the national media and telecommunications registries is available to the public in accessible formats;

b) Continue to establish policies to promote diversity and pluralism of media and enhance efforts to counter concentration in media, particularly within broadcasting and pay television;

c) Refrain from criminalizing the use of radio frequencies as this would be an unnecessary and disproportionate restriction to freedom of expression. This should be considered by the Senate when debating amendments currently being discussed in Congress on the Law of Telecommunications and Broadcasting (article 304) and the Federal Criminal Code (article 172 TER);

d) Adopt measures to expand access of indigenous peoples and rural areas to community broadcasting, including by encouraging the development and resources available to community broadcasting, and continue to strengthen access to broadband in areas that lack reliable access.

#### *Legislative action*

93. The Special Rapporteurs call upon relevant authorities to:

a) Repeal the law of Internal Security in its current version and instead initiate an open and comprehensive dialogue regarding the security model the country needs, reaffirming the role of civilian security agencies in addressing public security challenges. No laws should be adopted which counter the powers given to access to information authorities or standards relating to access to information for serious human rights violations;

b) Repeal the 1917 Print Offences Act and amend state criminal codes in order to remove offences that are used to criminalize freedom of expression and refrain from using other criminal law provisions to punish the lawful exercise of freedom of expression. Simultaneously amend state civil codes to ensure protection to honor through civil proceedings, establishing limits and criteria to sanctions, according to international standards. SEGOB and the Mechanism should play a key role on this;

c) Adopt legislation to protect sources and whistle-blowers. Include civil society in the process and take into consideration the reports of the Special Rapporteurs on the matter.

# SPECIAL REPORT ON THE SITUATION OF FREEDOM OF EXPRESSION IN CUBA

## INTRODUCTION

### A. Background and purpose of the report

1. For more than half a century, Cuba has been a State governed by a single party that obstructs all avenues of political dissent. The State severely restricts the rights to freedom of expression, association, assembly, freedom of movement, and due process. For decades the Cuban State has organized the institutional machinery to silence voices outside the regime, and to repress independent journalists, as well as artists or citizens who try to organize themselves to articulate their demands; in all that time the State has maintained a monopoly over the media. As the Inter-American Commission on Human Rights (hereinafter, “IACHR”) and the Office of the Special Rapporteur for Freedom of Expression (hereinafter, “Office of the Special Rapporteur”) have noted, open debate on ideas and on central aspects of national life has been suppressed.

2. As the Inter-American Commission has pointed out, this is presented in a context of serious disregard for the essential elements of representative democracy and its institutions. Historically, the IACHR has been critical of the absence of conditions that would allow genuine political participation by sectors with diverse lines of thought in Cuba; in particular, the holding of elections lacking plurality and independence, with insurmountable obstacles that prevent free access to multiple sources of information. The voice of opposition to the government, in its attempts to express itself and participate in the conduct of the country’s affairs, ends up being suppressed in the presence of a single party, the prohibition against association for political purposes, and arbitrary restrictions on freedom of expression and the right of assembly, among other fundamental rights.<sup>1</sup>

3. For decades, Cuba has remained among the countries in the hemisphere with the worst conditions and least favorable environment for the exercise of the right to freedom of expression.<sup>2</sup> Reporters Without Borders places it 172<sup>nd</sup> out of 180 countries included in the 2018 world ranking, a study based on the degree of freedom enjoyed by journalists. Year after year it continues to be the worst rated country in the American region.<sup>3</sup> According to the Committee to Protect Journalists (hereinafter “CPJ”), Cuba is one of the 10 countries in the world with the most censorship and the only one in the hemisphere on this list.<sup>4</sup> Practicing journalism in Cuba was not even close to a situation comparable to any other country in the region. This is due to the serious risks faced by journalists and other population groups seeking to express opinions, the lack of access to public and official government information, the fear of the population and of those who may potentially be journalists’ sources of information, among other multiple obstacles. Nevertheless, this model based on stifling the press and the free exchange of information and ideas on matters of public interest is apparently being emulated by other regimes, as demonstrated by the recent cases of Nicaragua and Venezuela.

4. El The control of freedom of expression and political freedoms has been ongoing for almost five decades, but there have been some emblematic episodes of repression such as the one that occurred in March 2003, when people identified as “counterrevolutionaries” for their thinking were arrested en masse. On

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<sup>1</sup> IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 25.

<sup>2</sup> IACHR. [Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 83; IACHR. [Annual Report 2007](#). OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Paras. 130-133; IACHR. [Annual Report 2005. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Para. 60; IACHR. [Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Paras. 64-65; IACHR. [Annual Report 2001](#). OEA/Ser. /L/V/II.114. Doc. 5 rev. April 16, 2002. Paras. 18-19; IACHR. [Annual Report 2001. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser. /L/V/II.114. Doc. 5 rev. April 16, 2002. Paras. 92-103; IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000. Pp. 44-45.

<sup>3</sup> This report measures the situation of press freedom, based on an assessment of pluralism, the independence of the media, the quality of the legal framework, and the safety of journalists in these countries. [Reporters Without Borders. [RSF Index 2018: Mixed performance in Latin America](#)]. In recent years, Cuba has fluctuated between 169<sup>th</sup> and 173<sup>rd</sup> out of 180 countries worldwide. [RWB. [Informe Anual 2017. América. Cuba](#)] [Annual Report 2017. Americas. Cuba] [in Spanish].

<sup>4</sup> CPJ. [10 Most Censored Countries](#). No date.

March 18, 2003, agents of the State Security force arrested dissidents. More than 80 people were arrested, and agents confiscated computers, typewriters, books, faxes, and personal documents. Seventy-five people were convicted and sentenced to up to 28 years in prison with an average sentence of more than 18 years.<sup>5</sup> The arrests, prosecutions, and convictions were one of the harshest repressive campaigns in the Cuban regime in decades, known as Black Spring. The acts committed in this context were addressed in the IACHR's recently published report on the merits in the *Case of Vladimiro Roca Antúnez, et al.*<sup>6</sup>

5. In recent years, the IACHR and its Office of the Special Rapporteur have continued to receive troubling information about illegitimate restrictions on freedom of expression in Cuba. Of particular concern is the continuing rise in selective and deliberate persecution of independent media and organizations that disseminate information and opinions on matters of public interest outside the control of the State. The acts and threats by authorities and public officials to intimidate anyone expressing critical ideas about the country's politics and institutions, such as activists, artists, journalists, human rights defenders, and intellectuals, among others, are also very serious.

6. All this is taking place under a legal framework that, far from protecting the exercise of freedom of expression, provides the State with the legal tools to repress it, especially through criminal law. State control of the media and over access to digital media also persists because of the limited connectivity of the Cuban population and the blocking of critical media on the Internet. This restricts the information, cultural expressions, and debate of ideas that Cubans are able to access through the press, radio, television, and the Internet. All these are illegitimate restrictions and infringements on freedom of expression that the Office of the Special Rapporteur has observed for several decades, especially in its annual reports.

7. The change in the country's leadership following the appointment of Raúl Castro in 2006 had consequences in terms of a certain degree of economic liberalization, and an apparent opening up of spaces for discussion within the framework of a political transition of the regime. Systematic violations of human rights and fundamental freedoms continued, although the intensity of the repression varied according to the political situation.

8. On December 17, 2014, the Governments of Cuba and the United States announced talks aimed at agreeing on bilateral measures, which included the reestablishment of diplomatic relations, which had been suspended since 1961. The IACHR welcomed this announcement at the time as a sign of strengthening relations between two member states of the Organization of American States (hereinafter, "OAS" or "Organization"), in the hope that such measures would be beneficial to the people of both countries. The Inter-American Commission welcomed the decision in a press release, and called for the dialogue to be followed by "increased respect for human rights and fundamental freedoms in Cuba," as well as "more measures to open up the country to international presence, including by human rights monitoring bodies, with a view to concrete advances in the protection of its inhabitants."<sup>7</sup>

9. However, two years after the process began, there has been no significant response to the demands for freedom in the areas of culture, the press, and in political debate and participation. At present, the intolerance of the Cuban authorities toward any form of criticism or opposition continues to be the main limitation on the enjoyment of the rights to freedom of expression and association in Cuba. The *de facto* change of government of the Presidency of the Council of State and Ministers from Raúl Castro to Miguel Díaz-Canel in 2018 had also created expectations of positive steps in the area of human rights. So far, however, the new government has generally shown itself to be a continuation of the former regime in terms of repressing the exercise of freedom of expression in Cuba. Of grave concern is the fact that, shortly after taking office,

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<sup>5</sup> See *inter alia* IACHR. *Hearing on the Situation of Freedom of Expression in Cuba*. 119<sup>th</sup> Session. March 2, 2004; IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). October 21, 2006.

<sup>6</sup> The IACHR declared the international responsibility of the Cuban State for the violation of the rights to freedom of expression and association of Vladimiro Roca Antúnez, René Gómez Manzano, Martha Beatriz Roque Cabello and Félix Bonne Carcassés, who were arbitrarily deprived of their liberty and sentenced to harsh prison terms on charges of sedition for the mere dissemination of political opinions. IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018.

<sup>7</sup> IACHR. [IACHR Welcomes Announcement to Reestablish Relations between the United States and Cuba](#). Press Release of December 18, 2014.

Díaz-Canel announced that he would maintain a position against press freedom and the legalization of independent media in the country.<sup>8</sup>

10. Most troubling is the fact that, even in recent times, there has been an increase in repression and intolerance in order to discourage journalism that does not toe the official line, the work of human rights defenders, and criticism voiced by dissidents, as discussed in detail below. For years, repression in Cuba was characterized by maintaining a veneer of legality, which included prosecution indictments, the appointment of public defenders, judicial proceedings, and/or final convictions. Although some of these practices continue, there are variations that seem to be aimed at leaving neither legal traces nor documentation that can be used as evidence of the abuses suffered.<sup>9</sup> During the 169<sup>th</sup> Session of the IACHR, several journalists in attendance, and others through previously recorded statements, reported what they called a repression of “attrition” that avoids prosecution. These forms of repression are said to include arrests and humiliating interrogations, particularly of women journalists; detentions of up to 72 hours without a warrant or judicial communication; pressures on their families and those around them; confiscation of equipment and theft of materials from journalists; as well as travel bans to keep journalists and activists from leaving the country.<sup>10</sup>

11. The current model reportedly follows a rationale that is separate from the legal structures, based on State Security or para-State structures that may be more subtle but equally serious in light of international law.<sup>11</sup> In addition to the traditional tools used to repress independent journalism, forms of repression have been reported such as threats to bring criminal action based on the criminal offense of “impersonation of a public official and acting without legal capacity” against those who practice journalism in non-state media and, more recently, the imposition of “aptitude tests” for admission to the journalism program at the State University.<sup>12</sup>

12. In this context, the Office of the Special Rapporteur also takes note of the constitutional reform process currently underway in Cuba.<sup>13</sup> The information available indicates that, at the end of July 2018, the “Draft Constitution of the Republic of Cuba” (hereinafter, “Draft Constitution”) was published, reportedly to be subject to popular consultation between August and November of the same year. According to the information available, the one-party political system and centralized economy is generally maintained, so the restrictions on the political rights of Cubans remain in force. In addition, the text of the draft amended Constitution expressly includes the obligation “to guarantee the enjoyment and exercise by the individual of the inalienable, indivisible and interdependent enjoyment and exercise of human rights, in accordance with the principle of progressivity and without discrimination.”<sup>14</sup> In addition, the introduction to the draft announces the intention to establish all “rights in keeping with the relevant international instruments to which Cuba is a party.”<sup>15</sup> These include freedom of thought, conscience, and expression, as well as the right to

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<sup>8</sup> Miguel Díaz-Canel. Tenth Congress of the Cuban Journalists’ Union. In: [Díaz-Canel descarta la libertad de prensa en Cuba](#) [Díaz-Canel Rules out Press Freedom in Cuba]. July 16, 2018.

<sup>9</sup> IACHR. Office of the Special Rapporteur. Working meeting with journalists. 168<sup>th</sup> Session. June 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

<sup>10</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

<sup>11</sup> Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

<sup>12</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

<sup>13</sup> According to the available information, on June 2, 2018, the National Assembly agreed to initiate this process and created a Commission responsible for drawing up the draft, which was reportedly chaired by Army General Raúl Castro Ruz and made up of 33 representatives. This Commission introduced a new draft Constitution to the VII Plenary of the Central Committee of the Party and to the Council of State. Subsequently, it was submitted to the National Assembly of People’s Power for its adoption, which took place on July 21 and 22, 2018. Granma. [Preparan proceso de consulta del Proyecto de Constitución](#) [Consultation process for the Draft Constitution prepared]. July 30, 2018.

<sup>14</sup> Article 39 of the draft Constitution states that: The Cuban State shall guarantee the enjoyment and exercise by the individual of the inalienable, indivisible and interdependent enjoyment and exercise of human rights, in accordance with the principle of progressivity and without discrimination. Their respect and guarantee are obligatory for everyone. [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]](#).

<sup>15</sup> [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]. Introduction to the analysis of the Draft.](#)

a defense, due process, popular participation, and access to the courts.<sup>16</sup> However, the draft also contains provisions that are incompatible with Cuba's human rights obligations, which will be examined accordingly in the present report.

13. The Office of the Special Rapporteur considers that Cuba's development and openness is closely linked to the indispensable return to democracy and respect for human rights. In that regard, respect for human rights, freedom of expression, and respect for political rights, together with the holding of free elections based on secret and universal suffrage are essential elements of democracy. Freedom of expression accompanies the person as one of the most precious freedoms because it allows each individual to think about the world from his or her own perspective and choose his or her own lifestyle, as well as to build pluralistic societies. For this reason, since the beginning of the current administration, the Office of the Special Rapporteur has given priority attention to the situation in Cuba. To that end, this report analyzes the situation of freedom of expression in Cuba in the light of the standards of the inter-American system and, on that basis, offers recommendations to the State that will enable it to contribute to the effective exercise of this right in the country.

## **B. International legal framework**

14. Cuba ratified the OAS Charter on July 16, 1952, and has been a member of the Organization ever since. In accordance with the OAS Charter, all States Parties undertake to respect the individual human rights set forth in the American Declaration of the Rights and Duties of Man (hereinafter, "Declaration" or "American Declaration"). In accordance with Article 20(a) of its Statute, the Commission must pay special attention to the task of observing the human rights recognized in Articles I, II, III, IV, XVIII, XXV, and XXVI of the Declaration when exercising its jurisdiction over States that are not parties to the American Convention.<sup>17</sup> In this regard, Cuba must observe the American Declaration despite not having ratified the American Convention on Human Rights (hereinafter, "Convention" or "American Convention").

15. The Office of the Special Rapporteur recalls, as the IACHR has expressed on repeated occasions,<sup>18</sup> that the American Declaration is a source of international legal obligation for all member States of the OAS, including Cuba. Article IV of the Declaration states that: "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." Article XXII establishes that: "Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."

16. The IACHR has repeatedly recognized that the freedom to express ideas and disseminate information of all kinds, regardless of borders, is a fundamental and inalienable right, inherent to all persons. It is "one of the individual rights that most clearly reflects the virtue that marks—and characterizes—human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live."<sup>19</sup>

17. It is also a prerequisite for the very existence of a democratic society. The very objective of this right is to strengthen the functioning of pluralistic and deliberative democratic systems by protecting and promoting the free flow of information, ideas, and expressions.<sup>20</sup>

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<sup>16</sup> [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]](#). Title IV: Rights, duties, and guarantees.

<sup>17</sup> IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). Para. 36.

<sup>18</sup> IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). October 21, 2006. Paras. 40-44; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo, et al. Cuba. October 21, 2006. Paras. 49 & 52; IACHR: Merits Report No. 47/96. Case 11.436. Victims of the tugboat "13 de Marzo" (Cuba). October 16, 1996; Merits Report No. 86/99. Case 11.589. Armando Alejandro Jr., Carlos Costa, Mario de la Peña & Pablo Morales. September 29, 1999; IACHR. Annual Report 2016. Chapter IV.b (Situation of Human Rights in Cuba). Para. 12.

<sup>19</sup> IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. December 30, 2009. Para. 7.

<sup>20</sup> IACHR. Report No. 103/13. Case 12.816. Merits. Adán Guillermo López Lone, et al. Honduras. November 5, 2013. Para. 210; IACHR. Report No. 27/15. Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75; IACHR. Arguments before the Inter-American Court in the case of Ivcher Bronstein v. Peru. Transcribed in: I/A Court H.R. *Case of Ivcher Bronstein v. Peru*. Merits,

18. The IACHR has stated that “when Article IV of the Declaration proclaims that ‘every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas’ by any means, it is indicating that the expression and dissemination of ideas is indivisible, so that a restriction of the possibility to impart thoughts represents directly, and to the same degree, a restriction of the right to express oneself freely.”<sup>21</sup> Indeed, according to the doctrine and jurisprudence of the inter-American system, freedom of expression has an individual dimension and a social dimension, which must be fully guaranteed simultaneously in order to give effect to the right to freedom of expression.<sup>22</sup> Freedom of expression requires that no one be arbitrarily hindered or prevented from expressing his or her own thought and disseminating information of all kinds; but it also entails a collective right to receive any information and to hear the expression of other people’s thoughts.<sup>23</sup>

19. The recognition and protection of freedom of expression in the inter-American system is complemented by that established within the framework of the United Nations (hereinafter, “UN”).<sup>24</sup> Specifically, Article 19 of the Universal Declaration of Human Rights (hereinafter, “Universal Declaration”) provides that, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

20. The IACHR notes that Cuba has ratified several human rights treaties adopted by the UN.<sup>25</sup> It also notes that the Cuban State signed the International Covenant on Civil and Political Rights on February 28, 2008, although to date it has not ratified this universal treaty that recognizes, *inter alia*, the right to freedom of expression.

21. Given the close relationship between these rights and democracy, reference should be made to the Inter-American Democratic Charter and, in particular, to Article 4, which states the following: “Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.” In addition, the Declaration of Principles on Freedom of Expression of the IACHR (hereinafter, “Declaration of Principles”) emphasizes that freedom of expression is “an indispensable requirement for the very existence of a democratic society” (Principle 1).

22. This body of norms, together with the decisions of the bodies of the inter-American system, establish clear principles in relation to the standards for the effective protection of freedom of expression, which will be considered by the Office of the Special Rapporteur in the analysis of this report.

### C. Methodology and structure of the Report

23. The present analysis is the product of continuous monitoring of the human rights situation in Cuba, especially with regard to freedom of expression in its various dimensions, carried out by the Office of the Special Rapporteur through its annual reports. The information available also comes from public hearings held by the IACHR, the petitions of alleged victims processed in the petition and case system, the mechanism of precautionary measures, and the information submitted by civil society organizations and information

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Reparations and Costs. Judgment of February 6, 2001. Para. 143. d); IACHR. Arguments before the Inter-American Court in the case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Transcribed in: I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations, and Costs. Judgment of February 5, 2001. Para. 61. b).

<sup>21</sup> IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). October 21, 2006. Para. 198.

<sup>22</sup> I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations, and Costs. Judgment of February 5, 2001. Para. 67; *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Para. 135.

<sup>23</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. Para. 30; *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Para. 136.

<sup>24</sup> Cuba signed the United Nations Charter on June 26, 1945 and ratified it on October 15 of the same year, being one of the founding States of that organization.

<sup>25</sup> In particular, it is a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and its two optional protocols, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities. See United Nations. [Multilateral Treaties Deposited with the Secretary-General](#). Chapter IV.

from various public sources were taken into account. The Office of the Special Rapporteur for Freedom of Expression of the IACHR also sent the Cuban authorities a letter describing specific situations involving the criminalization and persecution of journalists and activists, as well as a questionnaire sent jointly with the United Nations Rapporteur on Freedom of Opinion and Expression on various situations reported concerning cases of censorship, violence against journalists, arbitrary arrests, and the functioning of the Internet in Cuba; to date, the Cuban State has not replied to the questionnaire.<sup>26</sup>

24. This report contains six main sections. In Chapter I, the Office of the Special Rapporteur discusses the regulatory framework that is at the root of the human rights violations discussed in this report, as well as a brief analysis of the aspects of the constitutional reform introduced by the regime itself for debate in Cuba that refer to the right to freedom of expression. In the second chapter, it addresses free and independent journalism in Cuba, referring in particular to the public media, the impossibility of establishing private media, and the practices of persecution against independent journalists. Since journalists are not the only ones who have suffered persecution for expressing their ideas in Cuba, the third chapter analyzes the criminalization [of criticism and politically motivated discrimination](#) against different sectors of the population, such as human rights defenders, artists, political dissidents, and others. The following chapter discusses social protests and demonstrations. The sixth section refers to limitations on the right to freedom of expression on the Internet and addresses obstacles in the regulation of the use of networks and communication on the web, connectivity problems and universal access, content blocking and censorship, and surveillance. Finally, based on the analysis of these issues, the Office of the Special Rapporteur presents its conclusions and recommendations to the Cuban State.

## **I. REGULATORY FRAMEWORK**

25. Cuba has a legal system that is extremely restrictive of freedom of expression. The Constitution's regulation of the exercise of this right subordinates it to the protection of certain purposes and interests, in a manner incompatible with international instruments. Among other things, the 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 the State, the socialist order, and so on. The Cuban legal system has a restrictive and instrumental view of freedom of expression with regard to the activities of journalists and the media.

26. The existing legal structure in the country is used as the basis for persecuting and criminalizing those who express opinions or disseminate information that is critical or dissents from the official position. The main legal tools used by the Cuban State to repress independent journalism have been in force for several years, but new classifications of offenses have been added to the repressive model. The Office of the Special Rapporteur refers below to its main concerns about the Constitution, punitive provisions related to freedom of expression, and provisions concerning access to information. The Office of the Special Rapporteur refers to this part of the Draft Constitution in a subsection within this chapter (II.A.iv).

### **A. 1976 Constitution of the Republic of Cuba**

27. For purposes of the exercise of the right to freedom of expression in Cuba, Article 53 of the 1976 Constitution of the Republic is particularly relevant. That provision provides, to the letter, as follows:

Citizens have freedom of speech and of the press in keeping with the objectives of socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies and other mass media are State or social property and can never be private property. This ensures that they are used at the exclusive service of the working people and in the interest of society. The law regulates the exercise of these freedoms.<sup>27</sup>

28. This article provides the State with the key constitutional basis for the repression of freedom of expression in Cuba. Since its 1983 country report, the IACHR has expressed its concern about this provision inasmuch as it "subordinates the exercise of the freedom of expression 'to the objectives of socialist society,'"

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<sup>26</sup> Letter sent pursuant to the special mandates of the UN Rapporteur on Freedom of Opinion and Expression, David Kaye, and the IACHR Special Rapporteur for Freedom of Expression, Edison Lanza, in accordance with UN Human Rights Council Resolution 25/2 and Article 18 of the IACHR Statute. October 1, 2018.

<sup>27</sup> [Constitution](#) of the Republic of Cuba. 1976. Article 53.

because “it is the exercise of rights which must adapt to the purposes of the State.”<sup>28</sup> It noted that “Regulations in the law on the exercise of the right to freedom of expression obey two fundamental determinants: on the one hand, the preservation and strengthening of the socialist State; on the other, the need to suppress any possible criticism of the group in power.”<sup>29</sup>

29. In particular, the Office of the Special Rapporteur views three aspects of this provision with special concern due to their incompatibility with freedom of expression: (i) prior censorship of the exercise of freedom of speech and of the press by subjecting it to the aims of socialist society, (ii) state ownership of the media along with an express prohibition of the operation of private media, and (iii) the potential criminalization of the exercise of freedom of expression.

**i. Prior censorship of freedom of expression by subjecting it to the aims of a socialist society**

30. Article 53 distances Cuba from international standards in this area, according to which the recognition of freedom of expression may not be subject to any condition, much less when such condition limits the possibility of an open, plural, and democratic debate on political issues. However, in Cuba freedom of expression and of the press is only protected and respected by the authorities if it serves the purposes of socialism as expressly provided for in the Constitution, in accordance with the interpretations of that concept made at all times by the respective bodies. By establishing that such freedoms must be consistent with the aims of socialist society, the Cuban State is authorized to exercise control over the information that reaches the public.

31. The Office of the Special Rapporteur recalls that under Article IV of the American Declaration, freedom of expression must be exercised without prior censorship and restrictions on the flow of information can only be established as subsequent liabilities. Additionally, as stated in Principle 5 of the Declaration of Principles “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.”

32. The legal system that allows for the control of freedom of expression in Cuba is related to **Article 5 of the Constitution**, which calls the communist party the highest leading force in society and the State.<sup>30</sup> The Central Committee of the Cuban Communist Party (hereinafter, “PCC”)—by equating itself with the State and the Nation—, the Cuban Government and its governing body, grant themselves the right to consider any peaceful action or initiative that seeks to foster communication among citizens, as well as any opinion that disagrees with its policies, to be an affront to the country’s independence.<sup>31</sup>

33. It is also linked to **Article 16** of the Constitution, insofar as that article provides, as a general principle, that “The State organizes, directs and controls the national economic activity according to a plan that guarantees the programmed development of the country, with the aim of strengthening the socialist system; satisfying the material and cultural needs of the society and its citizens with constant improvement; and promoting the development of the human being and his dignity, [and] the country’s progress and security.” This provision supports the economic control and planning of virtually all sectors of the country, making it impossible for activities, including media activities, to be subject to economic and market dynamics. This article also proscribes activities that are essential for the development of a media system, particularly the marketing and purchasing of advertising space.

34. In its 1998 annual report on Cuba, the Inter-American Commission pointed out that the exercise of fundamental freedoms, such as freedom of expression, cannot be conditioned on the political ideas of a party or the absolute control of state power. The Commission said that “the Cuban political system continues to give an exclusive and exclusionary preponderant role to the Communist Party, which in fact is a force superior to

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<sup>28</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 7.

<sup>29</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 9.

<sup>30</sup> Constitution of the Republic of Cuba. Art. 5.- The Communist Party of Cuba, Martian and Marxist-Leninist, the organized vanguard of the Cuban nation, is the highest leading force of society and the State, organizing and guiding the common efforts aimed at the highest goals of the construction of socialism and advancement toward communist society-.

<sup>31</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

the state itself, impeding healthy ideological and political pluralism, which is one of the bases of any democratic form of government. Consequently, the most important state organs are controlled by members of the Communist Party.”<sup>32</sup>

35. The Office of the Special Rapporteur reiterates that such a constitutional formula establishes arbitrary limits to the exercise of the rights and freedoms to which citizens are entitled. According to this formula, they are the ones who must adapt this exercise to the purposes pursued by the State. However, the democratic approach is the opposite: it is the State that should limit its action vis-à-vis the freedoms inherent to the individual rather than the individual adapting the exercise of those freedoms to particular state objectives.<sup>33</sup>

## ii. State or social ownership of the media

36. A second aspect of concern is the State monopoly on the media, precisely for the purpose of preserving the instrumental role referred to above, which is explicitly enshrined in Article 53. The function of communicating and contributing to the formation of public opinion is concentrated almost exclusively in the hands of the State. Any activity in this sphere that takes place outside the limits of the State monopoly is considered to be outside the law, and may be subject to punishment and repression by the authorities.

37. In addition to the fact that the Constitution prohibits private ownership of the press, all media are presumably controlled by the one-party communist State, which has been a matter of frequent concern to the Office of the Special Rapporteur and the IACHR.<sup>34</sup> Added to the absence of plural and independent media, essential in any democratic society, the editorial policy of the official media is controlled by the Communist Party of Cuba and is based on the selection of topics conveyed from a single perspective, which is biased in favor of the current regime.<sup>35</sup>

38. A provision of this kind closes the door to the demands arising from the need for media diversity and pluralism to protect the right to freedom of expression. As the Office of the Special Rapporteur has stated, The establishment of a State conglomerate as the only vehicle for the dissemination of information, ideas, and opinions violates freedom of expression, which is reinforced by the prohibition against associating to establish different types of media, whether commercial or non-profit. As this report discusses in depth, this has real consequences for the way journalism is practiced in Cuba, because a restriction on the ability of journalists and the media to circulate news, ideas, and opinions also affects the public’s right to receive information, make its own political choices, and develop fully (III).

## iii. Potential criminalization of the exercise of freedom of expression

39. The open reference made in the last sentence of Article 53 also gives the legislature the discretionary power to determine the exercise of freedom of expression in a concrete manner, within the broad margins allowed by the Constitution. This authorization is set forth in repressive terms in **Article 62** of the Constitution, which provides that:

None of the freedoms to which citizens are entitled may be exercised against those established in the Constitution and the laws, nor against the existence and aims of the socialist state, nor against the decision of the Cuban people to build socialism and communism. **Violations of this principle are punishable** (emphasis added).

40. Thus, the constitutional framework itself favors the establishment of criminal penalties for noncompliance with freedom of speech and of the press under the openly restrictive terms established in Article 53. The limits or interests used to legitimize such restrictions and penalties are incompatible with the applicable international standards, as noted above. These are limits aimed at preserving the status quo of the socialist regime by avoiding any form of debate, criticism, or questioning that is inherent and necessary in any democratic society. Particularly noteworthy is the set of punitive provisions relating to defamation or the

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<sup>32</sup> IACHR. Annual Report 1998. Chapter IV. Cuba. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Para. 68.

<sup>33</sup> IACHR. Annual Report 1998. Chapter IV. Cuba. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Para. 69.

<sup>34</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 453; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 309; IACHR. [Annual Report 2003. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.118, Doc. 70 rev. 2. December 29, 2003. Para. 41.

<sup>35</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

mere criticism of State authorities and institutions, which are blatantly incompatible with freedom of expression, as discussed later in this report. (II.B and IV.C).

#### iv. Constitutional reform<sup>36</sup>

41. The Office of the Special Rapporteur notes that, in the draft Constitution presented for popular consultation, there are two provisions directly referring to freedom of speech and of the press: **Articles 59 and 60**. The first of these provides as follows:

ARTICLE 59. The State recognizes, respects and guarantees freedom of thought, conscience and expression.

Conscientious objection may not be invoked for the purpose of evading law enforcement or preventing another from fulfilling it or exercising his or her rights.

42. The Office of the Special Rapporteur takes note that the draft establishes the general obligation of the State to recognize, respect, and guarantee freedom of thought, conscience, and expression, while the 1976 Constitution contains no similar provision. However, in order for such rights to be enforceable in Cuba, they must be made compatible with other constitutional provisions that prevent political pluralism and non-State ownership of the media. The reform also does not establish any legal actions to guarantee or protect the exercise of fundamental freedoms. This is without prejudice to the need to enact an appropriate regulatory framework that does not contain arbitrary restrictions on the exercise of those freedoms, but rather serves as the framework for correcting the ongoing practice of persecuting journalists.

43. In this regard, it is troubling that the draft constitutional reform known so far would retain the main restrictions of the current legal system with regard to freedom of expression, which render the exercise of the right illusory and make it a recognition that could be merely rhetorical. This is related to **Article 60 of the Draft Constitution**, which would replace Article 53 of the current Constitution. This provision establishes:

ARTICLE 60. Citizens are entitled to freedom of the press. This right is exercised in accordance with the law. The fundamental means of social communication, in any of its forms, are the socialist property of all the people, which ensures that they are used in the service of society as a whole.

The State establishes the principles of organization and operation for all media.

44. According to this wording, although freedom of the press would no longer be subject to the “objectives of socialist society,” it seems to maintain the obstacles to media other than State media. As the provision expressly states, the media “are the socialist property of all the people.” This is even more troubling considering that the aforementioned Article 5 designating the PCC as the highest leading force also remains.

45. The Office of the Special Rapporteur recalls that the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information.” Furthermore, “The State should not have monopoly control over the media and should promote plurality of the media,” as also stated in General Comment 34 of the United Nations Human Rights Committee, cited in various decisions by the Commission and the Inter-American Court of Human Rights.<sup>37</sup>

46. With regard to the economic system, the Office of the Special Rapporteur notes that the Draft Constitution, while maintaining as essential principles the socialist ownership of all people over essential media and planning, does acknowledge the role of the market and new forms of non-State ownership, including private ownership.<sup>38</sup> Along these lines, one of the areas in which private ownership should be

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<sup>36</sup> The IACHR in a press release dated March 4, 2019, reported that the reform process was concluded with the referendum held on February 24, 2019. On this occasion, the Commission expressed its concern, among others, regarding the possibility that the referendum may not have complied with the conditions necessary for free, secret, reliable, independent elections that safeguard the principles of universality and plurality. IACHR. March 4, 2019. [Press Release No. 058-19, IACHR Concerned about Cuba’s New Constitution and its Implementation](#).

<sup>37</sup> UN. Human Rights Committee. General Comment No. 34: Article 19: Freedoms of opinion and expression. CCPR/C/GC/34. 12 September 2011. Para. 40; I/A Court H.R. Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293. Para. 143; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF.16/17. March 15, 2017. Para. 153; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017.

<sup>38</sup> [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]](#).

allowed as a matter of priority is the media, given that the possibility of establishing and operating media outlets is closely linked to the enjoyment of a wide range of freedoms.

47. Maintaining the State monopoly over the media is also contradictory to an aspect that seems central to this process of constitutional reform: the affirmation of Cuba as a democratic State governed by the rule of law.<sup>39</sup> In other words, we cannot speak of the existence of a democratic system without full respect for freedom of expression and the possibility for citizens to exchange information, ideas, and opinions from a variety of sources.

48. Nor is there adequate regulation to meet the requirements of freedom of expression in relation to audiovisual communication, both from the point of view of access to resources to establish media outlets (granting, renewal, and revocation of licenses to operate radio and television frequencies), and in terms of the essential guarantees for the media to be virtually open to all without discrimination, which—as the Inter-American Court has pointed out—is an inherent requirement for the functioning of the media.<sup>40</sup>

49. In addition, the bill succinctly recognizes that “All persons have the right to receive truthful, adequate, and timely information from the State, in accordance with established regulations,” which could constitute a partial recognition of the right of access to public information, although it does so without reference to the obligation to provide an appropriate enforcement mechanism that individuals can avail themselves of in the event that the State refuses to provide information (see section C). In relation to the Internet, and without prejudice to the various oversight mechanisms to which reference will be made (VI.A), the law in question does not contain rules on ensuring an accessible, open, and neutral Internet.

### B. Legal provisions that punish legitimate speech

50. The Office of the Special Rapporteur observes with concern the existence of a legal framework that represses and punishes the exercise of freedom of expression in Cuba. There are various provisions that have a considerable impact on this right, mainly but not exclusively in (i) the 1987 Criminal Code, (ii) Law No. 88 of 1999 for the Protection of National Independence, and (iii) Law No. 80 of 1996, for the Reaffirmation of Cuban Dignity and Sovereignty.

51. The Inter-American Commission and the Office of the Special Rapporteur have for decades expressed their concern about criminal concepts in the 1987 Criminal Code,<sup>41</sup> applied to the exercise of freedom of expression.<sup>42</sup> The information available through monitoring indicates that the criminal offenses most frequently used against journalists, political dissidents, human rights defenders, and others who exercise freedom of expression include the following:<sup>43</sup>

Title of the Criminal Code	Chapter	Offense
<b>Title I: Crimes against the security of the State</b>	Chapter I : Crimes against the external security of the State	Acts against the independence or territorial integrity of the State (Article 91)
		Espionage (Article 97)

<sup>39</sup> Different provisions refer to the democratic character of the Cuban State; in particular Article 96 of the draft states: The bodies of the State are composed, and conduct their activities, based on the principles of socialist democracy, which are expressed in the following rules: (...) g) the freedom of discussion, the exercise of criticism and self-criticism, and the subordination of the minority to the majority in all collegial State bodies. [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]](#).

<sup>40</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. 34.

<sup>41</sup> Criminal Code. Law of December 29, 1987. Published in the Official Gazette of the Republic of Cuba. Special edition. No. 3. December 30, 1987.

<sup>42</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Paras. 9-11.

<sup>43</sup> See *inter alia* IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 455; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 357, 358; IACHR. [Annual Report 2002](#). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 24; IACHR. [Annual Report 2000. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.111. Doc. 20 rev. April 16, 2001. Para. 66; IACHR. [Annual Report 1998. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Pp. 34, 39.

	Chapter II : Crimes against the domestic security of the State	Enemy propaganda (Article 103)
		Dissemination of false news against international peace (Article 115)
<b>Title II: Crimes against the public administration</b>	Chapter II : Violence, affronts, and disobedience against authority, public servants and their agents	Attack against a public authority (Article 142)
		Resistance (Article 143)
		Contempt of public authority (Article 144)
		Disobedience (Article 147)
	Chapter III: Fraudulent exercise of public functions	Impersonation of a public official (Article 148)
		Acting without legal capacity (Article 149)
<b>Title IV: Crimes against public order</b>	Public disorder (Articles 200 and 201)	
	Incitement to commit a crime (Article 202)	
	Insulting national symbols (Article 203)	
	Defamation of institutions and organizations and of heroes and martyrs (Article 204)	

52. The Office of the Special Rapporteur also notes that Articles 318, 319, and 320 of the Criminal Code provide for the system of penalties applicable to defamation, slander, and insult, respectively.

#### TITLE XII: CRIMES AGAINST HONOR

Offense	Article	Criminal conduct	Penalty
<b>Contempt of public authority</b>	318	In the presence of third parties, attributing dishonorable behavior, an act, or a characteristic to another, which may damage his or her social reputation, demean him or her in the public opinion, or subject him or her to the risk of losing the trust required for the performance of his or her position, profession, or social function.	Deprivation of liberty for a period of 3 months to 1 year, or a fine of 130 units [cuotas], or both
<b>Slander</b>	319	Knowingly disclosing false information that leads to the discrediting of a person	Deprivation of liberty for a period of 6 months to 2 years or a fine of 200 to 500 units [cuotas]
<b>Insult</b>	320	Intentionally insulting another person's honor, verbally or in writing, by means of drawings, gestures, or acts	Deprivation of liberty for a period 3 months to 1 year, or a fine of

		130 units [ <i>cuotas</i> ]
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53. In addition, on the basis of the constitutional provisions currently in force, Law 88 for the Protection of National Independence—known as the “Gag Law”—was enacted in February 1999.<sup>44</sup> The objective of this law is purportedly to combat any form of “aggression,” including ideological aggression, that occurs within the framework of the tensions between Cuba and the United States. That is why the provision contains a number of restrictions with a direct and notable impact in the area of free expression.

54. Specifically, under Article 6.1, any person who “accumulates, reproduces, or disseminates subversive material of the Government of the United States of America, its agencies, offices, representatives, officials, or of any foreign entity, to support the objectives of the Helms-Burton Act, the embargo, and the economic war against our people, aimed at disrupting internal order, destabilizing the country, and destroying the Socialist State and the independence of Cuba, may be punished with a term of imprisonment of up to six years.” Article 6.2 provides for a penalty of up to six years in cases of concurrent aggravating conduct, such as a profit motive or the presence of various persons. If the disclosure of the content “causes serious harm to the national economy,” the penalty may be up to fifteen years.

55. Article 7.1 punishes with up to eight years of imprisonment any person who collaborates with foreign media for the purpose of “achieving the objectives of the Helms-Burton Act, the embargo, and the economic war against our people, aimed at disrupting the internal order, destabilizing the country, and destroying the Socialist State and the independence of Cuba.” Finally, the application of Article 9.1 may result in up to twenty years of imprisonment for any person who performs any act “aimed at impeding or harming the economic relations of the Cuban State, or of national or foreign industrial, commercial, financial, or other entities, whether state-owned or private,” especially if this results in retaliation by the U.S. government.

56. This law provides legal mechanisms to punish those who express themselves in international media.<sup>45</sup> The Office of the Special Rapporteur recalls that these rules were used by the Cuban State during the Black Spring of 2003, during which 75 dissidents were arrested and sent to prison; more than 25 independent journalists were arrested and sentenced to prison terms of up to 20 years under this law, which remains in force.<sup>46</sup>

57. The aforementioned provisions are related to Law No. 80 of 1996 for the Reaffirmation of Cuban Dignity and Sovereignty.<sup>47</sup> Said law makes it unlawful to disseminate any material “aimed at impeding or harming the economic relations of the Cuban State, or of national or foreign industrial, commercial, financial, or other entities, whether state-owned or private.” These provisions are the basis for the above-cited Law No. 88 of 1999.

58. With regard to such provisions, the Office of the Special Rapporteur recalls that criminal law is the most restrictive and severe means of establishing responsibility for unlawful conduct, particularly when custodial sentences are imposed. Therefore, the use of the criminal justice system must adhere to the principle of minimum intervention, given the *ultima ratio* nature of criminal law. In a democratic society, the punitive power of the State can only be exercised to the extent strictly necessary to protect fundamental legal interests from the most serious attacks that harm or endanger them. The opposite leads to the abusive and unnecessary exercise of the punitive power of the State.

59. When restrictions on the exercise of the right to freedom of expression are imposed through criminal law, the enforcement of these conditions receives stricter scrutiny.<sup>48</sup> The regulations in question are contrary to inter-American standards insofar as they criminalize conduct protected by the right to freedom of expression, are incompatible with the principle of legality, and do not pursue a legitimate aim; nor do they

<sup>44</sup> National Assembly of People’s Power of the Republic of Cuba. [Ley No. 88 de 1999 de Protección de la Independencia Nacional y la Economía de Cuba](#) [Law 88 for 1999 for the Protection of the National Independence and Economy of Cuba]. March 15, 1999.

<sup>45</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>46</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>47</sup> National Assembly of People’s Power of the Republic of Cuba. [Ley 80 de 1996 de Reafirmación de la Dignidad y la Soberanía Cubanas](#) [Law No. 80 of 1996 for the Reaffirmation of Cuban Dignity and Sovereignty]. December 24, 1996.

<sup>48</sup> IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 114.

meet the requirements of necessity and proportionality of the restrictive measure in relation to the exercise of this right (IV.C).

60. The disproportionate penalties applied to these offenses warrant special condemnation. In effect, they allow for the imposition of measures of disqualification and deprivation of liberty that inhibit and intimidate those who seek to express their opinions in public and through any medium. The foregoing considerations produce a regulatory framework incompatible with the right to free expression, which represses opinions outside the official discourse.<sup>49</sup>

### C. Provisions on the right of access to information

61. Cuba lacks laws and regulations that guarantee citizens the right of access to public information, an essential tool to enable citizens to participate in decisions concerning them, monitor the exercise of government functions, and protect other fundamental rights. On the contrary, the rule in authoritarian states is secrecy: in that regard, Decree Law No. 199 of 1999 establishes a System for the Security and Protection of Official Information that imposes severe restrictions on the ability of journalists and citizens in general to access information produced or held by the State.<sup>50</sup> The Decree Law and the “Regulations on the Security and Protection of Official Information” of the Ministry of the Interior of December 26, 2000, are the legal basis for the protection of official information and establish, among other aspects, the competent authority in this area (Ministry of the Interior) and the procedures for handling official information, including its classification and declassification. Classified government information is also protected under criminal law, as provided for in the Criminal Code.<sup>51</sup> In addition, most government ministries and agencies lack press offices, do not issue newsletters, and only hold press conferences on their own initiative and on topics of their choice.<sup>52</sup>

62. The Office of the Special Rapporteur notes that the Draft Constitution presented for public consultation recognizes that “All persons have the right to receive truthful, adequate, and timely information from the State, in accordance with established regulations.”<sup>53</sup> The provision appears to reflect progress, given that the 1976 Constitution does not recognize the right of access to information; however, the wording does not fully address the scope and content of the right of access to information, which not only includes the right to “receive” government information, but also the right to seek and investigate. According to 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.”

63. At the same time, it emphasizes the importance that the legislation enacted for its exercise be fully in line with the State's obligations in this area. The right of access to information, like freedom of expression, has a dual character, in that it protects those who actively exercise it and those who receive such information through the media and/or official sources.<sup>54</sup> It also includes a positive obligation for the State to provide citizens with access to information in its possession and a correlative right of individuals to access information held by the State.

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<sup>49</sup> The Office of the Special Rapporteur notes that various actors have repeatedly expressed their rejection of this legal framework. See *inter alia* IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 73rd General Assembly 2017](#); IAPA. [Report to the Midyear Meeting 2016](#); AI. [“Your Mind is in Prison”: Cuba's Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. Pp. 12-17; AI. [Cuba: Human Rights at a Glance](#). 2015.

<sup>50</sup> Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 10; CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016; Alianza Regional por la libre Expresión e Información. *Acceso a la Información y la Libertad de Expresión en Cuba – Primer Reporte*. 2018. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>51</sup> This refers, in particular, to (i) Article 95, on the disclosure of political, military, economic, scientific, technical or any other kind of secrets concerning State security; (ii) Articles 129 and 130, both of which relate to the disclosure of information constituting administrative secrets, production secrets, or service secrets; and (iii) Article 169, aimed at officials or employees who, for malicious purposes or in violation of the relevant laws, destroy, alter, conceal, change, damage, or by any other means render useless state documents included within the legal category of classified documents.

<sup>52</sup> Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 10.

<sup>53</sup> [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]. Art. 56.](#)

<sup>54</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Lima Principles. November 16, 2000. Principle No. 1; IACHR. Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II. Doc. 69. December 30, 2011.

64. Individuals, for their part, have the right to request documentation and information held in public archives, generated or processed by the State, both to exercise their political rights and to exercise oversight of the State and its administration, promoting accountability and transparency.<sup>55</sup> Only through access to information can citizens participate in governance without discrimination and under equal conditions. Access to information is also a means for the effective exercise of other rights, including economic, social, cultural, and civil and political rights.<sup>56</sup>

65. At the regional level, there is a broad consensus among OAS member States on the importance of access to public information and the need for its protection, as evidenced by the passage of access to information laws in 25 countries in the hemisphere. Many of these laws are in line with the Model Inter-American Law on Access to Information, which provides a set of principles and guidelines for the design and implementation of access laws in the region.<sup>57</sup> The inter-American instruments recognize the right of every person to have access to all information in the possession, custody, or control of any public authority, under the principle of maximum disclosure. States must also comply in good faith with the disclosure of information from public institutions in such a way that the information is complete, timely, accessible, and subject to a clear and precise system of exceptions.<sup>58</sup> Individuals should also be able to file an appeal, both at the administrative and judicial levels, to challenge any denials.

## II. FREE AND INDEPENDENT JOURNALISM IN CUBA

66. As previously mentioned, Article 53 of the Cuban Constitution is of special concern because it explicitly prohibits the existence of private media. The Office of the Special Rapporteur has documented that, based on this regulatory framework, public media are used to uphold the official discourse and delegitimize independent journalism (III.A), while the establishment and operation of private media is not allowed (III.B). In addition, according to the information reported, the authorities carry out the systematic repression and persecution of journalists through the different practices discussed in this chapter (III.C).

67. The regulations and practices aimed at eliminating criticism in Cuba have meant that, for decades, the media have not been able to perform the role they must play in a plural, open, and democratic system, allowing for the flow and dissemination of ideas to facilitate the free formation of public opinion. Nor has the media system been able to freely carry out another of its main functions, that of subjecting public authorities and leaders to criticism and scrutiny.

### A. Public media

68. The current situation of the media in Cuba was preceded by the changes and tightening of restrictions on press freedom—over and above those already existing in 1959—implemented when the so-called Cuban revolution came to power. After the initial years of tensions and disagreements with the new government, the remaining opposition or dissident media either ceased to exist as a result of the restrictions and the exile of their owners and publishers, or they underwent changes in their management and orientation to conform to the socialist discourse. New media linked to the official policy were established, particularly in the 1960s.<sup>59</sup>

69. The Union of Cuban Journalists (UPEC)—the sole, and official journalists’ union—was created in 1963, assuming a position of loyalty to the revolution.<sup>60</sup> At that time there was no nationalization of the pre-

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<sup>55</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. The Inter-American Legal Framework regarding the Right to Access to Information. Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 5.

<sup>56</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. The Inter-American Legal Framework regarding the Right to Access to Information. Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 5; OAS. General Assembly. Access to Public Information: Strengthening Democracy. Resolution AG/RES. 2121 (XXXV-O/05). June 7, 2005.

<sup>57</sup> OAS. Permanent Council of the Organization of American States. Committee on Juridical and Political Affairs. Model Inter-American Law on Access to Information. OEA/Ser.G, CP/CAJP-2840/10 Corr.1. April 29, 2010.

<sup>58</sup> OAS. Permanent Council of the Organization of American States. Committee on Juridical and Political Affairs. Model Inter-American Law on Access to Information. OEA/Ser.G, CP/CAJP-2840/10 Corr.1. April 29, 2010.

<sup>59</sup> In the field of the written press, the emergence of the newspaper *Granma* in 1965 stands out.

<sup>60</sup> See Article 2 of the Bylaws of the UPEC, which establishes that: “The UPEC is a trade organization recognized in Article 7 of the Constitution of the Republic, which states: ‘The Cuban socialist State recognizes and encourages the mass and social organizations that have emerged in the historic process of our people’s struggles, which gather in their core different sectors of the population, representing their specific interests and incorporating them into the tasks of construction, consolidation, and defense of the socialist society.’”

existing media, but rather a process of transformation of the media and of journalism as a whole promoted by the authorities. In 1979, Article 53 of the Constitution expressly established that “the press, radio, television, movies and other mass media are State or social property.” From 1989 on, the print media in Cuba shrank drastically after the fall of the Union of Soviet Socialist Republics (USSR), the main supplier of paper and printing components. With this, only the media most directly controlled by the government were left standing.<sup>61</sup> The shrinking of the print media brought the traditional electronic media—radio and television—to the forefront of communication. Law No. 1030 of May 24, 1962<sup>62</sup> created the Cuban Institute of Broadcasting; that law was amended in 1976 by Law No. 1323 establishing the Cuban Institute of Radio and Television (ICRT), formally affiliated with the Ministry of Culture to this day.

70. According to the ICRT, its mission is “to meet the informational, educational, cultural, and entertainment needs of the population through daily radio and television programming that reflects the political, ideological, social, ethical, and aesthetic values of our nation.”<sup>63</sup> This Institute groups all radio stations and television channels together under its control.<sup>64</sup> It reportedly has around a hundred radio stations with essentially local coverage, as well as five national television channels. Its activity is supported by the existence of so-called “telecenters,” local television stations with limited resources. This picture is completed by the Cuban News Agency and the presence of some international conglomerates such as *Prensa Latina* and Cuba’s participation in the *Tele Sur* project, financed and controlled by the government of Venezuela. The few non-State media outlets belong to the churches and the episcopal conference, but they have a very limited range.<sup>65</sup>

71. The editorial policy of the official media depends on the Cuban Communist Party (PCC). Indeed, through the ICRT, which operates according to the guidelines of the Central Committee of the PCC, the government strictly supervises content and the organization of content.<sup>66</sup> The legal basis for controlling freedom of expression stems from the previously cited Article 5 of the Constitution, which calls the PCC the highest leading force in society and the State<sup>67</sup> and presumes a shared and single understanding of the political agenda, while at the same time aiming to eliminate sectors that may oppose it, leaving no room for the objectivity and search for truth that are the core function of information.<sup>68</sup> In this system, “[...] under no circumstances can [...] criticism go beyond the limits set by the requirements of ideological adherence.”<sup>69</sup> This understanding of journalism and the media remains in effect to this day, as shown by recent statements by the current President of the Council of State and Ministers.<sup>70</sup>

72. In addition, the UPEC, a trade organization that brings together the only journalists authorized to practice the profession, has a Code of Ethics that regulates the practice of journalism. Among other things, it

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<sup>61</sup> Moragues González, Nicolás José. *La revolución de los medios de comunicación en Cuba [The Media Revolution in Cuba]*. In: *Temps de Comunicar*. 2012.

<sup>62</sup> [Página web del Instituto Cubano de Radio y Televisión \[Website of the Cuban Institute of Radio and Television\]](#).

<sup>63</sup> [Página web del Instituto Cubano de Radio y Televisión \[Website of the Cuban Institute of Radio and Television\]](#).

<sup>64</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 435; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 441; 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. 227, 259; IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000. P. 44.

<sup>65</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>66</sup> In this regard, an independent journalist who worked for official media stated anonymously that media directors are required to go to the Party’s Ideological Committee where they are given orders as to what should be discussed by the press and how it should be done. IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013; Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 11.

<sup>67</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>68</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Paras. 21-23.

<sup>69</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Para. 26.

<sup>70</sup> In July 2018, Díaz-Canel pointed out that the Media Policy adopted by the new administration establishes “communication as a strategic resource of the leadership of the State and the Government,” and defines the public nature of broadcasting and communication services, recognizing only two types of mass media ownership: state and social. President of the Council of State and Ministers Miguel Díaz-Canel. X Congress of the UPEC. In: [Díaz-Canel descarta la libertad de prensa en Cuba \[Díaz-Canel Rules out Press Freedom in Cuba\]](#). July 16, 2018.

establishes that “journalists have the duty to defend and promote the content of the [UPEC] Bylaws, and other governing documents.”<sup>71</sup> For their part, these bylaws expressly establish that the organization “endorses the articles of the Constitution of the Republic of Cuba, especially the contents of Article 5, which recognizes the [PCC] as the highest leading force of our society and the State [...]”<sup>72</sup> Added to this is the information recently received about the tests for access to the journalism program consisting of determining the aspiring journalist’s ideological fidelity to the regime.<sup>73</sup>

73. The communication policy is based on selectivity in terms of the topics addressed, which are conveyed from a single perspective, with a constant bias;<sup>74</sup> nor is space allowed for criticism of government policies.<sup>75</sup> For instance, statements taken recently by the Committee to Protect Journalists (CPJ) indicate that the news editor and presenter of the main radio station in Cienfuegos, José Jasán Nieves, was reminded by his superiors that his role was to build consensus around government policies and not criticize them. The journalist asserted that he was demoted and his salary was reduced when he reported information that was inconvenient to the Party.<sup>76</sup> The IAPA also condemned the firing of several journalists who, while working for public media, supported or maintained ties to the independent or foreign press.<sup>77</sup> Amnesty International (hereinafter “AI”), for its part, also reported that the state engages in the discriminatory dismissal from the public sector of anyone expressing critical ideas of the government.<sup>78</sup> The Office of the Special Rapporteur has documented several such situations in its annual reports.<sup>79</sup>

74. Thus, for decades, the State-controlled media in Cuba have been used to uphold the official discourse and delegitimize independent journalism. This control is a serious obstacle to access by the majority of citizens to plural sources of information (III.B). The control of the media, in turn, leads to the implementation of a number of mechanisms designed to repress those who seek to express ideas and opinions or simply to distribute information outside these official channels (III.C).

75. As the Office of the Special Rapporteur has indicated, the establishment of a state conglomerate as the sole framework for the dissemination of information, ideas, and opinions undermines freedom of expression by precluding the diversity and plurality of voices needed in a democratic society.<sup>80</sup> It is clear that the concentration of ownership of the media leads to the homogenization of the content they produce or disseminate. The Office of the Special Rapporteur reiterates that the State must take legislative and other measures to put an end to the aforementioned media monopoly and allow for pluralism and diversity in this

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<sup>71</sup> Journalist’s Code of Ethics. Article 1.

<sup>72</sup> Bylaws of the Union of Cuban Journalists. Article 4.

<sup>73</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018; Regional Alliance for Free Expression and Information. Situation of Access to Information and Freedom of Expression in Cuba. First Report. P. 7.

<sup>74</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>75</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. Pp. 16 & 20.

<sup>76</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.20.

<sup>77</sup> IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 69th General Assembly 2013](#).

<sup>78</sup> AI. [Report: Cuba 2017/2018](#); AI. [“Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. Pp. 18-22, 27; AI. [Six facts about censorship in Cuba](#). 2016. P. 28.

<sup>79</sup> In particular, it was reported that in June 2016 the Ministry of Culture of Cuba (Minicult) punished Yanelys Núñez Leyva by firing her from her job at *Revolución y Cultura* magazine, an official organ of Minicult, for offering an interview to *CubaNet* about her artistic project and for using the office’s Internet connection to consult web pages that were “irrelevant” to her work as a cultural promoter. It was also reported that journalist José Ramírez Pantoja of *Radio Holguín* was dismissed from his job on July 11, 2016 after having transcribed in his personal blog the words of the deputy director of the official newspaper Granma, who had reportedly warned about possible protests in Cuba if power cuts resumed due to an energy supply shortage. On September 29 of that year, the National Ethics Commission of the UPEC reportedly upheld the dismissal. IACHR. Annual Report 2016. Chapter IV.b (Situation of human rights in Cuba). Paras. 66-97.

<sup>80</sup> IACHR. Office of the Special Rapporteur. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 3/09. December 30, 2009. Para. 116.

area.<sup>81</sup> It notes with concern that the Cuban State systematically prevents “freedom of the press which allows political disagreement, and which is fundamental to a democratic system of government.”<sup>82</sup>

## **B. Impossibility of establishing private media**

76. In Cuba people are not free to associate for the purpose of establishing media outlets—whether private, community, or public—as they are in most of the region; nor, more generally, to engage in citizen activities for the public dissemination of thoughts, information, and opinions, barring the exceptional cases of authorized foreign media, the practice of journalism on the margins of the laws currently in force, or radio stations linked to the Catholic Church. The rest of the media landscape is characterized by a state monopoly of the media system.

77. In order to perform their work, foreign media must register with the International Press Center, a ministerial agency, which allows them to connect to the Internet.<sup>83</sup> However, Ministry of Foreign Affairs Resolution No. 182 of 2006 authorizes the International Press Center to suspend or permanently revoke accreditation “when the holder carries out actions that are improper or unrelated to his or her profile and the content of his or her work, as well as when he or she is deemed to have breached journalistic ethics and/or failed to conform to objectivity in his or her work.”<sup>84</sup> According to the information available, aside from the traditional news services such as *Reuters*, *CNN* and *The Associated Press*, very few foreign media outlets have received a license, such as *OnCuba* and the website of the Miami-based *Progreso Semanal*, media originally established in Miami that were able to register as foreign media after the restoration of diplomatic relations with the United States.<sup>85</sup> However, in order to keep from having to leave the island, they must constantly decide whether to push the limits or retreat, and remain in the government’s good graces.<sup>86</sup>

78. The circulation of independent print newspapers and magazines continues to be illegal and the distribution of written media is made difficult by the seizure of material.<sup>87</sup> Under Resolution No. 81 of 1997 of the Ministry of Culture, any serial publication intended to be circulated, printed, or disseminated in Cuba must be approved by the National Registry of Serial Publications.<sup>88</sup> According to these regulations, “state, business, political, mass, social, religious, fraternal, or other non-governmental entities” and “joint ventures or Cuban entities associated with a foreign company” are authorized to apply for such registration, which clearly excludes private media.<sup>89</sup> In addition, the independent printing of publications is regarded as the criminal offense of “clandestine printing” under article 210 of the Criminal Code.<sup>90</sup>

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<sup>81</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 39; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Section 11 (Cuba). Para. 54.

<sup>82</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 28.

<sup>83</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.21.

<sup>84</sup> Ministry of Foreign Affairs. Resolution No. 182/2006, art. 46. Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 10.

<sup>85</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). September 28, 2016. P.21.

<sup>86</sup> For instance, it was reported that *OnCuba* was nearly shut down in 2016 when hard-line government leaders complained about the coverage and tried to convince officials to shut it down. The result is self-censorship, José Jasán Nieves, the website’s associate editor, told CPJ. Many *OnCuba* articles are subdued pieces that avoid controversy. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.23.

<sup>87</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 435; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 441; 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. 227, 259; IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000. P. 44.

<sup>88</sup> According to this Resolution, a serial publication is understood to be “any publication printed on paper or electronic medium that is intended to be published indefinitely [...], regardless of its name (newspaper, magazine, bulletin, or other), its periodicity and other characteristics.” Ministry of Culture. [Resolución No. 81 que regula el Registro Nacional de Publicaciones Seriadas](#) [Resolution No. 81 regulating the National Registry of Serial Publications]. October 3, 1997. Regulations governing the National Register of Serial Publications. Art. 2.c.

<sup>89</sup> Ministry of Culture. [Resolución No. 81 que regula el Registro Nacional de Publicaciones Seriadas](#) [Resolution No. 81 regulating the National Registry of Serial Publications]. October 3, 1997. Regulations governing the National Register of Serial Publications. Art. 11.

<sup>90</sup> “Article 241.- Anyone who produces, disseminates, or circulates publications without indicating the printing press or the place of printing or without complying with the rules established for the identification of the author or its origin, or reproduces, stores, or

79. Even in this scenario, a growing number of journalists have launched digital media outside official discourse and state control. Although these Cuban media are produced on the island, in most cases they are read abroad, as is the case of *14ymedio*, *Periodismo de Barrio*, and *Diario de Cuba*. An increasing number of journalists are beginning to take this option, and they have formed an alternative public sphere for the debate and discussion of matters of public and community interest, not just political ones.

80. These new media have found an essential space on the Internet to disseminate their work, as well as to promote the exchange of information and opinions. As the Office of the Special Rapporteur has recognized, the digital environment offers a unique tool for unlocking its enormous potential across broad sectors of the population.<sup>91</sup> Nevertheless, the inadequate deployment of infrastructures that enable network connection, as well as the control exercised over it by the authorities, mean that these new voices face serious obstacles to the exercise of freedom of expression.

81. It is also important to note that journalism is understood by the State as an activity that is unrelated to any economic or business dynamics, which means that the search for autonomous sources of financing not tied to the State is beyond the reach of new media. Advertising as a source of revenue is non-existent (with some exceptions related to tourist establishments or foreign companies), and a paid subscription model does not cover basic costs.<sup>92</sup> The media, and specifically Cuban journalists, also suffer in particular from the shortages affecting all sectors of the country, such as low salaries, lack of material resources and—especially at small radio and television stations—an inadequate electrical power supply. It is troubling to note that the government of the new president seems to be providing continuity in this regard.<sup>93</sup>

### C. Persecution of independent journalists

82. Independent journalists do not enjoy lawful status under the existing legal framework in Cuba because they do not belong to the UPEC, they do not publish in official media, or they take a critical stance toward the government. At present, journalism in Cuba faces multiple forms of intimidation, harassment, and repression.<sup>94</sup> Based on this, the Office of the Special Rapporteur is emphatic in pointing out that the repression of independent journalists in Cuba is a systematic and long-standing practice.<sup>95</sup>

83. At the same time, the Office of the Special Rapporteur wishes to underscore the determination and extraordinary courage of those journalists who, despite the difficulties and risks they face, continue in their work. Over the years and throughout the preparation of this report, dozens of statements have been received from journalists who wish to develop independent journalism in Cuba, but the State has clamped down on them time and again, even in matters that go beyond the political sphere, such as cultural, local, or social

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transports such publications, is subject to a term of imprisonment of three to nine months or a fine of up to two hundred and seventy units [*cuotas*], or both." National Assembly of People's Power of the Republic of Cuba. [Criminal Code](#). March 1, 1979.

<sup>91</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. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF.17/17. March 15, 2017.

<sup>92</sup> CIMA-NED. [Cuba's Parallel Worlds: Digital Media Crosses the Divide](#). August 30, 2016.

<sup>93</sup> According to reports, President of the Council of State and Ministers Díaz-Canel stated that "[...] the practice of journalism today demands that official journalists have 'very high ideals in order to reject, in the midst of great economic sacrifices, the relatively 'generous' payment offers that the lucrative anti-Cuba campaign industry, opportunistically and cynically, makes available to those who can be bought or who naively believe in the false libertarian discourse of market apologists." President of the Council of State and Ministers Miguel Díaz-Canel. Tenth Congress of the Cuban Journalists' Union (UPEC). In: [Díaz-Canel descarta la libertad de prensa en Cuba](#) [Díaz-Canel Rules out Press Freedom in Cuba]. July 16, 2018.

<sup>94</sup> See *inter alia* IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 422-457; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 427-441; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 305-352; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 307; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Paras. 164-174.

<sup>95</sup> Other institutions and organizations such as the Inter American Press Association (IAPA), AI, RWB and Freedom House (FH) have also referred to the persecution of journalists in Cuba. IAPA. [Report to the Midyear Meeting 2018: IAPA. Report to the 72nd General Assembly: IAPA. Report to the Midyear Meeting 2016](#); AI. [Cuba: Human Rights at a Glance](#). 2015; RWB. [Annual Report 2016. Americas. Cuba](#) [in Spanish]; RWB. [Annual Report 2015. Americas. Cuba](#) [in Spanish]; FH. [Freedom of the Press 2017: Cuba](#); FH. [Freedom of the Press 2016: Cuba](#); FH. [Freedom of the Press 2015: Cuba](#).

journalism. For them, a first option is to work in the foreign media or in Cuba-focused media located abroad, which is sometimes tolerated, but in many other cases forces them to conceal their identity or write under a pseudonym to avoid retaliation. A second option would be to work for local media outside state control, which is tantamount to assuming the risk described in the following section. In any case, the government seems to have changed the strategy of criminally prosecuting journalists who do not toe the official line; however, multiple forms of harassment and intimidation by the authorities have been reported, through ongoing repressive acts against independent journalists, media workers, artists, and others.<sup>96</sup>

84. In this section, the Office of the Special Rapporteur discusses the most recent practices of persecution against journalists in Cuba. It mentions some cases that illustrate the main trends that have been observed, prioritizing those events that have reportedly occurred more recently, but are not the only ones. In particular, the forms of repression against journalists that the Office of the Special Rapporteur has been aware of include (i) the requirement of affiliation to practice journalism; (ii) threats, subpoenas, and interrogations meant to intimidate; (iii) unlawful and/or arbitrary detentions; searches and seizures of journalistic equipment or other assets; (iv) dismissals and loss of authorizations to practice a profession or carry out economic activities; (v) pressures and threats to families, social environment, and defamatory practices; and (vi) barriers to departure from the country and other arbitrary restrictions on freedom of movement. The misuse of criminal law and criminalization that seriously affects journalism in Cuba is addressed in section IV.C.

#### **i. Requirement of affiliation to practice journalism**

85. The Office of the Special Rapporteur observes that the professional practice of journalism in Cuba is linked to legal restrictions on the attainment of the status of journalist. Article 2 of the UPEC Regulations on Admittance, Readmittance, Transfer, and Removal establishes that those who obtain, among other requirements, a certificate of journalistic practice from the director of the media outlet for which they work will be recognized as such within the framework of the official trade union.<sup>97</sup> Given the constitutional design (II.A), it should be noted that the official media are the only media.

86. Thus, the requirements for accessing the sole, official UPEC trade union and being recognized as a journalist by the state authorities are tantamount to a system of compulsory, prior membership. On this point, it bears recalling that Principle 6 of the IACHR's Declaration of Principles on Freedom of Expression establishes that "Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression." Similarly, the Inter-American Court established in Advisory Opinion OC-5/85, of November 13, 1985 that the imposition of such limits constitutes an arbitrary restriction on freedom of expression and therefore violates the right of every person, regardless of his or her professional consideration and activity, to seek and disseminate information and ideas by any means of his or her choice.<sup>98</sup> As the Inter-American Court has held:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. Within this context, journalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional [association].<sup>99</sup>

87. This requirement is even more serious in a context such as that of Cuba, where the UPEC is subject to the guidelines of the PCC. The Code of Ethics of the journalists' association provides that "the journalist shall refrain from disclosing, in whole or in part, any document or work material expressly classified as

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<sup>96</sup> International Institute on Race, Equality and Human Rights (IIRIDH). *Diario de Cuba, Palenque Visión, and La Hora de Cuba*. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

<sup>97</sup> Regulations on Admittance, Readmittance, Transfer, and Removal. Article 2. "Any person who wishes to join the UPEC must complete a membership application that includes: [...] d) A certificate of journalistic practice issued by the director of the media outlet. [...]" UPEC. [Reglamento de ingresos, reingresos traslados y bajas](#) [Regulations on Admittance, Readmittance, Transfer, and Removal]. January 11, 2014.

<sup>98</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. Para. 74.

<sup>99</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. Paras. 70-71.

confidential according to the State Secret laws in force in Cuba.”<sup>100</sup> Similarly, although the Code of Ethics requires journalists to preserve the anonymity of their sources, the Criminal Procedure Act does not release them from the obligation to report crimes and testify as witnesses.<sup>101</sup>

88. It is of particular concern to note that this Office has received information from various journalists who, practicing their profession in spite of these restrictions, have reportedly been indicted on charges of “impersonation of a public official” or “acting without legal capacity.”<sup>102</sup> This is reportedly because they have worked as journalists without belonging to an official media organization and without UPEC recognition. Prosecution, or the threat of prosecution, for the offenses of “impersonation of a public official” and “acting without legal capacity” is blatantly incompatible with freedom of expression and freedom of the press, which, on the contrary, demand guarantees for their full enjoyment.

Offense	Article	Criminal conduct	Penalty
<b>Title II: Crimes against the public administration</b>			
<b>Chapter III: Fraudulent exercise of public functions</b>			
<b>Impersonation of a public official</b>	148.1	a) To perform, without the lawful RIGHT, acts typical of a public servant or authority, claiming official status; b) Improperly performing acts typical of members of the Revolutionary Armed Forces, the Ministry of the Interior, or any other armed body of the Republic.	Deprivation of liberty for a period of 1 to 3 years or a fine of 300 to 1000 units [cuotas]
<b>Acting without legal capacity</b>	149	Performing acts typical of a profession one is not properly qualified to practice, for profit or any other malicious purpose, or resulting in harm or injury to another.	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 a 300 units [cuotas], or both

89. Recently reported cases include that of three journalists from the magazine *La Hora de Cuba*—Henry Constantín, Sol García Basulto, and Iris Mariño—who were allegedly prosecuted on charges of “acting without legal capacity.” Although these cases were reportedly shelved, that measure is provisional and therefore they remain under threat.<sup>103</sup> Similarly, *Diario de Cuba* journalists Manuel Alejandro León, Adriana Zamora, Eliécer Palma Pupo, and Ernesto Carralero were also reportedly threatened with jail time on charges of “acting without legal capacity.”<sup>104</sup>

<sup>100</sup> Journalist’s Code of Ethics. Article 17.

<sup>101</sup> Law of Criminal Procedure of 1977.

<sup>102</sup> IACHR. Office of the Special Rapporteur. Working meeting with journalists. 168<sup>th</sup> Session. June 2018.

<sup>103</sup> Diario de Cuba. [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'](#) [Activists and independent journalists complain to IACHR of repressive practices that avoid leaving a “legal trace”]. May 9, 2018; Diario de Cuba. [Liberado el periodista de DDC Manuel Alejandro León](#) [DDC journalist Manuel Alejandro León released]. June 24, 2017; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

<sup>104</sup> According to the statement of Ernesto Carralero Burgos, after being summonsed by state security agents, he was accused of impersonating a public official “because they were not journalists recognized by the Cuban government, so they had no right to be writing on a platform or to be commenting on Cuban reality in any media.” Statement of Diario de Cuba journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba; [La Seguridad del Estado libera bajo 'amenazas' al colaborador de DDC Eliécer Palma Pupo](#) [State Security releases DDC collaborator Eliécer Palma Pupo under “threats”]. January 30, 2018.

## ii. Threats, summonses, and interrogations for intimidating purposes

90. The Office of the Special Rapporteur has learned that independent journalists are frequently subject to interrogations designed to intimidate them. According to available information, independent journalists have been directly threatened by state agents with deprivation of liberty or other retaliation for the practice of journalism.<sup>105</sup> According to one statement received, “the more critical [the media], the harsher they [security agents] were going to be in their treatment.”<sup>106</sup>

91. For instance, on January 15, 2018, Luz Escobar, a journalist who worked for the digital newspaper *14yMedio*, was reportedly threatened by two State security officers—one of whom was identified as Lieutenant Amed—with prosecution for a common crime if she continued her journalistic work with the publication. During a police “interview,” she was also reportedly threatened with being barred from leaving the country, having her neighbors informed that she was a “counterrevolutionary,” and having pressure put on her family. According to publicly available information, the police also allegedly asked her to cooperate with them to “influence the editorial line of *14yMedio*.”<sup>107</sup>

92. The procedures used for summoning journalists are irregular<sup>108</sup> and, with some frequency, State Security reportedly use non-police facilities to interrogate them. This was reported by Ileana Álvarez, Adriana Zamora, and Ernesto Carralero, who were summonsed to the Department of Immigration where they found that political police officers were waiting for them.<sup>109</sup> According to statements from Carralero, upon arrival at the Department of Immigration, he was received by two officers who introduced themselves as the Lieutenant of State Security who handles *Diario de Cuba*, in charge of “monitoring that specific platform,” and the Chief of the State Security Digital Platforms Monitoring Section. The Office of the Special Rapporteur notes with concern that, according to this statement, there are allegedly State Security agents specifically devoted to intimidating journalists in connection with their work.

93. Another practice concerns the interrogation and harassment of female journalists by male officers.<sup>110</sup> Iris Mariño, for example, indicated that she had been subject to 22 instances of harassment involving detentions and interrogations in which no female officer had been present. One such instance, she said, occurred on May 1, 2018, when she was allegedly arrested while attempting to take a picture in the street. She stated that she was taken to a police unit in Camagüey, where four male officers—two of them identified as Maikel and Michel—interrogated and harassed her for more than three hours.<sup>111</sup> Ms. Mariño maintained that “the whole time I was in custody, I was being questioned. I figured that at some point some woman was going to come in, because they made reference to the fact that I am a woman, that I am a mother, they were even being a little flirtatious [...] But it never happened. There were four men opposite me. One would come in and another would leave [...]”<sup>112</sup>

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<sup>105</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

<sup>106</sup> Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

<sup>107</sup> 14yMedio. [“Te vamos a estar vigilando” \[“We’re going to be watching you”\]](#). January 16, 2018; 14yMedio. [Carta a una periodista amenazada \[Letter to a threatened journalist\]](#). January 17, 2018; IAPA. [SIP condena amenazas del gobierno contra periodista cubana Luz Escobar](#) [IAPA Condemns Government Threats Against Cuban Journalist Luz Escobar]; CubaNet. January 25, 2018. [Dos periodistas y una mentira](#) [Two journalists and a lie].

<sup>108</sup> According to the statement of Ernesto Carralero Burgos, they reportedly summonsed him to be interviewed the next day at the Department of Immigration. He indicated that the summons was served by plainclothes policemen and not delivered directly, but rather through the chair of his building’s revolution defense committee. Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

<sup>109</sup> Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

<sup>110</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*, 169<sup>th</sup> Session. October 1, 2018.

<sup>111</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

<sup>112</sup> *Diario de Cuba*. [Una periodista independiente es detenida en Camagüey al intentar hacer una foto del Primero de Mayo](#) [Independent journalist arrested in Camagüey for attempting to take May Day photo]. May 1, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*; IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*, 169<sup>th</sup> Session. October 1, 2018.

94. The information available also indicates that, in February 2018, State Security agents reportedly threatened Adriana Zamora, a journalist with *Diario de Cuba*, saying they would cause her to miscarry. According to reports, during a police interview, she was told “to think of her other son.”<sup>113</sup> According to her husband, journalist Ernesto Carralero, who was present, she was told that “she was at a sensitive time in her life because of her pregnancy, [and that] any disturbance or upset on account of your work is going to be your responsibility because we’re telling you now that you can’t keep working on this.”<sup>114</sup> According to Mr. Carralero, they said that “anything can happen in the delivery room, you get the wrong medication and there you stay.”<sup>115</sup> This threat, made by a police official, is of great concern—especially considering that the health system in Cuba is under the control of the State.

95. Added to these situations are humiliating procedures and searches, such as those allegedly undergone by journalists Maykel González Vivero of *Diario de Cuba* and Carlos Alejandro Rodríguez of *Periodismo de Barrio* in September 2017, when they were trying to report on the experience of residents of Isabela de Sagua (Villa Clara) affected by cyclones shortly before Hurricane Irma. According to information provided by González Vivero to the media, “The police handcuffed us and put us in the car, they drove us to a Border Guard post. The handcuffs were very uncomfortable. We have marks on our wrists. We were assaulted, especially Carlos Alejandro, who was dragged and placed in a chair. [...] Instead of driving us directly to the Sagua La Grande unit, they held us for a couple of hours outside the town cemetery,” he said. “It’s an uninhabited place, about three kilometers from the town [...],” he described. “There we were subjected to a lot of humiliating procedures. I don’t understand what it contributed to the alleged investigation to take convict photos of us, shirtless, we were stripped naked, our genitals were checked,” he reported. “A supposed police expert took pictures of us while they were taking off my underwear, right at that moment.”<sup>116</sup>

### iii. Unlawful and/or arbitrary detentions

96. The Office of the Special Rapporteur has also received information on the use of arbitrary arrest as a method of intimidation or retaliation against journalists. Although prolonged imprisonment has reportedly become infrequent since the wave of repression in 2003, it is still a systematic practice to carry out arrests without a warrant or legal basis, and to keep journalists in custody for hours or days in order to intimidate them and create a chilling effect on the exercise of freedom of expression. Those detained are reportedly not given any record or documentation to evidence the deprivation of their personal liberty.<sup>117</sup>

97. There have also been reports of short term detentions carried out with the apparent aim of preventing travel or blocking the coverage of social protests; the detention of critical journalists on arbitrary charges related to common crimes; and the mistreatment of dissident journalists without a clear statement of the charges, or with complete uncertainty about the progress of the respective hypothetical legal actions or proceedings.<sup>118</sup> The Office of the Special Rapporteur notes that the repressive methods currently used against

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<sup>113</sup> *Diario de Cuba*. [‘Tu embarazo depende de ti’, amenaza la Seguridad del Estado a la periodista de DDC Adriana Zamora](#) [“Your pregnancy is up to you,” State Security threatens DDC journalist Adriana Zamora]. February 2, 2018; Civicus. [Journalists, human rights defenders and artists persecuted and harassed in Cuba](#). February 16, 2018; Cuba en Miami [La Seguridad del Estado amenaza a una periodista gestante de 11 semanas: ‘Tu embarazo depende de ti’, le dicen los agentes](#) [State Security threatens 11-week pregnant journalist: “Your pregnancy is up to you,” agents tell her]. February 2, 2018.

<sup>114</sup> Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos.

<sup>115</sup> Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos. Similarly, see: *Diario de Cuba*. [‘Tu embarazo depende de ti’, amenaza la Seguridad del Estado a la periodista de Diario de Cuba Adriana Zamora](#) [“Your pregnancy is up to you,” State Security threatens DDC journalist Adriana Zamora]. February 2, 2018; IIRIDH, *Diario de Cuba*, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

<sup>116</sup> *Diario de Cuba*. [Maykel González Vivero: ‘Fuimos víctimas de un montón de procedimientos humillantes’](#) [Maykel González Vivero: “We were subjected to a lot of humiliating procedures”]. September 7, 2017; Díaz, Pablo. [Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica](#) [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

<sup>117</sup> In the same vein, CPJ and RWB have on several occasions condemned the practice of short-term detention as a method of harassing independent journalists. CPJ. [Independent Cuban journalist detained, accused of fomenting enemy propaganda](#). 2017; CPJ. [Cuban blogger jailed for five days after trying to cover protest](#). 2016. CPJ. [CPJ welcomes release of Juliet Michelena Díaz in Cuba](#). 2014; RWB. [Annual Report 2014. Americas. Cuba](#) [in Spanish]. Pp. 77-78.

<sup>118</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 9-34; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 9-45; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. OEA/Ser.L/V/II. Doc 48/15. December 31, 2015. Paras. 6-21.

people who speak out are intended to leave no legal trace.<sup>119</sup> According to the statement of a journalist threatened during a police interrogation, security agents told him: “We do things, but you will never see our hand.”<sup>120</sup>

98. Another practice that has been reported is the arrest and imprisonment of independent journalists on dates close to events related to domestic policy issues, participation in international forums, or human rights, in order to keep them from reporting.<sup>121</sup> For instance, this year, on the occasion of the May Day celebration in the Plaza de la Revolución, a journalist reported that he was detained for three hours by the political police for investigative purposes and, once the event began, he was released.<sup>122</sup> Another case was reported in October 2016, when independent journalists were detained for hours and their material seized while trying to cover the aftermath of Hurricane Matthew.<sup>123</sup> The same year, on the day of President Barack Obama’s arrival in Cuba, independent blogger and activist Lázaro Yuri Valle Roca was reportedly arrested and detained for five days after he attempted to cover a protest by the group *Damas de Blanco* [Ladies in White].<sup>124</sup>

99. Journalists who were reportedly detained in 2018 include Roberto de Jesús Quiñones, who publishes on the website *Cubonet*;<sup>125</sup> Manuel Alejandro León Velázquez, a journalist with *Diario de Cuba* and member of the audiovisual media agency *Palenque Visión*;<sup>126</sup> Eider Frómata Allen,<sup>127</sup> and *Diario de Cuba* journalist Osmel Ramírez.<sup>128</sup>

100. It is of particular concern to note that, according to available information, the repression against some 15 directors and journalists of the Cuban Institute for Freedom of Expression and the Press (ICLEP)

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<sup>119</sup> *Diario de Cuba*. [El OCDH condena la 'escalada represiva contra los periodistas independientes' en Cuba \[OCDH Condemns 'Escalating Repression Against Independent Journalists' in Cuba\]](#). June 26, 2017; *El Nuevo Herald*. [Denuncian aumento de la persecución contra el periodismo independiente en Cuba](#). [Increase in Persecution of Independent Journalism Reported in Cuba]. June 26, 2017; *CubaNet*. [Interrogatorio del MININT a Henry Constantín se pospone indefinidamente \[MININT Interrogation of Henry Constantín Postponed Indefinitely\]](#). July 5, 2017; Press Release of the *Centro para la Apertura y el Desarrollo de América Latina* [Center for Opening and Development of Latin America] (CADAL). July 27, 2017. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IAPA. [Cuba](#). October 26, 2017; *Diario de Cuba*. December 7, 2017. [El ICLEP denuncia 'una ola represiva' contra los periodistas de sus medios comunitarios](#) [ICLEP Condemns “Wave of Repression” against Community Media Journalists]; *Neo Club Press*. December 7, 2017. [Ola represiva contra periodistas independientes en Cuba](#) [Wave of Repression against Independent Journalists in Cuba]; IACHR, [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 91.

<sup>120</sup> Statement of journalist Ernesto Carralero Burgos of *Diario de Cuba*. Díaz, Pablo. [Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica](#) [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

<sup>121</sup> IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 318; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 173.

<sup>122</sup> IACHR. Office of the Special Rapporteur. Working meeting with journalists. 168<sup>th</sup> Session. June 2018.

<sup>123</sup> Reporters Without Borders. October 21, 2016. [Cuba. Crackdown on media includes ban on Hurricane Matthew coverage](#).

<sup>124</sup> [CPI. Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.11.

<sup>125</sup> CCDHRN. [Detienen al periodista independiente Roberto de Jesús Quiñones \[Independent journalist Roberto de Jesús Quiñones arrested\]](#). July 4, 2018; ICLEP. [Detenido abogado y periodista independiente cubano \[Cuban lawyer and independent journalist arrested\]](#). July 5, 2018; *Diario de Cuba*. [La Seguridad del Estado amenaza a otro periodista independiente: 'Vas a saber lo que es represión' \[State Security threatens another independent journalist: "You'll find out what repression is"\]](#). July 7, 2018.

<sup>126</sup> *Diario de Cuba*. [El régimen detiene al periodista de DIARIO DE CUBA Manuel Alejandro León Vázquez \[Regime Arrests DIARIO DE CUBA Journalist Manuel Alejandro León Vázquez\]](#). July 8, 2018; *CiberCuba*. [¿Cruzada contra los medios independientes? Policía detiene a varios periodistas cubanos esta semana](#) [Crusade against the independent media? Police arrest several Cuban journalists this week]. Undated.

<sup>127</sup> *Diario de Cuba*. [El régimen detiene al periodista de DIARIO DE CUBA Manuel Alejandro León Vázquez \[Regime arrests DIARIO DE CUBA Journalist Manuel Alejandro León Vázquez\]](#). July 8, 2018.

<sup>128</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018. On June 19, 2018, he was reportedly arrested by members of State Security. According to statements by his wife, who was at home at the time of his arrest, “They assured him that for every article he writes he will go to prison. This time it will be for 72 hours, according to the State Security agent, but he threatened that the second arrest will result in legal action against him and he will go to prison for a long time.” Ramírez Álvarez was released without charge 72 hours later. *Diario de Cuba*. [Detenido el periodista de Diario de Cuba Osmel Ramírez Álvarez \[Cuban newspaper journalist Osmel Ramírez Álvarez arrested\]](#). November 11, 2017; *Diario de Cuba*. [La Seguridad del Estado amenazó con un 'buen escarmiento' al periodista de DDC Osmel Ramírez](#) [State Security threatens to teach DDC journalist Osmel Ramírez a “good lesson”]. November 12, 2017.

continued in 2018.<sup>129</sup> They were reportedly arrested, called in for questioning, and interrogated by the political police, just as they had been the previous year. It was reported, for instance, that journalists Yoarielis Centelle and Arodis Pelicié were summonsed by officials from the Technical Investigations Department of San Antonio de los Baños.<sup>130</sup> On June 25, 2018, ICLEP reported that, in the previous six days, its community media outlets had been subjected to “abuse of power and larceny” by the Political Police, which had confiscated newspaper equipment and raided four homes. It also indicated that ten journalists “have been the targets of numerous attacks, ranging from interrogations, to arbitrary arrests, to physical and psychological assaults.”<sup>131</sup>

101. In particular, it indicated that journalist Martha Liset Sánchez, director of the community newspaper *Cocodrilo Callejero*, was arrested on June 23, 2018.<sup>132</sup> Previously, on February 7, Liset Sánchez was summonsed to the Political Police unit in Colón, Matanzas, where officers threatened to arrest her for the alleged crime of distributing subversive propaganda if she continued to circulate the newspaper *Cocodrilo Callejero*.<sup>133</sup> On the same day, her husband Alberto Corzo, who is a journalist and the administrative and monitoring director of ICLEP, was reportedly arrested by the Provincial State Security Unit in Matanzas.<sup>134</sup> In addition, journalist and ICLEP Director Raúl Velázquez was reportedly detained for one day in February 2018.<sup>135</sup> It was also reported that at least 13 journalists were arbitrarily detained in different parts of Cuba in August 2018 alone.<sup>136</sup>

102. During some of these detentions, the journalists were reportedly held incommunicado and crowded into cells alongside persons detained for common crimes. The statement provided by one of them describes their imprisonment together with “five hardened criminals [...] One was suspected of stabbing a man to death and pouring acid down a woman’s throat [...]”<sup>137</sup> According to the report received, “It was a room made entirely of concrete, six meters long by three meters wide (18m<sup>2</sup>), for six inmates. There were three double berths, one attached to the other, also made of concrete. And, in a corner, a crusty hole in which to go to the bathroom without privacy.”<sup>138</sup>

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<sup>129</sup> According to ICLEP, this repression “is motivated by the enormous social impact [their] project ‘Luz Cubana’ has in the communities where [they work].” ICLEP. [Nota de prensa: Aumenta represión contra directivos del ICLEP](#) [Press release: Repression against ICLEP directors escalates]. February 7, 2018.

<sup>130</sup> According to reports, the political police made it known through third parties that “All the journalists who make this newspaper possible will be questioned and prosecuted.” ICLEP. [Ola represiva contra periodistas del ICLEP \[Wave of repression against ICLEP journalists\]](#). December 4, 2017; ICLEP. [Bajo acoso medio independiente que distribuye información sin censura en Cuba \[Independent media outlet that distributes uncensored information in Cuba under harassment\]](#). December 5, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 91.

<sup>131</sup> ICLEP. [Nota de prensa: Aumenta represión contra directivos del ICLEP](#) [Press release: Repression against ICLEP directors escalates]. February 7, 2018.

<sup>132</sup> ICLEP. [Nota de prensa #4: Cuando pensábamos que terminaba, la ola represiva contra los periodistas del ICLEP se extendió a Matanzas](#) [Press Release #4: Just when we thought it was over, the wave of repression against ICLEP journalists spread to Matanzas], June 25, 2018.

<sup>133</sup> ICLEP. [Nota de prensa: Aumenta represión contra directivos del ICLEP](#) [Press release: Repression against ICLEP directors escalates], February 7, 2018.

<sup>134</sup> ICLEP. [Nota de prensa: Aumenta represión contra directivos del ICLEP](#) [Press release: Repression against ICLEP directors escalates]. February 7, 2018; IAPA. [Cuba: Detenciones y amenazas a la orden del día](#) [Cuba: Arrests and threats are the order of the day]. March 2, 2018.

<sup>135</sup> Diario de Cuba. [El ICLEP denuncia la ‘desaparición’ del periodista Raúl Velázquez](#) [ICLEP condemns “disappearance” of journalist Raúl Velázquez]. February 2, 2018; Martí Noticias. [Periodista Raúl Velázquez había sido detenido por la Seguridad del Estado](#) [Journalist Raúl Velázquez had been detained by State Security]. February 7, 2018; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

<sup>136</sup> The detained journalists include Mario Echeverría Driggs, of the Dos Mundos agency; Osniel Carmona Breijo, of Cubamedia Press; Adriana Zamora and Ernesto Corralero, and Borís González Arenas, contributors to Diario de Cuba; Henry Constantín and Iris Mariño, of La Hora de Cuba; Dagoberto Valdés, director of the *Convivencia* project and magazine; Alejandro Hernández Cepero, Roberto Rodríguez Cardona, and Luis Cino Álvarez of CubaNet; Oscar Padilla Suárez, of *Red de Periodistas Comunitarios* [Community Journalists’ Network]; Odalina Guerrero Lara, legal advisor to APLP, and APLP journalist José Antonio Fornaris Ramos. Cubanet. [Denuncian “terrorismo de estado” contra periodistas independientes en Cuba](#) [“State Terrorism” against independent journalists in Cuba denounced]. September 17, 2018.

<sup>137</sup> Díaz, Pablo. [Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica](#) [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

<sup>138</sup> Díaz, Pablo. [Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica](#) [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

#### iv. Searches and seizures of journalistic equipment or other assets

103. The Office of the Special Rapporteur was also informed of several cases of independent journalists in Cuba whose homes had been raided, and their journalistic equipment confiscated by State agents. The taking of materials and work equipment from independent journalists is reportedly a common practice; those affected are sometimes intercepted in the street, and State agents reportedly carry out “confiscations” during operations in which they raid homes, intimidate the family, and detain the journalist. In the cases reported, the authorities have refused to return the confiscated items to those affected,<sup>139</sup> and the political police have reportedly refused to turn over a copy of the list of confiscated items.<sup>140</sup>

104. For example, it was reported that three journalists from *Diario de Cuba* had been subjected to this type of action. During the arrest of Manuel Alejandro León Velázquez in June 2017, the police took his money, two cell phones, a transformer, pens, calendars for *Diario de Cuba*, his press credentials, and his passport. While he was in custody, the political police reportedly took several belongings from his home, including his laptop, camera and several discs containing audiovisual material from civil society; these items were reportedly never returned to him.<sup>141</sup>

105. When Osmel Ramírez was arrested in June 2018, his house was reportedly searched and, according to his wife, officers removed his computer, telephone, and “anything that might be suspicious because of his writings.”<sup>142</sup> Eliécer Palma Pupo was also reportedly arrested during a search of his home. According to his account, the authorities indicated that they were looking for “all the material to carry out counterrevolution.” He reported that State Security agents took nearly 100 books because they were considered “subversive material,” as well as records, a telephone, photographs, and memory devices.<sup>143</sup>

106. On November 30, 2017 the headquarters of the community media outlet *El Majadero de Artemisa*—which has reportedly been subject to harassment and ongoing surveillance by the political police—was raided by the police and its director Roberto Morena was arrested and taken to the National Revolutionary Police Unit (PNR) in Artemisa, where he was accused of printing “illegal newspapers.”<sup>144</sup> According to reports, the political police also made it known through third parties that “all the journalists who make this newspaper possible will be questioned and criminally investigated.”

#### v. Dismissals and loss of authorizations to practice a profession or carry out economic activities

107. A number of independent journalists were reportedly expelled from their places of work or study.<sup>145</sup> Such is the case of Iris Mariño, who reportedly lost her job as a teacher at an art school in Camagüey, and of

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<sup>139</sup> IIRIDH, *Diario de Cuba*, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

<sup>140</sup> *Diario de Cuba*. [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'](#) [Activists and independent journalists complain to IACHR of repressive practices that avoid leaving a “legal trace”]. May 9, 2018.

<sup>141</sup> *Diario de Cuba*. [Detenido en Guantánamo el periodista de DIARIO DE CUBA Manuel Alejandro León Velázquez](#) [DIARIO DE CUBA journalist Manuel Alejandro León Velázquez arrested in Guantánamo]. June 22, 2017; *Diario de Cuba*. [Liberado el periodista de DDC Manuel Alejandro León](#) [DDC journalist Manuel Alejandro León released]. June 24, 2017; IIRIDH, *Diario de Cuba*, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

<sup>142</sup> *Diario de Cuba*. [Detenido el periodista de Diario de Cuba Osmel Ramírez Álvarez](#) [Diario de Cuba journalist Osmel Ramírez Álvarez arrested]. November 11, 2017; *Diario de Cuba*, [La Seguridad del Estado amenazó con un 'buen escarmiento' al periodista de DDC Osmel Ramírez](#) [State Security threatens to teach DDC journalist Osmel Ramírez a “good lesson”]. November 12, 2017; IIRIDH, *Diario de Cuba*, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018; IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

<sup>143</sup> *Diario de Cuba*. [El régimen detiene a Eliécer Palma Pupo, colaborador de DIARIO DE CUBA \[Regime arrests DIARIO DE CUBA contributor Eliécer Palma Pupo\]](#). January 26, 2018; Martí Noticias. [Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba \[“Subversive material” confiscated from journalist and human rights activist in Cuba\]](#). January 30, 2018; *Diario de Cuba*. [La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo](#) [State Security releases DDC contributor Eliécer Palma Pupo under “threats”]. January 30, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

<sup>144</sup> *Diario de Cuba*. [El ICLEP denuncia ‘una ola represiva’ contra los periodistas de sus medios comunitarios \[ICLEP Condemns “Wave of Repression” against Community Media Journalists\]](#). December 7, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 91.

<sup>145</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

Aimara Peña, who was allegedly expelled from the university.<sup>146</sup> In this way, independent journalists are not only restricted legally, but also economically. Retaliatory measures such as dismissals have a serious impact on the insecure status and, in some cases, the isolation experienced by journalists. In addition, the materials needed for the practice of their profession, such as printing materials, the Internet, and laptops and printers, are expensive in Cuba relative to the low wages commonly received by its citizens.<sup>147</sup>

108. Another example is that of Carlos Alberto Pérez, an officially accredited journalist originally employed by *Tino* magazine. The information available indicates that Pérez took advantage of the Internet access afforded by this status to launch the blog *La Chiringa de Cuba*, with the intention of expressing a critical voice. However, according to CPJ, Pérez was fired from the magazine in apparent response to the content of his blog, leading to the loss of his Internet access and the inability to publish the blog for the time being.<sup>148</sup>

109. Similarly, Uruguayan journalist Fernando Ravsberg announced in July 2018 that he would close the *Cartas desde Cuba* [Letters from Cuba] blog, which he had been writing from the island for several years. The information available indicates that the Ministry of Foreign Affairs did not renew his residence permit and authorization to work on the island. According to the International Press Center, which reports to MINREX, the accreditation simply expired, but was not withdrawn. For his part, the journalist believed that it was related to the fact that UPEC officials questioned his “allowing people opposed to the Revolution to criticize it” in his blog. He further reported that, weeks prior to the announcement of its shutdown, the blog page received “thousands of daily attacks, some generated by robots, seeking out our vulnerabilities.” The measure suggests that the regime is unwilling to accept even “moderate” criticism from journalists outside its control.<sup>149</sup> Other foreign journalists have reportedly faced similar situations.<sup>150</sup>

#### vi. Pressures and threats to families, social environment, and defamatory practices

110. State Security also reportedly uses threats, surveillance, and harassment of journalists’ families and associates, including children.<sup>151</sup> The children, spouses, and parents of journalists and activists are said to be the targets of frequent threats.<sup>152</sup>

111. One such case took place on April 14, 2018, when 22-year-old university student Francis Rafael Sánchez Álvarez was reportedly detained for two hours at a Ciego de Ávila police unit. According to the information received, the young man is the son of Ileana Álvarez, director of the magazine *Alas Tensas*, and Francis Sánchez, head of the magazine *Árbol Invertido*, both independent publications. He was fined for allegedly “receiving stolen property” because he was carrying a network cable on his person. Ileana Álvarez stated that counterintelligence officers and members of the Ministry of the Interior had participated in the

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<sup>146</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018; Diario de Cuba. [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'](#) [Activists and independent journalists complain to IACHR of repressive practices that avoid leaving a “legal trace”]. May 9, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

<sup>147</sup> IAPA. [Report to the 73rd General Assembly 2017](#); IAPA. [Report to the 72nd General Assembly 2016](#).

<sup>148</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). September 28, 2016.

<sup>149</sup> DDC. [‘El cerco se ha cerrado’: Fernando Ravsberg anuncia el fin de su blog ‘Cartas desde Cuba’](#) [“The walls have closed in”]: Fernando Ravsberg announces the end of his “Letters from Cuba” blog]. July 13, 2018.

<sup>150</sup> One such is that of Mauricio Vicent, who for decades was a correspondent for the Spanish daily *El País* in Havana and whose press credentials were not renewed in 2011. EcoDiario.es. [Cuba veta a Mauricio Vicent, corresponsal de El País y La Ser](#) [Cuba blackballs Mauricio Vicent, correspondent of *El País* and *La Ser*]. September 4, 2011.

<sup>151</sup> Iris Mariño García, for instance, said that a State Security agent has been surveilling her 11-year-old son. She stated that during an interrogation carried out by security agents, “Everyone gave me information about the extensive surveillance around my house. Another one of the agents, identified as Michel, told me what had happened yesterday over an eight-hour period near my house. The people who had come in, the people who had gone out, who I had talked to.” Diario de Cuba. [Liberado el periodista de DDC Manuel Alejandro León](#) [DDC journalist Manuel Alejandro León released]. June 24, 2017; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

<sup>152</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

interrogation of her son, which would indicate that it was related to the journalistic activities of his parents.<sup>153</sup>

112. Independent journalist and activist Aimara Peña also reportedly received direct threats against her young son when he was due to undergo eye surgery. According to her statement, her son was to be operated on for strabismus. The doctors prepared for the operation, but it was delayed until the child was three years old. She indicated that she was pressured on account of her journalistic work. “They said to me, ‘your child is going into an operating room; why don’t you think about it more carefully, you don’t know what might happen.’ They tried to sow fear in me as a mother so that I would give up my work.” She also said that her son had to enroll in a “special school,” but that “he has not yet done so because of the same delay process,” and difficulties with enrolling him. She also maintained that her mother had been denied medical attention, allegedly because of her activism and activities as a journalist.<sup>154</sup>

113. Family members of independent journalists are also said to be frequently pressured to cooperate with State Security. This is the case, for example, of Margarita Aranda Tejeda, the wife of reporter Manuel Alejandro León Velázquez,<sup>155</sup> as well as Idalia Torres Carballosa, the wife of journalist Osmel Ramírez Álvarez, who was subject to this kind of pressure when he was arrested in November 2017.<sup>156</sup>

114. It was also reported that State Security has thwarted opportunities for citizen participation by independent journalists in community and political activities. In October 2017, for instance, the political police reportedly occupied a community in Sancti Spiritus in order to keep Aimara Peña González from being elected as a representative of the People’s Power in her district.<sup>157</sup> Henry Constantin, who was also allegedly prevented from running for representative office in his district, faced a similar situation. In his case, it was reported that his father was also subject to repression.<sup>158</sup> In January 2018, Osmel Ramírez denounced a “defamatory campaign” against him for his condemnation of the abuses suffered by tobacco producers in his town, Mayarí (Holguín), at the hands of the State-run Cubatabaco, which reportedly paid them a pittance.<sup>159</sup>

#### **vii. Barriers to departure and other arbitrary restrictions on freedom of movement**

115. Several journalists have reported travel bans that the regime has applied, with increasing frequency, to activists and journalists, in retaliation for their activities or to hinder their training and professional exchanges.<sup>160</sup> Journalists including Carlos Alejandro Rodríguez Martínez, Maily Esteves Pérez Regina Coyula,

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<sup>153</sup> She added that she and her husband heard one of them say “We can easily implicate you,” “We’re going to do a search on them,” and “We’re going to look for the units.” Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

<sup>154</sup> Statement of Aimara Peña. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba; Diario de Cuba, [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la ‘huella legal’](#) [Activists and independent journalists complain to IACHR of repressive practices that avoid leaving a “legal trace”]. May 9, 2018.

<sup>155</sup> While León Velázquez was in custody in June 2017, she was also threatened with jail. “I was forced to sign a statement. They told me that if I didn’t cooperate with them, they were going to imprison my mother [León Velázquez’s mother-in-law] for supposedly hiding the house’s computer, and me for covering up for my mother. They dictated a statement to me that said that I promise to cooperate, to betray my husband, and to tell them everything he does”, said Aranda Tejeda. Diario de Cuba. [El régimen amenaza con prisión al periodista de DDC Manuel Alejandro León, su esposa y su suegra](#) [Regime threatens DDC journalist Manuel Alejandro León, wife, and mother-in-law with jail]. June 23, 2017.

<sup>156</sup> “They warned me that they know about everything I write, everything I talk about, what I send to anyone, and what is uploaded to the web. They said there is a charge against me for being a participant, collaborator, and accomplice of his,” Torres Carballosa said at the time. She added that State Security made her sign a document containing warnings about “the dangers” that could befall her and the journalist. “I have a lot of courage and I won’t let them intimidate me. I’m not going to leave him alone in this, not at all,” she said. Diario de Cuba. [La Seguridad del Estado dice que tiene ‘suficientes cargos’ para acusar al periodista de DDC Osmel Ramírez](#) [State Security says it has ‘sufficient charges’ to indict DDC journalist Osmel Ramírez.]. November 14, 2017.

<sup>157</sup> Diario de Cuba. [El régimen ‘toma’ una comunidad de Sancti Spiritus para impedir la postulación de una candidata independiente](#) [Regime “occupies” Sancti Spiritus community to prevent nomination of independent candidate]. October 5, 2017.

<sup>158</sup> Diario de Cuba. [Coacción, trampas y miedo: así fue la asamblea en la que un candidato independiente quiso nominarse](#) [Coercion, cheating, and fear: this was the assembly in which an independent candidate sought to be nominated]. November 14, 2017.

<sup>159</sup> Diario de Cuba. June 19, 2018. [72 horas preso por cada artículo publicado en DIARIO DE CUBA](#) [72 hours in jail for each article published in DIARIO DE CUBA]; Diario de Cuba. [El periodista de DDC Osmel Ramírez denuncia una ‘campana difamatoria’ en su comunidad](#) [DDC journalist Osmel Ramírez condemns “defamatory campaign” in his community]. January 22, 2018.

<sup>160</sup> IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018.

Joan Manuel Núñez Díaz, Sol García Basulto, Maykel González Vivero, Yoandy Izquierdo, Anderlay Guerra, Raúl Velázquez, Roberto de Jesús Quiñones, Iván Hernández Carrillo, Abel Estrada, Henry Constantín, Augusto Cesar San Martín Albístur, Yusimí Rodríguez López, Ileana Álvarez, and Yudel Estenez, among others, have recently been prevented from travelling abroad.<sup>161</sup>

116. The information received indicates that bans on travel have been issued verbally, without written documents or a specific reply. They are also reportedly not given prior notice of any exit restrictions, but instead learn of the ban upon arrival at the airport. This is despite the fact that, according to the information available, they have gone to various State authorities prior to the trip to check with the Department of Immigration or the Identity Card Office—where they were not given clear information on the matter.<sup>162</sup> Several sources agree that this measure is applied with some frequency by State Security, through the Ministry of the Interior, under the category of “regulated,” for reasons related to their journalistic work.<sup>163</sup> In some cases, the measure may be imposed by intelligence departments and information may not be available until the person attempts to leave the country.<sup>164</sup>

117. The Office of the Special Rapporteur notes that the “Migration Act,” Law No. 1312 of September 20, 1976, is relevant in this regard. This law was amended by Decree Law No. 302, published on October 16, 2012.<sup>165</sup> At the time, the IACHR underscored the amendments to the Migration Act, which removed some restrictions for Cuban nationals to obtain exit permits to travel abroad, considering that this was a positive step that should be followed by additional measures.<sup>166</sup>

118. The Office of the Special Rapporteur is particularly concerned about Article 25 of Decree Law No. 302, according to which a person may be barred from leaving the country “when deemed advisable for reasons of National Defense and Security” (subsection (d)); when he or she “lacks the authorization established, pursuant to the provisions aimed at preserving a qualified work force for the economic, social, and scientific/technical development of the country, as well as for the security and protection of official information” (subsection (f)), or “when, for other reasons of public interest, it is determined by the competent authorities” (subsection (h), among others).<sup>167</sup> The vagueness and breadth of these terms gives a wide margin of discretion to the authorities, for which reason the Office of the Special Rapporteur urges the Cuban State to fully guarantee the right of its nationals to free movement.<sup>168</sup>

119. In turn, Article 25.f of Decree Law No. 302 would appear to be related to Decree No. 306 of October 11, 2012 “on the treatment of officials, professionals, and athletes who require authorization to travel abroad.” Despite the fact that this treatment supposedly applies only to professionals and athletes engaged in

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<sup>161</sup> CubaNet. [APLP denuncia amenazas y ofensas a periodista independiente en Santa Clara](#) [APLP condemns threats and insults to independent journalist in Santa Clara]. August 31, 2017; Martí Noticias. [Periodistas denuncian amenazas de la Seguridad del Estado para que dejen de informar](#) [Journalists condemn State Security threats meant to keep them from reporting]. August 30, 2017; CubaNet. [El régimen prohíbe salir del país a periodista de CubaNet](#) [Regime bars CubaNet journalist from leaving country]. November 30, 2017; Revista El Estornudo. [Persona controlada](#) [Person under surveillance]. August 29, 2017; IAPA. [Cuba](#). October 26, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 92; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018; Alas Tensas. [¿Por qué quieren cortarnos las Alas?](#) [Why do they want to clip our wings?]. May 2, 2018; Diario de Cuba. [La revista feminista 'Alas tensas' denuncia 'acoso y ataques sistemáticos'](#) [Feminist magazine *Alas Tensas* condemns “systematic harassment and attacks”]. May 3, 2018.

<sup>162</sup> Diario de Cuba. ['Regulado': cinco meses confinado en Cuba sin trámite judicial](#) [“Regulated”: five months in Cuban custody without judicial process]. March 29, 2018; Diario de Cuba. [El régimen impide viajar al periodista de DDC Jorge Enrique Rodríguez](#) [Regime prevents DDC journalist Jorge Enrique Rodríguez from travelling]. February 19, 2018.

<sup>163</sup> For example, in February 2018, Jorge Enrique Rodríguez was reportedly told at State Security headquarters that the restriction was imposed by State Security to prevent him from traveling to attend the upcoming Summit of the Americas in Lima. IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

<sup>164</sup> Journalist Augusto César San Martín Albístur—who allegedly recorded his conversation with the official—reported that, according to the official, the “exit ban” is secret and internal to the State, imposed by the intelligence departments, and that no one will be informed that they are subject to such a ban until they attempt to leave the country. “Regulated” treatment, on the other hand, is public, and immigration officials can see a person’s status before they attempt to travel. CubaNet. [Prohíben salir de Cuba a periodista de CubaNet](#) [CubaNet journalist barred from leaving Cuba]. February 18, 2018.

<sup>165</sup> [Decree Law No. 302](#). Amending Law No. 1312. October 16, 2012.

<sup>166</sup> IACHR. [IACHR Welcomes Immigration Reforms in Cuba](#). Press Release No. 130/12. November 5, 2012.

<sup>167</sup> [Decree Law No. 302](#). Amending Law No. 1312. October 16, 2012.

<sup>168</sup> IACHR. [IACHR Welcomes Immigration Reforms in Cuba](#). Press Release No. 130/12. November 5, 2012.

activities that the government considers necessary for the development of the country, the Office of the Special Rapporteur has been informed that State agents have informed journalists that they are “regulated” under this provision and cannot travel abroad.<sup>169</sup> Some examples of this include Osmel Ramírez Álvarez, in November 2017;<sup>170</sup> Jorge Enrique Rodríguez, in February 2018,<sup>171</sup> and Augusto César San Martín Albistur, also in February 2018.<sup>172</sup> With this arbitrary application of the law, the State is restricting the departure from the country of persons who hold opinions that differ from those of the government.<sup>173</sup>

120. Another form of arbitrary restriction of freedom of movement is related to Decree No. 217 of April 22, 1997, referring to “Domestic Migration Regulations for the City of Havana and their violation.” This Decree prevents the free movement of citizens within the country and allows for internal “deportations” of persons who are in Havana to their province of origin. According to statements received, “They detain you, as they did me: they put us on a train, and when the train is full, which may take several days, they take you to your province.”<sup>174</sup>

121. In view of the above, the Office of the Special Rapporteur concludes that the persecution of journalists in Cuba remains a constant, based both on rules that are still in force and on arbitrary State practices. The Office of the Special Rapporteur recognizes that, even in the complete absence of a framework that enshrines the right to seek and to impart information independently, and in spite of such repressive rules and practices, Cuban journalists persist in wanting to do their jobs even though it poses a serious risk to their physical and psychological integrity, and to their rights.<sup>175</sup> The constant fear among independent journalists is illustrated by the following statement received in May 2018:

From the moment you are a dissident, opponent, or a person who thinks differently from the government, who wants another alternative or who simply calls for improvements in this government such as more freedoms for citizens [...], you cease to have all the human rights that the government is supposed to respect [...], rights are violated flagrantly and with impunity, because they leave no trace or physical evidence of this type of action.<sup>176</sup>

122. The Office of the Special Rapporteur reiterates that Principle 9 of the Declaration of Principles establishes that “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” Moreover, as established by the UN Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and by this Office, the State “has the duty to ensure that journalists and media workers [...] are not

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<sup>169</sup> IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018.

<sup>170</sup> Diario de Cuba. [‘Regulado’: cinco meses confinado en Cuba sin trámite judicial](#) [“Regulated”: five months in Cuban custody without judicial process], March 29, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba; Diario de Cuba. [El régimen impide viajar al periodista de DDC Jorge Enrique Rodríguez](#) [Regime prevents DDC journalist Jorge Enrique Rodríguez from travelling]. February 19, 2018.

<sup>171</sup> Diario de Cuba. [El régimen impide viajar al periodista de DDC Jorge Enrique Rodríguez](#) [Regime prevents DDC journalist Jorge Enrique Rodríguez from travelling]. February 19, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

<sup>172</sup> CubaNet. [Prohíben salir de Cuba a periodista de CubaNet](#) [CubaNet journalist barred from leaving Cuba]. February 18, 2018; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018; Diario de Cuba. [‘Regulado’: cinco meses confinado en Cuba sin trámite judicial](#) [“Regulated”: five months in Cuban custody without judicial process]. March 29, 2018.

<sup>173</sup> IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018.

<sup>174</sup> IACHR. [Hearing on the Human Rights Situation of Journalists in Cuba](#). 150<sup>th</sup> Session. March 25, 2014. In particular, it was reported that in December 2017 the Cuban authorities blocked journalist Manuel Alejandro León Velázquez from leaving the province of Guantánamo, where he resides. According to the available information, when he arrived at a checkpoint by car, the authorities forced him to get out of the vehicle and instructed the driver to keep going. They reportedly led him to a small room and held him there for about 20 minutes. Diario de Cuba. [El régimen detiene al periodista Manuel Alejandro León y le impide salir de su provincial](#) [Regime detains journalist Manuel Alejandro León and prevents him from leaving his province]. December 10, 2017.

<sup>175</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016.

<sup>176</sup> Statement of Aimara Peña. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

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.”<sup>177</sup>

123. The State must not only refrain from engaging in such conduct; rather, at the same time, it has a positive duty to guarantee the exercise of this right through actions to prevent, protect against, and investigate attacks against journalists and the media. In Cuba, State agents are the main source of threats and attacks against the press, a practice that must be dismantled and punished. As the IACHR has previously pointed out in relation to Cuba, “Acts of violence against journalists have a threefold effect: They violate the right of victims to express and disseminate their ideas, opinions and information; they have a chilling and silencing effect on their peers; and they violate the right of persons and society in general to seek and receive information and ideas of any kind. Its consequences for democracy—which depends on the free, open and dynamic exchange of ideas and information—are particularly serious.”<sup>178</sup>

### III. CRIMINALIZATION OF POLITICAL CRITICISM AND DISCRIMINATION AGAINST DIFFERENT POPULATION GROUPS

124. Journalists have not been the only sector to suffer persecution in Cuba as the Cuban State maintains a practice of harassment against others seeking to express their ideas. Artists, human rights defenders, political dissidents, intellectuals, and opinion leaders face serious attacks, threats, and intimidation.

125. The Office of the Special Rapporteur considers that the following paragraphs illustrate serious structural discrimination on political grounds in the exercise of human rights, since all who think or express themselves differently from the regime cannot exercise their rights free from threats of suffering. This is supported by the regulatory framework, multiple provisions of which are referred to in this report. Although the Draft Constitution does acknowledge the right to equality and nondiscrimination in broader terms, it does not consider equality based on political motives. Indeed, while the Office of the Special Rapporteur applauds the inclusion of prohibited grounds of discrimination, such as gender, gender identity, sexual orientation, ethnicity, and disability,<sup>179</sup> it notes that political opinion is also a prohibited motive that is broadly recognized in human rights instruments,<sup>180</sup> but not protected in the text of the Constitution. A democratic system requires regulatory conditions that allow all people, without discrimination, to exercise their rights in freedom.

#### A. Attacks, threats, and intimidation

##### i. Artists

126. For more than three decades, the Commission has affirmed that there is a practice of tight control by government authorities 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.”<sup>181</sup> The Commission and the Office of the Special Rapporteur have continued to receive information indicating that ideological differences have been a reason for repressing artistic expression.

127. The Office of the Special Rapporteur notes that such practice is based on existing laws and regulations. Indeed, **Article 39 of the Constitution** establishes that “In its educational and cultural policy, [the State] adheres to the following principles: [...] d. artistic creation is free as long as its content is not contrary to the Revolution [...]” Regarding this article, the IACHR in 1983 stated that “[...]the provision [on] artistic expression is a demonstration of political intolerance and sets forth the [legal] basis for censorship.” The Office of the Special Rapporteur reiterates that “The condition that the content of artistic endeavor not contradict ‘the Revolution’ imposes the prerequisite of prior analysis of that content and a judgment of its compatibility with the current political process. Therefore, it is a clear violation of the right to freedom of

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<sup>177</sup> 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 IACHR. [Joint Declaration on violence against journalists and media workers in the context of protests](#). September 13, 2013.

<sup>178</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 287.

<sup>179</sup> [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]](#). Art. 40.

<sup>180</sup> See *inter alia* Universal Declaration. Art. 2; ICCPR. Art. 2.1; ACHR. Art. 1.

<sup>181</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Paras. 29-30.

artistic expression.”<sup>182</sup> It is troubling to note that the Draft Constitution seems to maintain this same approach by establishing as a tenet of the State’s cultural policy that “artistic creation is free and in its content respects the values of Cuban socialist society [...],” and that the State “promotes culture and various artistic expressions, in accordance with cultural policy and the law,” which, as observed in the following paragraphs, is plainly incompatible with freedom of artistic expression.<sup>183</sup>

128. 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;<sup>184</sup> (ii) the Regulations for the system of artistic hiring, marketing, and compensation in music and performing arts events in the national territory;<sup>185</sup> (iii) the Regulations for the system of labor relations of workers in the arts sector;<sup>186</sup> and (iv) the Regulations of the evaluation system for workers in the arts sector.<sup>187</sup> Penalties for noncompliance with the cultural policy were recently adopted by Decree No. 349 of April 20, 2018 of the Council of Ministers.

129. This policy establishes, in general terms, that Cuban artists must be qualified by the State in order to practice professionally. Only artists registered in the Registry of Fine Art and Applied Art Creators may give presentations, render services in public, or have commercial spaces. They are reportedly required to establish ties with a State institution in order to obtain remuneration for their work, and only institutions authorized by the Ministry of Culture or the ICRT may enter into working or commercial arrangements with artists. They may not enjoy productions and performances, or develop and exhibit their skills in public, without State authorization. State officials reportedly have the authority to decide when a work of art fails to meet ethical, cultural, or other broad criteria. The measures they can apply range from fines or the confiscation of property to the immediate suspension of the show or cancellation of the authorization to carry out the activity.

130. Based on these regulations, there is a consistent practice in Cuba of censoring ideological differences that are expressed through art. Acts of harassment have included not allowing certain work, the prohibition against leaving the country, internal deportations, summonses to police centers, searches of their homes, and interrogations.<sup>188</sup> The use of common crimes to intimidate or imprison persons exercising freedom of expression through art has also been documented, including preventing performances by arresting the artists beforehand, or interrupting and violently repressing them.<sup>189</sup>

131. The information received shows that numerous artists, such as theater directors,<sup>190</sup> musical groups,<sup>191</sup> writers, and others,<sup>192</sup> continue to experience severe harassment designed to prevent them from

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<sup>182</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 13.

<sup>183</sup> [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]](#). Arts. 95(h); 90.

<sup>184</sup> Resolution 63 of August 8, 2011.

<sup>185</sup> Resolution 70 of September 19, 2013.

<sup>186</sup> Resolution 44 of June 16, 2014.

<sup>187</sup> Resolution 45 of June 16, 2014.

<sup>188</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 421-448; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 174; IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 34.

<sup>189</sup> IAPA. [Report to the 71st General Assembly of 2015](#); IAPA. [Report to the Midyear Meeting 2015](#); IAPA. [Report to the Midyear Meeting 2014](#); IAPA. [Report to the Midyear Meeting 2013](#).

<sup>190</sup> In December 2017, for example, it became known that the Ministry of the Interior had called theater director Adonis Milás in for questioning after he had decided to join the alternative biennial. They also allegedly pressured members of the Milan-based Persephone Theater group. According to information, the director belonged to the Hermanos Saíz Association, which had recently organized performances of the play Hamlet Machine in Santiago de Cuba. This work reportedly went through a jury of the Provincial Council of the Performing Arts of Santiago de Cuba, which approved the event. However, State Security reportedly suspended the second performance, alleging that the play cast doubt on the image of Fidel Castro. Due to alleged pressure from the regime’s agents, the actors are reportedly now afraid to work. IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 69.

<sup>191</sup> Similarly, according to members of the punk rock band Porno para Ricardo, they were subject to government harassment and censorship, and could not perform publicly in Cuba, due, among other things, to a repertoire that would challenge the official regime. Punte Democrático. [El punk rock cubano en Buenos Aires](#) [Cuban punk rock in Buenos Aires]. May 3, 2017.

<sup>192</sup> Other artists who have recently been censored include curator Yanelis Núñez, writer and journalist Jorge Enrique Rodríguez, the director of the television project *Lente cubano* Iliana Hernández, and Luis Manuel Otero Alcántara. Diario de Cuba. [#00Biennial: el régimen responde al arte independiente con represión \[#00Biennial: Regime responds to independent art with repression\]](#). May 13, 2018;

expressing their social and political concerns through art. By way of example, in 2018 it was reported that the political police had kept the literary event *Palabras Excluidas* [Excluded Words], scheduled for February 3 at the Dissidence Museum, from taking place. State Security reportedly prevented several writers from reaching the venue, as was the case with the writer Ángel Santiesteban. According to reports, Santiesteban was detained when he left his home to make his way to the literary event.<sup>193</sup> The Office of the Special Rapporteur notes that this occurred despite the fact that Santiesteban and his son are beneficiaries of precautionary measures granted by the IACHR in September 2014.<sup>194</sup>

132. In addition, in February 2018, painter Luis Trápaga and activist Lía Villares, artists from the El Círculo Gallery, were reportedly detained for 24 hours and interrogated, the house serving as the gallery was searched, and the police reportedly seized USB flash drives, computers, cell phones, video and photo cameras, and hard drives containing the interviews Villares conducted with various censored artists. This material was going to be used for the documentary that she was making, called *Arte Libre vs. Censura Totalitaria* [Free Art vs. Totalitarian Censorship].<sup>195</sup> Added to this are other cases reported in 2017, such as the arrests of artists Tania Burguera and Danilo Maldonado “El Sexto” (*infra* IV.B), and the harassment of members of the punk rock group *Porno para Ricardo*,<sup>196</sup> which show that all forms of critical expression are persecuted.

133. The IACHR emphatically reiterates that it “considers the limitations on freedom of artistic expression imposed by the Government of Cuba, and the pressures and punishments to which artists who do not share the official ideology or who disagree with the political authorities are submitted, reprehensible.”<sup>197</sup> In addition to the restriction of freedom of expression, these regulations contain limitations on equal access to decent work for all, regardless of political opinion.<sup>198</sup>

#### ii. Human rights defenders

134. As the IACHR has repeatedly noted for several years, Cuba presents a context of serious hostility, persecution, and harassment against human rights defenders.<sup>199</sup> Multiple sources have consistently reported that they are arbitrarily deprived of their liberty under certain types of criminal charges—such as contempt of public authority, Attack against a public authority, and public disorder—and are sometimes subjected to assaults, threats, and abuse within detention facilities.<sup>200</sup> Other forms of harassment include internal deportations, summonses to police centers, searches of their homes, assaults, bars to leaving or entering the country, impediments to leaving their homes through the use of official operations, and surveillance of their communications.<sup>201</sup>

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Martí Noticias. [Creadores buscan espacios fuera de la UNEAC y las instituciones oficiales de Cuba](#) [Creators seek spaces outside UNEAC and Cuba's official institutions]. February 27, 2018.

<sup>193</sup> Diario de Cuba. [La Seguridad del Estado impide la celebración de un evento literario con escritores censurados](#) [State Security bars literary event with censored writers]. February 4, 2018; Martí Noticias. [Policía política reprime evento literario contra la censura en Cuba](#) [Political police repress literary event against censorship in Cuba]. February 4, 2018.

<sup>194</sup> IACHR. [Resolution 26/2014](#). PM 206-13. *Matter of Ángel Lázaro Santiesteban Prats concerning Cuba*. September 26, 2014.

<sup>195</sup> 14yMedio. [La policía detiene durante 24 horas a los artistas de la galería El Círculo](#) [Police detain artists from El Círculo Gallery for 24 hours]. February 4, 2018.

<sup>196</sup> Similarly, according to members of the punk rock group *Porno para Ricardo*, they have been subject to government harassment and censorship, and cannot perform publicly in Cuba due to, among other things, a repertoire that would challenge the official regime. Puente Democrático. [El punk rock cubano en Buenos Aires](#) [Cuban punk rock in Buenos Aires]. May 3, 2017.

<sup>197</sup> IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 36.

<sup>198</sup> Cubalex. *La relación entre el Decreto 349 y la política cultural del Estado cubano en 7 puntos* [The relationship between Decree 349 and the cultural policy of the Cuban State in 7 points].

<sup>199</sup> Since its 1992-1993 Annual Report, the Commission has expressed concern about the obstacles faced by human rights defenders in demonstrating, and in defending and promoting respect for human rights. IACHR. [Annual Report 1992-1993](#). OEA/Ser.L/V/II.83. Doc. 14. March 12, 1993.

<sup>200</sup> IACHR. [Annual Report 2016](#). Chapter IV. Para. 45; IIRIDH, *Request for hearing on human rights violations of Unpacu members*. August 1, 2017.

<sup>201</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 421-452; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 439; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 163; 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. 141; IACHR. [Annual Report 2010](#). OEA/Ser.L/V/II. Doc. 5 corr. 1. March 7, 2011. Para. 404; IACHR. [Annual Report 2006](#). OEA/Ser.L/V/II.127. Doc. 4 rev. 1.

135. The Office of the Special Rapporteur notes that this is related to a regulatory framework that precludes the free exercise of the rights of expression, assembly, and association, recognized in article XXII of the American Declaration. In particular, the Associations Act, Law No. 54 of 1985, authorizes the Ministry of Justice to refuse a request for the formation of an association, *inter alia*, “when the bylaws or internal regulations that will govern it do not clearly express its objectives and activities” (article 8.b), “when its activities could be harmful to the interests of society” (article 8.c), and “when another is registered with identical or similar objectives or denomination” (article 8.d). This regulatory framework is applicable to artistic, cultural, friendship and solidarity, sports, and scientific and technical societies, as well as to others that propose “social interest purposes” (article 2).

136. Such legislation creates serious obstacles for an organization to obtain legal recognition and results in many of them having to operate in a precarious or unlawful legal status.<sup>202</sup> This is compounded by threats and even the use of the criminal offense of “unregistered association” (article 208 of the Criminal Code), leading not only to a lack of legal recognition and protection, but also to the criminal prosecution of the activities of various organizations and groups.<sup>203</sup>

Offense	Article	Criminal conduct	Penalty
Unregistered Association	208.1	Belonging as an associate or affiliate to an association not registered in the appropriate registry	Deprivation of liberty for a period of 1 to 3 months or a fine of up to 100 units [cuotas]
	208.2	Serving as the promoter or director of an unregistered association	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas]

137. Of particular concern to the Office of the Special Rapporteur is the severe and persistent harassment by the State against the non-governmental organization **Cubalex (Legal Information Center)**. Such acts include warrantless searches by police and security officers, the arbitrary seizure of property, and the cutting of telephone lines. Its members have been frequently detained, subject to arbitrary criminal proceedings, called in for questioning, and even subjected to degrading and inhuman treatment such as being forced to remove their clothing for supposed strip searches or being deprived of food while in custody.<sup>204</sup> It was reported that the organization was being prosecuted for operating without authorization since at least September 2016. Due to the intensification of the repression, members of Cubalex reportedly traveled in May and June to the United States as political refugees.<sup>205</sup> Laritza Diversent, the organization’s director, and other

March 3, 2007. Para. 73, 75; IACHR. [Annual Report 2005](#). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Paras. 97, 104, 105, 106; IACHR. [Annual Report 2001](#). OEA/Ser./L/V/II.114. Doc. 5 rev. April 16, 2002. Para. 20.

<sup>202</sup> Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 5.

<sup>203</sup> AI. [“Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. Pp. 12, 13, 15, 16, 17, 32; AI. [Cuba: Human Rights at a Glance](#). 2015.

<sup>204</sup> IACHR. [IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#). Press Release R149/16. October 13, 2016. According to reports, Julio Iglesias and Julio Ferrer are facing criminal prosecution or are deprived of their liberty. Agencia EFE. [Cubalex asegura que desde EEUU harán visible desprotección de organizaciones \[Cubalex promises to bring attention to lack of protection for organizations from the U.S.\]](#). May 7, 2017; 14yMedio. [Laritza Diversent y Cubalex comienzan su vida en el exilio \[Laritza Diversent and Cubalex begin life in exile\]](#). May 4, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 82.

<sup>205</sup> El Nuevo Herald. [Activistas de Cubalex, el principal grupo legal opositor de Cuba, se marchan al exilio \[Activists from Cubalex, Cuba’s main opposition legal group, go into exile\]](#). May 4, 2017; Diario de Cuba. [Laritza Diversent: ‘Salgo mañana del país y no me dejan regresar’ \[Laritza Diversent: “I am leaving the country tomorrow and they won’t let me return”\]](#). May 4, 2017; Martí Noticias. [Catorce](#)

members of Cubalex are the beneficiaries of precautionary measures issued by the Commission, which requested in April 2015 that the State take the necessary measures to safeguard their lives and personal integrity and allow them to carry out their work without being subjected to harassment.<sup>206</sup> The IACHR and its Office of the Special Rapporteur reiterate their appeal to the Cuban State to cease these actions, and to effectively ensure that the members of this organization can exercise their rights and defend human rights free from undue interference.<sup>207</sup>

138. Similarly, the Office of the Special Rapporteur reiterates its concern over the harassment and acts of pressure and violence against the organization Ladies in White.<sup>208</sup> In this case too, the aforementioned acts of harassment, arrests, and other actions aimed at humiliating and frightening its members are intended to prevent the exercise of the right of criticism that the organization legitimately seeks to pursue. During 2018, the organization reported that it continued to be subjected to attacks, harassment, and arrests, mainly for contempt of public authority and resistance in connection with protesting.<sup>209</sup> Relatives of the movement's members have also reportedly been targeted for repression by State agents.<sup>210</sup> The Commission has granted several precautionary measures on behalf of members of the organization or persons involved in its work.<sup>211</sup>

139. Additionally, in 2018, members of the *Asociación Pro Libertad de Prensa* [Association for Press Freedom] (APLP)—Odalina Guerrero Lara, Manuel Morejón, Amarilis Cortina Rey, and Miriam Herrera Calvo—were reportedly interrogated by State Security after sending a report on the situation of the right to freedom of expression in Cuba to the UN Human Rights Council for the Universal Periodic Review (UPR). This reportedly occurred following the participation of APLP Director José Antonio Fornaris and Odalina Guerrero Lara in an event in Geneva. In February 2018, four members of APLP were prevented from leaving the country to participate in a journalism workshop.<sup>212</sup>

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[miembros de Cubalex obtienen refugio político en Estados Unidos \[Fourteen Cubalex members obtain political asylum in the United States\]](#), May 4, 2017; Agencia EFE. [Cubalex asegura que desde EEUU harán visible desprotección de organizaciones \[Cubalex promises to bring attention to lack of protection for organizations from the U.S.\]](#), May 7, 2017; IACHR. [Annual Report 2017](#), Chapter IV.B. Cuba. Para. 82.

<sup>206</sup> IACHR. [Resolution 13/2015](#), PM 96-15. *Matter of members of Cubalex concerning Cuba*, April 22, 2015; IACHR. [IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#), Press Release R149/16, October 13, 2016. Other repressive actions by the Cuban authorities against Cubalex have been the subject of precautionary measures adopted by the IACHR. IACHR. [Resolution 13/2015](#), PM 96-15. *Matter of members of Cubalex concerning Cuba*, April 22, 2015.

<sup>207</sup> IACHR. [IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#), Press Release R149/16, October 13, 2016.

<sup>208</sup> IACHR. [Resolution 12/2014](#), PM 264-13, May 12, 2014.

<sup>209</sup> In particular, Marta Sanchez has reportedly been in custody since March 11, on charges of “contempt of public authority” and “resistance” for protesting during the elections in Cuba. [IACHR. Office of the Special Rapporteur. [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for \*desacato\* laws in Cuba](#), Press Release R152/18, July 17, 2018]. At least 24 Ladies in White were reportedly arrested on the eve of May 1 [Diario de Cuba. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco \[Hours before May Day, raids and arrests of UNPACU and Ladies in White activists\]](#), April 30, 2018]. In the same month, Micaela Roll Gibert and Aimara Nieto Muñoz were allegedly beaten by the Political Police as they took to the streets in the town of Calabazar with posters calling for the release of political prisoners [Martí Noticias. [“¡Abajo Díaz-Canel!” gritan Damas de Blanco mientras las golpea la policía \[VIDEO\]. \[“Down with Díaz-Canel!” Damas de Blanco shout as they are beaten by police \[VIDEO\]\]](#), May 9, 2018] Berta Soler was reportedly violently detained on September 23, 2018 by two security guards, who injured her shoulder and caused a blood vessel to burst in her eye [IACHR. [Hearing on Criminalization of social activists and journalists in Cuba](#), 169<sup>th</sup> Session, October 1, 2018].

<sup>210</sup> For example, in June 2018 police reportedly arrested Leticia Ramos Herrería's son, Randy Montes de Oca Ramos, on charges of “disobedience, resistance, and contempt of public authority.” He was reportedly intercepted by police who told him he had to go with them. When he replied that he had to give something to Ramos Herrería first, he was arrested. According to Ramos Herrería, “This is yet another act of retaliation” against her, intended to make her leave the country and Ladies in White. ICLEP. June 5, 2017. [Damas de Blanco denuncian un incremento del acoso a sus hijos](#) [Ladies in White condemn increased harassment of their children]; Diario de Cuba. [Damas de Blanco denuncian un incremento del acoso a sus hijos](#) [Ladies in White condemn increased harassment of their children], June 5, 2017.

<sup>211</sup> See IACHR. PM 354-12. *Sonia Garro. Cuba*, November 8, 2012; PM 34-13. *X. Cuba*, February 14, 2013; [Resolution 6/13](#), PM 264-13. *Ladies in White. Cuba*, October 28, 2013; PM 264/13. *Ladies in White. Cuba*, Extension, May 12, 2014.

<sup>212</sup> According to Amarilis Cortina Rey, the wife of Fornaris and a member of the APLP's board of directors, DSE officials explained that the search was conducted for the purpose of “gathering information on the activities of the APLP.” CubaNet. [Policía registra la sede de la Asociación Pro Libertad de Prensa en Cuba](#) [Police search headquarters of the Association for Press Freedom in Cuba], May 30, 2018; 14yMedio. [La policía incauta los implementos de trabajo de la APLP tras un registro en su sede \[Police seize APLP's work materials after search of its headquarters\]](#), May 30, 2018.

140. It was also reported that women advocates have been frequent victims over the years of physical assault when exercising their freedom of expression.<sup>213</sup> For example, in October 2017, several women from *Movimiento Dignidad* [the Dignity Movement] were reportedly detained in operations organized by State Security and prevented from moving freely.<sup>214</sup> In this context, it has been necessary for the IACHR to grant a number of precautionary measures on behalf of human rights defenders in order to protect their lives and personal integrity.<sup>215</sup>

141. The freedom to associate with others is a fundamental right, linked to the existence of any democratic society, recognized in Article XXII of the American Declaration. It protects the freedom to associate *inter alia* for ideological and political purposes, without the intervention of authorities that would limit or hinder its exercise, and not exclusively for the purpose of forming a trade union or professional organization.<sup>216</sup> The protection afforded by this right extends to all activities that are essential to its effective functioning, including the ability to express opinions and disseminate information in furtherance of the aims of the associated group.<sup>217</sup> In this regard, the UN Human Rights Committee has stated that “the existence and operation of associations, including those which peacefully promote ideas not necessarily favorably received by the government or the majority of the population, is a cornerstone of a democratic society.”<sup>218</sup>

142. The Commission has recognized the interdependent relationship that exists between the right to freedom of expression and the right to freedom of association, and in particular the instrumental role that the right to freedom of expression plays in the exercise of other rights.<sup>219</sup> The IACHR has been emphatic in affirming that members of associations, particularly those committed to defending human rights, should enjoy full freedom of expression and, in particular, the freedom to be openly critical of government policies and practices.<sup>220</sup>

143. Thus, and as it emerges from the well-established jurisprudence of the bodies of the inter-American system<sup>221</sup> and the universal human rights system,<sup>222</sup> the right to freedom of expression of the members of an

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<sup>213</sup> IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 314-315; 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. 230-261; AI. [Report: Cuba 2017/2018](#); AI. ["Your Mind is in Prison": Cuba's Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. P. 11.

<sup>214</sup> For several months, the regime has reportedly prevented them from leaving the town of Palmarito de Cauto, in Santiago de Cuba. The members of the Dignity Movement, led by Belkis Cantillo Ramírez, have reportedly been under “strong pressure” from State Security since the movement became known 10 months ago. [Diario de Cuba. [Detenidas activistas del Movimiento Dignidad que llevan diez meses cercadas en un pueblo](#) [Dignity Movement activists arrested after being confined to village for ten months]. October 22, 2017; Diario de Cuba. [Detenidas una veintena de activistas del Movimiento Dignidad](#) [Twenty Dignity Movement activists arrested]. May 5, 2017; Martí Noticias. [Detienen a opositoras de Movimiento Dignidad en Santiago de Cuba](#) [Dignity Movement opposition activists arrested in Santiago de Cuba]. October 22, 2017; 14yMedio. [Activistas del Movimiento Dignidad denuncian "represión y detenciones arbitrarias"](#) [Dignity Movement activists condemn “repression and arbitrary detentions”]. October 23, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 90]. Through a statement released in October, they condemned the repression and arbitrary arrest of their members, and demanded “the citizens’ right to exercise freedom of movement and communication” [IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 90].

<sup>215</sup> These include the precautionary measures issued on behalf of: Juana Mora Cedeño and Mario José Delgado González, defenders of the rights of LGBTQI people, in July 2016 [IACHR. [Resolution 37/2016](#) [in Spanish] PM 236-16. *Matter of Juana Mora Cedeño et al, regarding Cuba*. July 3, 2016]; Sirley Ávila León, in September 2015 [IACHR. [Resolution 31/2015](#) [in Spanish] PM 428/15. *Matter of Sirley Ávila León regarding Cuba*. September 2, 2015]; Jose Ernesto Morales Estrada, in March 2018; and Iván Hernández Carrillo, in October 2013 [IACHR. [Resolution 5/2013](#). PM 245-13. *Matter of Iván Hernández Carrillo regarding Cuba*. October 28, 2013].

<sup>216</sup> IACHR. Complaint before the I/A Court H.R. Case of Manuel Cepeda Vargas (Case 12.531). Colombia. November 14, 2008. Para. 93.

<sup>217</sup> IACHR. Report No. 27/15. Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75.

<sup>218</sup> UN Human Rights Committee. Viktor Korneenko, et al. CCPR/C/88/D/1274/2004. 10 November 2006. Para. 7.3.

<sup>219</sup> IACHR. Report No. 27/15. Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75.

<sup>220</sup> In this regard, see: IACHR. [Press Release](#). September 17, 2015. UN and IACHR experts condemn moves to dissolve prominent organization in Ecuador.

<sup>221</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; I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001; I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004; I/A Court H.R. *Case of Kimel v. Argentina*. Merits, Reparations, and Costs. Judgment of May 2, 2008; IACHR, Report on the *Compatibility of "Desacato" Laws with the American Convention on Human Rights*, OEA/ser L/V/II.88, Doc.9 rev (1995). Pp. 210-223. Annex D; IACHR. Arguments before the Inter-American Court in the case of Herrera Ulloa v. Costa Rica. Transcribed in: I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July

association may not be subject to prior control by the State and may only be subject to subsequent liability, provided that it is not abusive or arbitrary. In order not to be so, they must be provided for in the law, pursue a legitimate aim, and meet the requirements of suitability, necessity, and proportionality.<sup>223</sup> When examining the validity of restrictions imposed, it should be borne in mind that the freedom to express opinions and disseminate information of a political nature is absolutely central to the right protected by Article IV of the American Declaration.<sup>224</sup>

144. The Office of the Special Rapporteur is particularly concerned to note that women activists have on several occasions been harassed or arrested following their involvement with UN human rights bodies or the IACHR.<sup>225</sup> The IACHR stresses that human rights bodies are responsible for monitoring compliance with the Cuban State's international obligations in this area. However, human rights supervision or monitoring is not accepted as a lawful activity; on the contrary, it can be classified as treason and is stigmatized and illegal.<sup>226</sup> In the past, the Commission has expressed its concern and repudiation of such acts of retaliation, and reminds Cuba that Rule 63 of its Rules of Procedure provides that States shall “grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission.”

### iii. Political dissidents

145. The IACHR and the Office of the Special Rapporteur have consistently observed a serious practice of repressing political dissidents on account of their condemnation of the lack of political rights and freedoms or simply for trying to express an opinion and participate in political affairs. The most commonly reported forms of harassment against dissidents include internal deportations, summonses to police centers, searches of their homes or of the offices of political organizations, and being prevented from attending meetings of their organizations. There have also been reports of the use of physical assault, vandalism, and acts of repudiation, among others, to harass Cuban dissidents.<sup>227</sup> In Cuba, the law does not recognize the plurality of political parties, and any organization or campaign by candidates outside the PCC is illegal.

146. Methods of harassing political dissidents include expulsion from educational institutions.<sup>228</sup> For instance, in April 2017 journalism student Karla María Pérez González was reportedly expelled from the Central University of Las Villas for belonging to the opposition movement *Somos+*, a Cuban civil society organization that reportedly promotes, among other things, multiparty politics, the independent press, and open elections.<sup>229</sup> In May, Pérez González reported being the victim of a systematic attack by journalists from the official media, pro-government bloggers, and university authorities.<sup>230</sup>

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2, 2004; IACHR. Report No. 103/13. Case 12.816. Merits. Adán Guillermo López Lone, et al. Honduras. November 5, 2013; IACHR. Report No. 27/15. Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015.

<sup>222</sup> UN Human Rights Committee. General Comment No. 34: Article 19: Freedoms of opinion and expression. September 12, 2011.

<sup>223</sup> IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). October 21, 2006.

<sup>224</sup> IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Ppara. 100; IACHR. Annual Report 1994. Chapter V. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>225</sup> This occurred, for example, in relation to Laritza Diversent, Leticia Ramos, and Berta Soler. IACHR. [IACHR Concerned over Treatment of Human Rights Defenders in Cuba](#). Press Release 127/16. September 6, 2016; 14yMedio. [El Gobierno prohíbe a Berta Soler salir de Cuba](#) [Government forbids Berta Soler from leaving Cuba], March 21, 2017. IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 92.

<sup>226</sup> IACHR. [Hearing on the Situation of Freedom of Expression in Cuba](#). 119<sup>th</sup> Session. March 2, 2004.

<sup>227</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 421, 434, 437- 439, 443; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 435; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 324, 326, 346.

<sup>228</sup> AI. [“Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. P. 5.

<sup>229</sup> According to the available information, her classmates decided that she should be expelled, a decision that was ratified by the school's University Student Federation (FEU). In the statement it released, the FEU asserted that she was “a member of an illegal and counterrevolutionary organization, contrary to the principles, objectives, and values of the Cuban Revolution.” El País. April 19, 2017. [Una universidad cubana expulsa a una alumna de 18 años por disidente](#) [Cuban university expels 18-year-old student for being a dissident]; BBC Mundo. April 19, 2017. [“Me expulsaron por no comulgar con las ideas comunistas”: Karla María Pérez, la estudiante de periodismo a la que echaron de una universidad en Cuba por ser de un grupo disidente](#) [“I was kicked out for not sympathizing with

147. The systematic use of unjustified restrictions on activists' travel abroad was also reported. In July 2017, for instance, 12 dissidents were reportedly detained at the airport while attempting to travel to civil society meetings in other countries.<sup>231</sup> According to publicly available information, in 2016, four Cuban opposition activists were prevented from traveling to Puerto Rico to attend the Second National Cuban Conference. Among them was Iván Hernández Carrillo, journalist and General Secretary of the Confederation of Independent Workers of Cuba. Mr. Hernandez is a beneficiary of precautionary measures granted by the IACHR. The Commission received information indicating that he is still on parole as a result of the "Black Spring" of March 2003. According to this information, on July 31, 2016, upon his return to Havana from an authorized trip abroad, Iván Hernández was violently beaten, arrested, and held at the airport until the following day.<sup>232</sup>

148. According to the information received, dissidents have been harassed not only by State Security forces but also by citizens organized in neighborhood watch groups, designated as Committees for the Defense of the Revolution. The function of these organizations is to monitor, report, and punish "antisocial behavior"—that is, opposition activity—through allegedly spontaneous "acts of repudiation."<sup>233</sup>

149. The information available indicates that the government reportedly retaliated against those who expressed their intention to run for office in the 2018 elections in Cuba. Limitations on pluralism in the exercise of political rights and freedom of expression in the country were reportedly imposed, both legally and extra-legally, as this Office discussed in its 2017 Annual Report.<sup>234</sup> Such acts reportedly included intimidation and smear campaigns against candidates from the various platforms seeking to run in the upcoming municipal elections,<sup>235</sup> and the government's thwarting of the nomination of independent candidates.<sup>236</sup> Independent candidates were also arbitrarily detained and questioned, among other acts of intimidation.<sup>237</sup>

150. The Inter-American Commission has underscored that there is a "direct relationship between the exercise of political rights and the concept of democracy as a form of organization of the State." In the Inter-American System, the relationship between human rights, political rights, and democracy is embodied in the Inter-American Democratic Charter, which states that: "Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government."

## B. Arrests

151. The Office of the Special Rapporteur reiterates the existence in Cuba of a systematic pattern of arbitrary detention and imprisonment for the exercise of the right to freedom of expression in its various manifestations and expressions of opinion.<sup>238</sup> Multiple reports alleged arbitrary short and long-term

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communist ideas": Karla María Pérez, journalism student expelled from Cuban university for being part of a dissident group]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 68.

<sup>230</sup> Cuba en Miami. [Gobierno de Cuba inicia campaña mediática contra Karla Pérez \[Cuban government launches media campaign against Karla Perez\]](#). May 9, 2017; El Nuevo Herald. [La joven expulsada de la universidad en Cuba denuncia una campaña mediática en su contra \[Young woman expelled from Cuban university condemns media campaign against her\]](#). May 8, 2017; CubaNet. [Joven expulsada de la universidad denuncia campaña mediática en su contra \[Young woman expelled from university condemns media campaign against her\]](#). May 9, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 68.

<sup>231</sup> Civicus & CCDHRN. [Joint Submission to the UN Universal Periodic Review](#). October 5, 2017. P. 8.

<sup>232</sup> IACHR. [IACHR Concerned over Treatment of Human Rights Defenders in Cuba](#). Press Release No. 127/16. September 6, 2016.

<sup>233</sup> Civicus & CCDHRN. [Joint Submission to the UN Universal Periodic Review](#). October 5, 2017. P. 9.

<sup>234</sup> IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 107.

<sup>235</sup> Cuban Human Rights Observatory [[Observatorio Cubano de Derechos Humanos](#)] (OCDH). September 1, 2017. [Casi 500 detenciones en agosto en Cuba](#) [Nearly 500 arrests in Cuba in August]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 109.

<sup>236</sup> IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Paras. 109-110.

<sup>237</sup> IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 111.

<sup>238</sup> See *inter alia* IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 421- 440; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur](#)

detentions (from hours to days), and other mass arrests involving the use of violence.<sup>239</sup> Arrests are frequently made by individuals wearing civilian clothing, in cars with no license plates, and without a warrant.<sup>240</sup> Detainees are not usually informed of the reasons for their detention, and are kept in vehicles or facilities under circumstances of great uncertainty.<sup>241</sup>

152. In addition to detention under the aforementioned repressive rules—whose ambiguous formulation is inconsistent with the strict requirements of the right to freedom of expression—arbitrary arrests for short periods of time without trial are also used frequently as an intimidation tactic.<sup>242</sup> This practice is routinely used not only against journalists (section III.C) but also against artists, political dissidents, human rights defenders, and others who express ideas and opinions in terms critical of the Cuban government and its institutions. According to the Cuban Commission for Human Rights and National Reconciliation [*Comisión Nacional de Derechos Humanos y Reconciliación Nacional*] (CCDHRN), Cuba was said to have a total of 120 individuals recognized as “prisoners for political reasons,” as of May 31, 2018.<sup>243</sup> It is worrisome to note that, according to this same organization, there are 21 such persons who have been deprived of their liberty for between 15 and 27 years.<sup>244</sup>

153. In particular, arbitrary arrests are commonly used to repress artists who express ideas critical of the Government.<sup>245</sup> For example, Danilo Maldonado “El Sexto” was reportedly arrested in Havana in November 2016 for property damage.<sup>246</sup> This happened after he painted graffiti on a wall of the Habana Libre Hotel and on the façade of two other government buildings in allusion to the death of former President Fidel Castro, which read “He’s gone.”<sup>247</sup> Maldonado was reportedly released in January 2017, after nearly two months in detention without any charges being brought against him,<sup>248</sup> despite the fact that the offense he was accused of is punishable by a fine, not by deprivation of liberty.<sup>249</sup> Another case is that of graffiti artist Yulier Rodríguez, reportedly detained for 48 hours in August 2017 when he was trying to paint a mural in downtown Havana.<sup>250</sup> Artist Tania Bruguera was also arrested numerous times, including in December

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[for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paras. 433, 439; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 314-327.

<sup>239</sup> Recent OCDH figures indicate that 3,594 arbitrary detentions were reported in the first eight months of 2017. OCDH. June 5, 2017. [2.149 detenciones arbitrarias desde enero en un claro recrudecimiento de técnicas represivas](#) [2,149 arbitrary arrests since January in a clear intensification of repressive techniques]; OCDH. September 1, 2017. [Casi 500 detenciones en agosto en Cuba](#) [Nearly 500 arrests in Cuba in August]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 80.

<sup>240</sup> IACHR. [Hearing on the Human Rights Situation of Journalists in Cuba](#). 150<sup>th</sup> Session. March 25, 2014; IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>241</sup> IACHR. [Hearing on the Human Rights Situation of Journalists in Cuba](#). 150<sup>th</sup> Session. March 25, 2014; IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>242</sup> IACHR. Office of the Special Rapporteur. Meeting of June 5, 2018.

<sup>243</sup> CCDHRN. [Lista parcial de condenados o procesados en cuba por razones políticas en esta fecha](#) [Partial list of persons convicted or tried in Cuba for political reasons to date], June 11, 2018.

<sup>244</sup> CCDHRN. [Lista parcial de condenados o procesados en cuba por razones políticas en esta fecha](#) [Partial list of persons convicted or tried in Cuba for political reasons to date]. June 11, 2018.

<sup>245</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 458; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paras. 427-443; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 167.

<sup>246</sup> The information at hand shows that Maldonado has been detained repeatedly in the past. IACHR. Office of the Special Rapporteur for Freedom of Expression, [The Office of the Special Rapporteur Expresses Concern over the detention in Cuba of artist Danilo Maldonado, known as “El Sexto”](#). Press Release R196/16. December 23, 2016.

<sup>247</sup> IACHR. [Annual Report 2016. 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. Para. 458.

<sup>248</sup> El País. [Un disidente cubano es liberado tras pasar dos meses en prisión](#) [Cuban dissident released after two months in prison], January 23, 2017; Agencia EFE. [Las autoridades cubanas liberan a “El Sexto” tras casi dos meses en prisión](#) [Cuban authorities release “El Sexto” after nearly two months in prison]. January 21, 2017.

<sup>249</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Office of the Special Rapporteur Expresses Concern over the detention in Cuba of artist Danilo Maldonado, known as “El Sexto”](#). Press Release R196/16. December 23, 2016.

<sup>250</sup> The artist was reportedly released after the authorities made him sign an agreement to erase his paintings, with a warning that he would be punished for property damage. IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 69.

2014,<sup>251</sup> May 2015,<sup>252</sup> and July 2015.<sup>253</sup> It was also recently reported that in August 2018, Yanelys Nuñez and Luis Manuel Otero Alcántara were arrested on the street five hours before an event to protest Decree 349 (IV.A.i).<sup>254</sup>

154. The Office of the Special Rapporteur reiterates its concern over cases such as those mentioned above, in which measures are imposed to deprive a person of his or her liberty based on the dissemination of ideas through graffiti, which is nothing more than the free expression of a political opinion about events of obvious public relevance like those mentioned earlier. It is a critical opinion that falls within the scope of freedom of thought and that people have the right to express, and the public to receive, pursuant to the right to freedom of opinion guaranteed in article IV of the American Declaration. In this case, the property damage that may have been caused is of lesser importance and can eventually be remedied in other ways that are less harmful to the right to freedom of expression.<sup>255</sup>

155. Arbitrary arrests have been used as a method of intimidation and harassment against activists.<sup>256</sup> The Commission learned, for example, of the situation of lawyer José Ernesto Morales Estrada, who according to the information received, had been arbitrarily detained some 90 times between 2014 and 2017.<sup>257</sup> Other reported cases include the detention in August 2016 of Laritza Diversent, the Director of *Cubalex*, for some two hours upon her return from Geneva,<sup>258</sup> among other members of that organization.<sup>259</sup> Lia Villares, an independent activist, was reportedly held in May 2017 for 3 hours by a police officer.<sup>260</sup> It was also reported that dissident photographer Claudio Fuentes was arrested in July 2018 and held for 27 hours incommunicado at the Cotorro police station.<sup>261</sup>

156. It was also reported that, in May 2017, Daniel Llorente, known as “the dissident with the flag,” was arrested after running through the Plaza de la Revolución with the United States flag.<sup>262</sup> Llorente was reportedly accused of resistance and public disorder, held in police custody for a month, and subsequently transferred to the Havana Psychiatric Hospital, where he remains confined. It was reported that Llorente was

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<sup>251</sup> She was reportedly arrested because she had invited Cubans to speak at an open microphone in the Plaza de la Revolución to offer their opinions on the reestablishment of relations between Cuba and the United States. Along with the artist, other people who tried to participate in the event were arrested. The authorities confiscated the passport of the artist, who had lived abroad in recent years.

<sup>252</sup> She is said to have been arrested by State agents after staging a performance called 100 hours of reading the book “The Origins of Totalitarianism,” held during the Havana Biennial. Hours later she was released.

<sup>253</sup> She was reportedly arrested along with Claudio Fuentes, the editor of *Estado de Sats*, dissident Jorge Luis García “Antúnez,” and Berta Soler, a member of the Ladies in White movement, when they attended mass at the Santa Rita Church. Several dozen human rights activists at the scene, including Angel Moya, Egberto Escobedo, blogger Agustín López, *Hablemos Press* reporters, and journalist Serafín Morán, were also arrested by plainclothes police and State Security agents.

<sup>254</sup> DDC. [San Isidro versus Seguridad del Estado](#) [San Isidro versus State Security]. August 13, 2018.

<sup>255</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Office of the Special Rapporteur Expresses Concern over the detention in Cuba of artist Danilo Maldonado, known as “El Sexto”](#). Press Release R196/16. December 23, 2016.

<sup>256</sup> AI. “Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life. 2017. P. 11; AI. [Cuba: Human Rights at a Glance](#). 2015.

<sup>257</sup> IACHR. Resolution 22/2018. Precautionary Measure No. 954-16. *Matter of José Ernesto Morales Estrada concerning Cuba*. March 18, 2018. Para. 4.

<sup>258</sup> IACHR. [IACHR Concerned over Treatment of Human Rights Defenders in Cuba](#). Press Release No. 127/16. September 6, 2016

<sup>259</sup> IACHR. [Resolution 13/2015](#). PM 96-15. *Matter of members of Cubalex concerning Cuba*. April 22, 2015; [Resolution 56/2016](#) [in Spanish]. PM 96-15 Extension, *Matter of members of Cubalex concerning Cuba*. November 14, 2016.

<sup>260</sup> IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 92.

<sup>261</sup> He was reportedly arrested along with his partner, who was released three hours later. In June, the photographer was also reportedly arrested and threatened with imprisonment following a call for “civil disobedience” by a large group of internal and exiled dissidents. Fuentes was a member of the independent project *Estado de Sats* and of the Forum for Rights and Freedoms [*Foro por los Derechos y Libertades*] (ForoDyL). DDC. [El régimen libera al fotógrafo Claudio Fuentes tras más de 24 horas de arresto](#) [Regime releases photographer Claudio Fuentes after more than 24 hours in custody]. July 12, 2018.

<sup>262</sup> This was not the first time Daniel Llorente had reportedly staged public actions. CubaNet. [‘Estoy encerrado con candado’, dice desde Mazorra el cubano Daniel Llorente](#) [“I’m locked up with a padlock,” says Cuban Daniel Llorente from Mazorra]. June 6, 2017; Martí Noticias. [Daniel Llorente vuelve a manifestarse con bandera de EEUU, ahora en marcha por el 1 de mayo](#) [Daniel Llorente once again demonstrates with the US flag, now marching for May Day]. May 1, 2017; El País. [Cuba encierra en un psiquiátrico a un opositor](#) [Cuba locks up dissident in psychiatric hospital]. June 27, 2017; ICLEP. June 3, 2017. [Autoridades cubanas quieren tildar de loco al hombre de la bandera](#) [Cuban authorities want to call the man with the flag crazy].

subjected to electric shocks, radiation, isolation, forced labor, psychotropic drugs, and periodic beatings.<sup>263</sup> The Commission has also underscored the arbitrary arrest and detention of women human rights defenders.<sup>264</sup> In October 2017, for example, operations organized by State Security detained several women from the Dignity Movement.

157. In particular, it was reported that the authorities made between 380 and 400 allegedly arbitrary arrests of members of the Patriotic Union of Cuba (UNPACU) between December 2016 and August 2017, most of which involved excessive use of force.<sup>265</sup> In 2018, UNPACU denounced that several of its activists had been arrested near the upcoming elections in Cuba.<sup>266</sup> According to UNPACU leader José Daniel Ferrer, by July 2018, 55 members of the organization were in custody, most accused of public disorder, “pre-criminal social dangerousness,” and contempt of public authority.<sup>267</sup> Particularly worrisome is the situation of Tomás Núñez, a detained UNPACU member who has reportedly—as of October 1, 2018—been on a life-threatening 48-day hunger strike.<sup>268</sup>

158. It bears recalling that the arbitrary deprivation of liberty of dissidents and political opponents for expressing ideas, opinions, and information, or for exercising their right to peaceful protest, is a systematic practice that dates back decades, as the IACHR has verified through various mechanisms. Within the framework of the petition and case system, the IACHR has decided numerous cases between 1973 and 2018 that reflect this same pattern.<sup>269</sup> In its annual reports, it has also documented the use of arbitrary arrests of political dissidents as a common pattern.<sup>270</sup> In these cases the IACHR established that arrests and criminal prosecutions are targeted at dissidents in an attempt to sway their ideas.<sup>271</sup>

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<sup>263</sup> DDC. [El poco conocido Gulag del Caribe](#) [The little-known Caribbean Gulag]. August 16, 2018; DDC. [La Fundación Víctimas del Comunismo condena 'el uso del régimen de la psiquiatría punitiva de estilo soviético'](#) [Victims of Communism Foundation condemns “the use of the Soviet-style punitive psychiatric system”]. October 29, 2017.

<sup>264</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 432.

<sup>265</sup> IIRIDH. [Request for hearing on human rights violations of Unpacu members](#). August 1, 2017.

<sup>266</sup> In February, the detained activists included Gilberto Hernández Lago, Alexander Verdecia Rodríguez, Carlos Alberto Rojas, Yuri Sollet Soto, and José Antonio López Piña. Verdecia Rodríguez was allegedly arrested on charges of putting up anti-government posters. [Martí Noticias. [UNPACU denuncia alza de represión mientras se acercan elecciones en Cuba \[UNPACU condemns crackdown as Cuban elections approach\]](#). February 12, 2018]. In April 2018, Zaqueo Báez Guerrero, Ismael Boris Renhi, Alberto de Caridad Ramírez Baró, Alberto Antonio Ramírez Odio, and Leonardo Ramírez Odio were reportedly arrested. [Diario de Cuba. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco \[Hours before May Day, raids and arrests of UNPACU and Ladies in White activists\]](#). April 30, 2018].

<sup>267</sup> Martí Noticias. [Denuncian violencia contra miembros de UNPACU en prisión](#) [Reports of violence against UNPACU members in prison]. July 1, 2018.

<sup>268</sup> IACHR. [Hearing on Criminalization of social activists and journalists in Cuba](#). 169<sup>th</sup> Session. October 1, 2018.

<sup>269</sup> In 1973 Cases 1604 - Pedro Luis Boitel; 1721 - Eloy Gutiérrez Menoyo, Hubert Matos, Pedro Luis Boitel, César Paez, T. Lamas, A. Gamis, L. Blanco, J. Pujal, J. Valls y O. Figueroa; and 1726 - Oriol Acosta y García et al.; in 1975, Case 1805 - political prisoners in Cuba, Case 1834 - political prisoners in Cuba, and Case 1847 - Pablo Castellanos and political prisoners held in “La Cabaña,” Havana; in 1981, Resolution No. 39/81, Case 2299 - Ángel Cuadra Landrove, Resolution No. 40/81, Case 3347 - Tomás Fernández Travieso, Resolution No. 41/81, Case 3496 - Ernesto Arraigotia, Resolution No. 42/81, Case 3992 - Clara Abrahante, Resolution No. 43/81, Case 3956 - Eleno Oviedo, Resolution No. 44/81, Case 3884 - Alberto Fibia González et al., Resolution No. 45/81, Case 4402 - 114 Political Prisoners, Resolution No. 46/81, Case 4429 - 170 Political Prisoners held in the “Combinado Del Este” Prison, Resolution No. 47/81, Case 4677 - Alemany Pelaez, Jorge, Alonso Guillot, Ramón, Brito García, Juan, Iglesias, Ramirez, Manuel, Lam Rodríguez, Roberto, Piedra Bustarviejo, Antonio, Pinera, Machin, Agustín, Bacallao, Pedro, Bermúdez Esquivel, Mario, Beravides Ballesteros, Eulalio, Burias Acosta, Luis, Chapi Yaniz, Francisco, Estevez De Arcos, Guillermo, Pérez Valdes, Roberto, Rodríguez De Castro, Ricardo, Rodríguez, Edelso, Samoano, Gustavo C., Arguelles, Ramón, Campbell, Francisco B., Lazo De Cuba, Carlos, Antunez, Telesforo R., Becerra, Rafael, Bergueiro, Armando, Capote Oropesa, Alfredo, Delgado Hernández, Sandalino, Cerdena Valdes, Benigno, Concepción, Julio, Córdoba Aguiar, Julio; and Resolution No. 48/81, Case 7486 - Melvin Lee Bailey, Robert Bennet, Walter Lewis Clark, William Dawson John Fekete, Agustin Householder, Lance Fyfe, Jon Gaynor, Douglas Miklas, Lewis Douglas Moore, William Nelson, Michael Seitler, Mark Schierbaum, Dale Stanhope, Ythomas White; Resolution No. 49/81, Case 7455 - Eduardo Prieto Blanco and Alberto Prieto Blanco. Available at: <http://www.oas.org/en/iachr/decisions/merits.asp>.

<sup>270</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 434-438; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 439; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015, P. 318-345.

<sup>271</sup> IAPA. [Report to the Midyear Meeting 2014](#).

159. The IACHR has insisted that, in light of democratic principles, the exercise of freedom of expression and association cannot constitute a legitimate reason for the deprivation of a person's liberty, and that such deprivation of liberty results in arbitrary detention. The capture, imprisonment, and/or criminal prosecution of a person for the mere act of having expressed opinions that annoy the authorities is expressly prohibited by inter-American standards on freedom of expression.<sup>272</sup> The IACHR additionally notes that under Articles I, XXV, and XXVI of the American Declaration, the State must have a legal basis to justify the detention of any person, and to keep that person in custody, whether or not he or she is subject to criminal proceedings. Those provisions require that any arrest, regardless of duration, must be carried out pursuant to a judicial warrant or, in its absence, that the arrest be due to a circumstance of manifest criminal activity or flagrancy. In all cases, detainees are entitled to have the legality of their detention ascertained without delay by a court, as established in Article XXV of the Declaration.

160. In addition, the conditions of detention reported are openly contrary to the relevant international standards.<sup>273</sup> The Office of the Special Rapporteur must reiterate its profound concern over the critical conditions of incarceration to which detainees are subjected, in this case for political crimes.<sup>274</sup> The right of detainees to humane treatment while in the custody of the State is a universally accepted norm of international law. The American Declaration contains several provisions in this regard, including Articles I, XXV, and XXVI.

161. The IACHR has also established that prolonged isolation and prolonged solitary confinement and coercive incommunicado detention, by themselves, are forms of cruel and inhuman treatment, harmful to the mental and emotional integrity of the person and to every detainee's right to respect for the inherent dignity of the human being.<sup>275</sup> The isolation of persons who have not yet been convicted is particularly problematic, as it imposes punitive and potentially harmful conditions on persons who are innocent until proven guilty. It can also serve to coerce them and force them to self-incriminate or to provide some kind of information.<sup>276</sup>

### C. Criminal proceedings and convictions

162. In Cuba, criminal law is misused as a mechanism to impose subsequent liability on persons who express opinions, information, or criticism on matters of public interest, or that refer to government authorities or officials. The information received by the IACHR and the Office of the Special Rapporteur through its various mechanisms shows that this practice is widespread and has been in use for several

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<sup>272</sup> IACHR. Report No. 71/15. Case 12.879. Merits. Vladimir Herzog, et al. Brazil. October 28, 2015. Para. 149; IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 133.

<sup>273</sup> In particular, it was reported that "In addition to severe beatings, political prisoners suffer psychological harassment from their jailers and bosses. They are subjected to spoiled foods, untreated diarrhea outbreaks, denial of medications, a staggering lack of hygiene, overcrowding, bandages for poultices in the same dirty jars in which they receive food, mites, bedbugs, mosquitoes, mice, and cockroaches. They are also denied visits, and punished for refusing to do certain 'favors,' such as spying on another inmate or beating him as punishment, or stealing his belongings. They also have bladed weapons planted on them as an excuse to punish them." [DDC. [El poco conocido Gulag del Caribe](#) [The little-known Caribbean Gulag]. August 16, 2018]. According to available information, "It is a routine State Security procedure to keep detained opponents incommunicado and not to provide information even to family members" [DDC. [El régimen libera al fotógrafo Claudio Fuentes tras más de 24 horas de arresto](#) [Regime releases photographer Claudio Fuentes after more than 24 hours in custody]. July 12, 2018]. According to *Archivo Cuba*, between 2008 and 2017, there were 204 reported deaths in prisons and detention centers. Three of them were political opponents Adrián Sosa, of the Sats State project; Lady in White Ada María López, and UNPACU activist Hamell Mas Hernández [14ymedio. [Persisten las ejecuciones extrajudiciales en la Isla, según Archivo Cuba](#) [Extrajudicial executions persist on the island, according to *Archivo Cuba*]. August 27, 2018. DDC. [Hay una 'matanza sistemática' en las prisiones de la Isla, denuncia Archivo Cuba](#) [*Archivo Cuba* condemns "systematic massacre" in the island's prisons]. August 28, 2018].

<sup>274</sup> 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. 135; IACHR. [Annual Report 2006](#). OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Paras. 66-70.

<sup>275</sup> IACHR. *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 161; IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 145.

<sup>276</sup> IACHR. Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. Doc. 46/13 December 30, 2013. Para. 280; IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 145.

decades.<sup>277</sup> Other organizations have also noted that the misuse of the criminal law constitutes a pattern that hinders freedom of expression.<sup>278</sup>

163. The Office of the Special Rapporteur reiterates its special concern at the recent upsurge in the criminalization of academics, journalists, artists, and activists, through the application of criminal offenses that penalize criticism.<sup>279</sup> The cases reported in 2018 include the criminal conviction and imprisonment of Doctor of Biological Sciences Ariel Ruiz Urquiola, for the crime of contempt of public authority.<sup>280</sup> According to public information, this conviction is related to the fact that on May 3, 2018, officials from the Ministry of the Interior's Forest Ranger Corps entered the lands that Ruiz Urquiola was reportedly using in Viñales National Park, in order to ask him to demonstrate ownership of his work instruments and show them the legal permits for the activities he was carrying out. The officials reportedly refused to show official identification, so the biologist referred to them as "rural guards," a term that is said to have a negative connotation in Cuba. The same day, Ruiz Urquiola was reportedly arrested and charged with having committed the crime of "contempt of public authority" against the forest rangers. In May 2018, he was reportedly sentenced to a year in prison by the Viñales Municipal Court, in a summary trial, for the crime of contempt of public authority. The conviction was upheld on appeal. On July 3, he was reportedly freed on conditional release [*licencia extrapenal*] for health reasons, after he went on a hunger and thirst strike in protest.<sup>281</sup>

164. It was also reported that at least five women members of the Ladies in White have either been convicted or currently awaiting trial for public activities: Marta Sánchez Gonzales, sentenced to 5 years; Nieves Caridad Matamoros González, to 1 year and 6 months; Aymara Nieto Muñoz, awaiting trial; Yolanda Santana Ayala, sentenced to 1 year and 4 months; Xiomara de las Mercedes Cruz, sentenced 1 year and 4 months.<sup>282</sup> Other cases include the conviction of Eduardo Cardet Concepción, coordinator of the Christian Liberation Movement (MCL), who has been in prison for more than a year.<sup>283</sup> The judgment was upheld on appeal and, according to the information available, between 2014 and 2016 Cardet had been detained several times for his activism against the regime.<sup>284</sup> On February 24, 2018, the IACHR granted precautionary measures on his behalf so that, among other things, the Cuban government would take the necessary measures to guarantee his life and personal integrity.<sup>285</sup> This in view of the fact that, being deprived of liberty

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<sup>277</sup> Cases of persons arbitrarily detained or prosecuted for political reasons reportedly totalled 6,424 in 2013 (an average of 536 per month), 8,899 in 2014 (741 per month), 8,616 in 2015 (718 per month), 9,940 in 2016 (827 per month), and 2,859 in the first half of 2017 (476 per month). Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 7.

<sup>278</sup> IAPA. [Report to the 73rd General Assembly 2017](#); AI. [Report: Cuba 2017/2018](#); AI. ["Your Mind is in Prison": Cuba's Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#) 2017, P. 11; AI. [Cuba: Human Rights at a Glance](#). 2015.

<sup>279</sup> IACHR. Office of the Special Rapporteur. [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for \*desacato\* laws in Cuba](#). Press Release R152/18. July 17, 2018.

<sup>280</sup> The Office of the Special Rapporteur expressed its serious concern over this criminal conviction in a press release in July 2018. IACHR. Office of the Special Rapporteur. [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for \*desacato\* laws in Cuba](#). Press Release R152/18. July 17, 2018.

<sup>281</sup> El Nuevo Herald. [Científico cubano es condenado a un año de cárcel por "desacato" a las autoridades](#). [Cuban scientist sentenced to one year in prison for "contempt" of authorities]. May 9, 2018; BBC. [Quién es Ariel Ruiz Urquiola, el científico cubano sentenciado a un año de cárcel por criticar a las autoridades](#). [Who is Ariel Ruiz Urquiola, the Cuban scientist sentenced to one year in prison for criticizing the authorities?]. July 6, 2018; AI. June 11, 2018. [Urgent Action - Environmental activist imprisoned](#); The Washington Post. [Ariel Ruiz Urquiola, un hombre libre en una sociedad presa](#) [Ariel Ruiz Urquiola, a free man in an imprisoned society]. July 9, 2018.

<sup>282</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

<sup>283</sup> In March 2017, Cardet was reportedly sentenced to three years in prison for the crime of "attack against a public authority." He was reportedly arrested on November 30, 2016, five days after Fidel Castro's death, after allegedly criticizing him in an interview during a national mourning period imposed by the Cuban government. IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018; 14yMedio. [Al dice que la condena a Cardet demuestra poca libertad de expresión \[AI Says Cardet's conviction shows little freedom of speech\]](#). March 22, 2017; El Confidencial/EFE. [Opositor cubano Cardet condenado a 3 años de cárcel acusado de una agresión](#) [Cuban oppositionist Cardet sentenced to 3 years in prison on charges of attacking public authority]. March 21, 2017; Martí Noticias. [Acción urgente de AI por Cardet recibe apoyo dentro y fuera de Cuba](#) [Urgent AI action for Cardet receives support within and outside Cuba]. June 10, 2018.

<sup>284</sup> As an example, in 2016 he was reportedly beaten, detained, and threatened with imprisonment by the police authorities upon his return to Cuba from the United States, where he had attended an MCL event, participating in an initiative to change Cuba's electoral law. Before his arrival, his wife had also been arrested and threatened.

<sup>285</sup> IACHR. [Resolution 16/2018](#). MC 39-18. *Eduardo Cardet Concepción. Cuba*. February 24, 2018 [in Spanish].

in a maximum-security prison, he has reportedly been attacked by other prisoners and, despite the injuries sustained, has not received adequate medical treatment.<sup>286</sup> The Office of the Special Rapporteur calls upon the State to immediately cease the violations of Mr. Cardet's human rights and, at the same time, notes with great concern that his sister, Miram Cardet Concepción, was prevented from leaving Cuba when she attempted to travel to attend the 169<sup>th</sup> session of the IACHR.<sup>287</sup>

165. Reports indicate that several members of UNPACU have been subjected to ongoing criminalization.<sup>288</sup> In July 2018, Eliecer Góngora Izaguirre was reportedly sentenced to 6 months in jail for refusing to pay a fine of 2000 pesos, imposed against him in April for distributing information about the “*Cuba Decide*” initiative and about UNPACU.<sup>289</sup> In addition, Zaqueo Báez, Ismael Boris Reñí, and María Josefa Acón Sardiñas were fined 1500 pesos for distributing discs and printed material in the streets in order to bring information to the Cuban people.<sup>290</sup> Ismael Boris Reñí reportedly already served a year in prison between 2016-2017, also for distributing discs and printed materials in the streets.<sup>291</sup> On August 18, 2017, the organization's coordinator, Jorge Cervantes García, was reportedly released on bail after spending three months in detention, accused of ongoing contempt of public authority, impersonation of a public official, and resistance.<sup>292</sup> Similarly, on August 23, Sánchez Romero was sentenced to 1 year and six months in prison following a summary trial; Martín Castellano was provisionally detained on charges of attack against a public authority, and Rodríguez Chacón was released.<sup>293</sup>

166. The tools that have been used thus far to criminalize the free expression of ideas protect a clear political objective.<sup>294</sup> The offenses to which the State has frequently resorted in order to imprison opponents relate mainly to offenses against the security of the State, such as external security, domestic security,

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<sup>286</sup> In July 2018, the Office of the Special Rapporteur expressed its concern over Eduardo Cardet's conviction. IACHR. Office of the Special Rapporteur. [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for \*desacato\* laws in Cuba](#). Press Release R152/18. July 17, 2018.

<sup>287</sup> IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169<sup>th</sup> Session. October 1, 2018.

<sup>288</sup> As for the most recent events, it was stated that, in June 2017, four Unpacu activists, two of them members of the Ladies in White, as well as seven members of the Orlando Zapata Tamayo Civic Action Group, were reportedly tried after more than a year awaiting trial. The first four activists were reportedly arrested after participating in a demonstration on April 15, 2016, in Havana's Parque de la Fraternidad and taken to detention centers. The other seven were reportedly arrested and released on bail after participating in a 2016 demonstration outside the Havana Capitol. In some cases, the Cuban regime was reportedly seeking jail time of up to three years.

Diario de Cuba. [El régimen pide condenas de hasta tres años de cárcel para 11 activistas](#) [Regime calls for up to three years in prison for 11 activists]. June 17, 2017.

<sup>289</sup> Martí Noticias. [Distribuyó información sobre Cuba Decide y ahora paga seis meses de cárcel](#) [Six months in jail for distributing information about *Cuba Decide*]. July 5, 2018.

<sup>290</sup> Martí Noticias. [Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?](#) [Citizen journalism and social networks: forbidden for opponents in Cuba?]. June 18, 2018.

<sup>291</sup> Martí Noticias. [Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?](#) [Citizen journalism and social networks: forbidden for opponents in Cuba?]. June 18, 2018.

<sup>292</sup> Unpacu. August 21, 2017. [Liberan bajo fianza al coordinador de UNPACU en Las Tunas, Jorge Cervantes después de tres meses tras rejas, con 39 días en huelga de hambre](#) [UNPACU coordinator in Las Tunas, Jorge Cervantes, released on bail after three months behind bars, with 39 days on hunger strike]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 85.

<sup>293</sup> Unpacu. [Uno de los principales líderes de UNPACU, Ovidio Martín Castellanos, en prisión 'provisional', acusado de un falso delito de 'atentado' por ser víctima de violenta golpiza de la policía política](#) [Prominent UNPACU leader, Ovidio Martín Castellanos, in “provisional” prison, accused of a false crime of “attack against a public authority” after a violent beating by the political police]. August 28, 2017; Martí Noticias. [Activista de UNPACU deberá esperar juicio en la cárcel](#) [UNPACU activist must await trial in jail]. August 29, 2017; Martí Noticias. [Opositor de UNPACU detenido el sábado condenado a prisión en juicio sumarísimo](#) [UNPACU opponent arrested on Saturday sentenced to prison in summary trial]. August 25, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 85.

<sup>294</sup> IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paras. 423, 441; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 306; 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. Paras. 225-260; IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 164; IACHR. [Annual Report 2003. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.118. Doc. 70 rev. 2. December 29, 2003. Para. 87.

domestic enemy, and so on. The State uses these offenses, indicated in the following table, to criminalize the exercise of freedom of expression under the guise of protecting State security.<sup>295</sup>

<b>Offense</b>	<b>Article</b>	<b>Criminal conduct</b>	<b>Penalty</b>
<b>Title I: Crimes against the security of the State</b>			
<b>Chapter I : Crimes against the external security of the State</b>			
<b>Acts against the independence or territorial integrity of the State</b>	91	In the interest of a foreign State, committing an act with the intent to cause damage to the independence of the Cuban State or the integrity of its territory	Deprivation of liberty from 10 to 20 years or death
<b>Espionage</b>	97.1	To the detriment of the security of the State, participating in, collaborating with, or maintaining relations with information services of a foreign State, or to provide them with reports, or to obtain or procure such reports in order to communicate them to the foreign State	Deprivation of liberty from 10 to 20 years or death
<b>Chapter II : Crimes against the domestic security of the State</b>			
<b>Sedition</b>	100	Riotously and having either expressly or tacitly agreed to disrupt the socialist order, and do so using violence; or disrupt the holding of elections or referenda, or obstruct compliance with any judgment, legal provision or measure issued by the government, or by a civil or military authority in the exercise of their respective functions, or refuse to obey them, or make demands, or refuse to carry out their duties	
<b>Enemy propaganda</b>	103.1	a) Inciting against the social order, international solidarity, or the socialist State, by means of verbal or written propaganda or in any other form; b) Making, distributing, or possessing propaganda of the kind described in the previous paragraph	Deprivation of liberty from 1 to 8 years
	103.2	Disseminating false news or malicious predictions that tend to cause alarm or discontent in the population, or public disorder	Deprivation of liberty from 1 to 4 years
	103.3	Using mass media to carry out the acts described in the previous sections	Deprivation of liberty from 7 to 15 years

<sup>295</sup> IACHR. *Hearing on the Situation of Freedom of Expression in Cuba*. 119<sup>th</sup> Session. March 2, 2004.

	103.4	Allowing mass media to be used for the purposes described in the previous paragraph	Deprivation of liberty from 1 to 4 years
<b>Dissemination of false news against international peace</b>	115	Disseminating false news with the purpose of disturbing international peace, or endangering the standing or credit of the Cuban State or its good relations with another State	Deprivation of liberty from 1 to 4 years

167. Nevertheless, a review of the charges applied by the authorities also shows that they make frequent use of charges alleging common crimes. These include the offenses of attack against a public authority, resistance, contempt of public authority, and disobedience, which are deemed “crimes against the public administration” under the Cuban Criminal Code. On other occasions, they use charges of “crimes against public order” like public disorder and incitement to commit a crime.<sup>296</sup> There is also a certain change in the methods of repression, given that in some cases criminal proceedings are threatened but not actually brought. This is due to the fact that, as previously mentioned, the current model of repression appears to follow an extra-legal rationale.

Offense	Article	Criminal conduct	Penalty
<b>Title II: Crimes against the public administration</b>			
<b>Attack against a public authority</b>	142.1	Using violence or intimidation against authorities, public servants, or their agents or assistants, to prevent them from performing an act pertaining to their duties, or to require them to perform it, or for revenge or in retaliation for the exercise of such duties	Deprivation of liberty for a period of 1 to 3 years
<b>Resistance</b>	143.1	Resisting an authority, public servant, or his or her agents or assistants in the performance of their duties	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas]
	143.2	The act provided for in the above paragraph is committed with respect to a public servant or his or her agents or assistants, or a soldier, in the performance of his or her duties to apprehend criminals or guard individuals deprived of their liberty	Deprivation of liberty for a period of 2 to 5 years
<b>Contempt of public authority</b>	144.1	Threatening, slandering, defaming, offending, insulting, or in any way affronting or abusing, verbally or in writing, the dignity or decorum of an authority, public servant, or his or her	Deprivation of liberty for a period of 3 to 9 months or a fine of 100 to 270

<sup>296</sup> IACHR. Office of the Special Rapporteur. Meeting of June 5, 2018; IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 421, 431, 440; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 354; IACHR. [Annual Report 2005](#). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Paras. 101-102; IACHR. [Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Para. 73; IACHR. [Annual Report 2002](#). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Paras. 27.a, 27.h.

		agents or assistants, in the performance of, or in connection with, or because of their duties	units [cuotas], or both
	144.2	The act provided for in the above paragraph is committed with respect to the President of the Council of State, the President of the National Assembly of People's Power, the members of the Council of State or the Council of Ministers, or the representatives of the National Assembly of People's Power	Deprivation of liberty for a period of 6 months to 3 years
<b>Disobedience</b>	147.1	Disobeying the decisions of public authorities or public servants, or the orders of their agents or assistants, issued in the performance of their duties	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas], or both

#### Title IV: Crimes against public order

<b>Public disorder</b>	200.1	Any person who, without good cause, raises shouts of alarm, or makes threats against the general public in public places, at performances, or in large gatherings	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas], or both
	201.1	Any person who causes fights or altercations in establishments open to the public, public transport vehicles, social circles, performances, family or public parties, or other events or places attended by a large number of people	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas], or both
<b>Incitement to commit a crime</b>	202.1	Publicly inciting others to commit a particular crime	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 a 300 units [cuotas]

168. There are statutory definitions of criminal offenses that are used selectively for specific groups of people. In the case of journalists, for instance, we have the abovementioned use of the charges of “impersonation of a public official” and “acting without legal capacity.” In the case of rights activists, the charge of unregistered association is used. Such crimes are cited interchangeably by State agents in their threats. In addition to these provisions of the Criminal Code, there are Law 88 of 1999 for the Protection of National Independence and Law No. 80 of 1996 for the Reaffirmation of Cuban Dignity and Sovereignty. Both also serve as a legal basis for the criminalization of freedom of expression in Cuba.

169. Additional information was received about the frequent use of the concept of “dangerous state” or “pre-criminal dangerousness” to deprive activists, dissidents, and others of their liberty.<sup>297</sup> According to the CCDHRN, in 2018, at least the following twelve individuals were reportedly imprisoned on such charges:<sup>298</sup>

Name	Date of	Duration of the	Activities/affiliation
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<sup>297</sup> Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 7.

<sup>298</sup> CCDHRN, [Lista parcial de condenados o procesados en cuba por razones políticas en esta fecha](#) [Partial list of persons convicted or tried in Cuba for political reasons to date]. June 11, 2018.

	arrest	measure	
Arcis Hernández, Osvaldo	09-12-2017	4 years	member of the <i>Frente Antitotalitario Unido</i> [United Anti-totalitarian Front]
Andera Barrera, Eliécer	23-09-2016	4 years and 10 months	UNPACU Activist
Bello González, Luis	05-03-2016	3 years	UNPACU Activist
Díaz Paseiro, Misael	22-11-2017	3 years and 6 months	Active member of the opposition, member of the <i>Frente de Resistencia Cívica Orlando Zapata Tamayo</i> [Orlando Zapata Tamayo Civic Resistance Front] (FRCOZT)
Fernández Pérez, Aracelis	21-03-2018	2 years	<i>Movimiento Opositor Juventud Despierta</i> [Awakened Youth Opposition Movement]
Matos Montes de Oca, Rafael	19-05-2017	Pending	UNPACU Member
Morera Jardines, Mario	21-07-2015	4 years	Active member of the opposition <i>Movimiento Cubano Reflexión</i> [Cuban Reflection Movement]. Participated in several protest activities.
Ortiz Delgado, José	23-04-2016	2 years	Active member of the <i>Foro Antitotalitario Unido</i>
Ramírez Baro, Alberto	24-04-2018	3 years	<i>Comité de Defensores de los DDHH</i> [Human Rights Defenders' Committee]
Ramírez Odio, Leonardo	24-04-2018	2 years and 6 months	<i>Comité de Defensores de los DDHH</i>
Ramírez Rodríguez, George	20-11-2016	2 years	Member of the <i>Movimiento Libertad Democrática por Cuba</i> [Democratic Freedom Movement for Cuba]
Triana González, Orlando	07-01-2018	3 years	Member of the <i>Movimiento Cubano Reflexión</i>

170. These concepts are established in Article 72 of the Criminal Code, which literally defines “dangerousness” as: “a special inclination on the part of a person to commit crimes, as demonstrated by behavior that is clearly contrary to the standards of socialist morality.”<sup>299</sup> This classification authorizes the use of “pre-criminal security measures,” “to prevent the commission of, or in connection with the commission of, criminal offenses,”<sup>300</sup> which may consist of therapeutic, re-educational, or surveillance measures by the bodies of the National Revolutionary Police.<sup>301</sup> This Office notes that this provision facilitates the harassment and criminalization of members of the opposition, and that, although it does not expressly provide for the restriction of personal freedom, it is reportedly used to that end.<sup>302</sup> The Office of the Special Rapporteur

<sup>299</sup> Article 73.2 states that “an individual who habitually breaks the rules of social coexistence by acts of violence, or by other provocative acts, violates the rights of others or by his general behavior breaks the rules of coexistence or disrupts the order of the community or lives, as a social parasite, off the work of others or exploits or practices socially reprehensible vices, is considered to be in a dangerous state on account of his or her antisocial behavior.” Criminal Code. Law of December 29, 1987.

<sup>300</sup> Criminal Code. Law of December 29, 1987. Art. 76.

<sup>301</sup> Criminal Code. Law of December 29, 1987. Arts. 78-81.

<sup>302</sup> AI. “[Your Mind is in Prison](#)”: [Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. Pp. 12, 13, 15, 16, 17, 32; AI. [Cuba: Human Rights at a Glance](#). 2015.

reiterates that the provisions on “dangerous state” and “pre-criminal security measures” should be removed from the Criminal Code, as “since their lack of precision and their subjective nature constitute a source of [legal uncertainty] which creates conditions permitting the Cuban authorities to take arbitrary action.”<sup>303</sup> They are also contrary to the principle of legality and the presumption of innocence, given that—rather than punishing specific acts—they punish the likelihood of committing potential, future, and uncertain acts.

171. In addition, the concept of “*licencia extrapenal*” (conditional release amounting to house arrest) set forth in Article 31 of the Criminal Code allows a defendant to serve his or her sentence under house arrest, but does not suspend the criminal penalty and leaves open the possibility of returning to prison if it is determined that the beneficiary does not comply with “rules of good conduct.”<sup>304</sup> The Office of the Special Rapporteur received information indicating that there are people under this kind of “house arrest” who are still serving sentences of up to 25 years that were imposed during the “Black Spring” of 2003.<sup>305</sup> There are reportedly at least 10 former prisoners of conscience who have been released on so-called “*licencia extrapenal*” who remain exposed to the arbitrary restriction of their rights, including the prohibition against travelling freely abroad:<sup>306</sup> it also allows for political dissidents to be kept under State surveillance.<sup>307</sup>

### Considerations on criminal law provisions

172. The imposition of a criminal penalty for the exercise of freedom of expression is a severe restriction on this right. With this in mind, the Office of the Special Rapporteur is particularly concerned about the following aspects reflected in the criminal laws currently in force in Cuba and their application: (i) criminalization of conduct protected by the right to freedom of expression, (ii) incompatibility with the principle of legality, (iii) failure to pursue a legitimate aim, and (iv) lack of necessity and proportionality of the measure restricting the exercise of this right.

173. Some of the above-mentioned provisions prescribe criminal penalties for acts that are protected by the right to freedom of expression and should be openly permitted within the framework of a pluralistic and democratic political system. The fact that certain types of expression may be critical of a particular political regime or ideology, or may be offensive or inconvenient for authorities and public servants, is by no means sufficient cause to justify their persecution through the harshest repressive instruments of the State.<sup>308</sup>

174. In this regard, the Office of the Special Rapporteur has held on numerous occasions that “contempt of public authority laws” are incompatible with the inter-American human rights system because they violate freedom of thought and expression. Such provisions lend themselves 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.”<sup>309</sup> Citizens are entitled to “to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office,”<sup>310</sup> while, as established in Principle 11 of the Declaration of Principles “Public officials are subject to greater scrutiny by society.”<sup>311</sup> The intolerance of the Cuban authorities toward any form of criticism or political opposition constitutes the main limitation to the rights to freedom of expression and association.<sup>312</sup>

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<sup>303</sup> IACHR. Annual Report 1996. OEA/Ser.L/V/II.95. March 14, 1997. Chapter V. Para. 96.

<sup>304</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 419.

<sup>305</sup> Martí Noticias. [Son 93 los presos políticos en Cuba, según comisión de DDHH](#) [93 political prisoners in Cuba, according to Human Rights Commission]. April 25, 2016.

<sup>306</sup> CCDHRN. [Lista parcial de condenados o procesados en cuba por razones políticas en esta fecha](#) [Partial list of persons convicted or tried in Cuba for political reasons to date]. June 11, 2018.

<sup>307</sup> IAPA. [Report to the 69th General Assembly 2013](#).

<sup>308</sup> CPJ. [Critics Are Not Criminals: Comparative Study of Criminal Defamation Laws in the Americas](#). March 2, 2016.

<sup>309</sup> IACHR. Annual Report 1994. Chapter V. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. P. 223.

<sup>310</sup> IACHR. Annual Report 1994. Chapter V. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. P. 218.

<sup>311</sup> Declaration of Principles on Freedom of Expression. Principle 11.

<sup>312</sup> IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 117.

175. The Office of the Special Rapporteur also wishes to call attention to the fact that any restriction or limitation that is based on criminal law must adhere to the strict requirements characteristic of the statutory definition of criminal offenses in order to satisfy the principle of legality in this area, using strict and unambiguous terms that clearly define the punishable conduct.<sup>313</sup> In this regard, the Office of the Special Rapporteur is concerned by the provisions of Cuban law that describe punishable conduct in a vague and general manner, and are subject to broad interpretation, including such ambiguous terms as “material of a subversive nature,” “disrupting domestic order, destabilizing the country, and destroying the socialist State and the independence of Cuba,” as well as allusions to conduct such as offense, disparagement or denigration, the disturbance of international peace, attacks on Cuba’s credit, or causing dissatisfaction among the population, among others.

176. The Office of the Special Rapporteur recalls that, in the case of *Vladimiro Roca Antúnez et al.*, the IACHR referred specifically to the crimes provided for in Articles 100(c) and 125(c) of the Cuban Criminal Code. Under Article 100, the offense of sedition is committed by any persons who, riotously and using violence, “disrupt the socialist order,” “obstruct compliance with any judgment, legal provision, or measure issued by the government,” “make demands,” or “refuse to carry out their duties.” With respect to this law, the IACHR noted that the law is not specific in terms of the punishable conduct and, on the contrary, uses vague and indeterminate concepts to define the offense of sedition, making it impossible to know in advance what conduct is punishable. As such, they are ambiguous concepts that invite arbitrary judicial interpretation.<sup>314</sup> The law is also not exhaustive; rather, it provides for different penalties depending on a variety of open-ended scenarios.<sup>315</sup>

177. Similarly, the IACHR determined in this matter that Article 125(c) of the Criminal Code uses vague terms to define “incitement” to the commission of crimes related to national security. The Office of the Special Rapporteur recalls that the imposition of sanctions for the abuse of freedom of expression based on the incitement of violence—understood as incitement to the commission of crimes, or the breach of public order or national security—must have as a legal requirement the actual, certain, objective, and conclusive proof that the person was not simply expressing an opinion—however harsh, unfair, or disturbing it may be—but that he or she had a clear intent to commit a crime, and the actual, real, and effective possibility of achieving those objectives.<sup>316</sup>

178. A second issue that must be examined in order to determine whether a restriction on fundamental rights is permissible under the American Convention concerns the identification of the aim pursued by the restrictive measure. The Office of the Special Rapporteur observes that the protection of national security and the safeguarding of public order—purposes often appealed to in Cuba—are legitimate aim for establishing subsequent liability for the abuse of freedom of expression, only if they are invoked and interpreted from a democratic perspective.<sup>317</sup> According to Article XXVII of the American Declaration, restrictions on fundamental rights are permissible only to ensure “the rights of others,” “the security of all,” and “the just demands of the general welfare and the advancement of democracy.” Similarly, the inter-American case law

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<sup>313</sup> IACHR. Annual Report 1994. Chapter V. 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. Transcribed in: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Para. 72(a).

<sup>314</sup> IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 91.

<sup>315</sup> IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 93.

<sup>316</sup> See European Court on Human Rights (ECHR). *Karatas v. Turkey* [GC]. No. 23168/94. ECHR 1999-IV; *Gerger v. Turkey* [GC]. No. 24919/94. 8 July 1999; *Okçuoglu v. Turkey* [GC]. No. 24246/94. 8 July 1999; *Arslan v. Turkey* [GC]. No. 23462/94. 8 July 1999; *Erdogdu v. Turkey*. No. 25723/94. § 69. ECHR 2000 – VI; 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. Para. 77.

<sup>317</sup> IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 75; See, e.g., I/A Court H.R., *Case of Molina Theissen v. Guatemala*. Merits. Judgment of May 4, 2004. Para. 40.2. In addition, according to the [Global Principles on National Security and the Right to Information](#) (Tshwane Principles) adopted on June 12, 2013, “It is good practice for national security, where used to limit the right to information, to be defined precisely in a country’s legal framework in a manner consistent with a democratic society”; see also *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, adopted in November 1996. Similarly, see IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 101.

has clearly indicated that, in order for any penalty to be imposed in the name of defending the public order, it must be demonstrated that the concept of “order” that is being defended is not authoritarian, but rather that of a democratic order, understood as the existence of structural conditions in which all persons, without discrimination, can freely exercise their rights, vigorously and without fear of being punished for it.<sup>318</sup>

179. The IACHR has also recognized that national security can only be legitimately invoked if “its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.”<sup>319</sup> No democratic idea of “national security” or “public order,” which are based on respect for human rights and the subordination of public servants to the law, can be otherwise compatible with this proposition.

180. Any restriction must also be *necessary* and *proportionate*. In order for the restriction to be legitimate, its certain and compelling need must be clearly established; that is, that such a legitimate and imperative objective cannot reasonably be achieved by other means less restrictive of human rights. In particular, the IACHR has considered that, in order to be necessary, the restriction imposed must have as a legal requirement the actual, certain, objective, and conclusive proof that the person was not simply expressing an opinion—however harsh, unfair, or disturbing it may be—but that he or she had a clear intent to commit a crime, and the actual, real, and effective possibility of achieving those objectives.<sup>320</sup>

181. The restrictions must also be *strictly proportionate* to the legitimate aim for which they are intended. In order to determine the strict proportionality of the limiting measure, it must be determined whether the sacrifice of freedom of expression that it entails is exaggerated or excessive in view of the advantages obtained.<sup>321</sup> On this point, in the *Case of Vladimiro Roca Antúnez et al.*, the IACHR found that the imposition of prolonged pretrial detention, the confiscation of items, criminal prosecution for the offense of sedition, the resulting imposition of severe prison sentences and other accessory penalties are by any reckoning excessive.<sup>322</sup> The Office of the Special Rapporteur recalls that prosecutions and convictions have a systemic effect on the general conditions for the exercise of the rights concerned. In addition to the individual dimension of the impact of these measures, criminalization has an intimidating and chilling effect on society as a whole.<sup>323</sup>

182. Finally, the Office of the Special Rapporteur notes that the information received indicates that the prosecutions criminalizing freedom of expression in Cuba tend to involve violations of the right to due process.<sup>324</sup> The trials leading up to these incarcerations have been described as “prefabricated” because of their lack of due process guarantees.<sup>325</sup> The Commission has repeatedly stated that there is no proper separation of powers between the branches of the Cuban government to ensure that the justice system is free

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<sup>318</sup> Indeed, in the opinion of the Inter-American Court, in general terms, “public order” cannot be invoked to suppress a right guaranteed by the American Convention, to distort it or to deprive it of real content. If this concept is invoked as a basis for limiting human rights, it must be interpreted in strict accordance with the “just demands of a democratic society.” 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. Para. 64; IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 80.

<sup>319</sup> IACHR. Report on Terrorism and Human Rights. OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 329, citing the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*. Principle 2(a).

<sup>320</sup> IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 82; IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 121.

<sup>321</sup> IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 119.

<sup>322</sup> IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 122.

<sup>323</sup> IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 122.

<sup>324</sup> 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. 225-231; IACHR. [Annual Report 2000. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser./L/V/II.111. Doc. 20 rev. April 16, 2001. Para. 56.

<sup>325</sup> IAPA. [Report to the Midyear Meeting 2017](#).

from influence from the other branches. In fact, Article 121 of Cuba's Constitution establishes that "the courts are a system of state bodies, structured with functional independence from any other and hierarchically subordinate to the National Assembly of People's Power and the Council of State."

#### IV. SOCIAL PROTESTS AND DEMONSTRATIONS

183. 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. **Article 54 of the Cuban Constitution** establishes the right to freedom of assembly in the following terms:

Article 54.- The rights of assembly, demonstration, and association are exercised by workers, both manual and intellectual, peasants, women, students, and other sectors of the working people, for which they have the necessary means. Mass and social organizations have every facility for the development of such activities in which their members enjoy the broadest freedom of speech and opinion, based on the unrestricted right to initiative and criticism.

184. The Office of the Special Rapporteur observes that, according to the text of the constitution, this right is enjoyed not by all people in general, but rather by "workers, both manual and intellectual, peasants, women, students, and other sectors of the working people," including "mass and social organizations" recognized by the State. This means that the right is guaranteed only to those who are regarded as defending the political orientation of the State. Freedom of peaceful assembly is not guaranteed to individuals or groups of individuals who wish to demonstrate or protest for any reason; in principle, only demonstrations organized by or in support of the State are deemed to be "in accordance with the law."

185. The Office of the Special Rapporteur notes that Article 61 of the Draft Constitution provides that "The rights of assembly, demonstration and association, for lawful and peaceful purposes, are recognized by the State provided that they are exercised with respect for public order and compliance with the provisions of the law."<sup>326</sup> Although entitlement to this right is not conditioned upon membership in specific organized groups like in the text of the current constitution, the broad interpretation and application of the concept of "public order" in Cuba—including through the abusive application of the criminal law ( IV.C)—and the regulatory framework currently in force, may make it impossible in practice to exercise this right without being subject to obstacles and retaliation.

186. This constitutional framework is complemented by the criminal laws that penalize the exercise of the right to social protest. Article 209.1 of the Criminal Code imposes fines or prison sentences from 1 to 3 months on any person who takes part in demonstrations that violate the provisions regulating the right of assembly.<sup>327</sup> There are also other statutory definitions of criminal offenses in the Cuban legal system that criminalize social protest. The IACHR referred to this aspect in the *Case of Vladimiro Roca Antúnez et al.*, in which it observed that the terms used in Article 100 of the Criminal Code to define the offense of sedition<sup>328</sup> favor the criminalization of social protest, civic activism, or any criticism of public authorities. A social protest could be understood as the "riotous" act of a group or multitude of people, intended to "make demands" or to "obstruct compliance with any [...] measure issued by the government," under the aforementioned Article 100. In addition, the phrase "disrupt the socialist order" may be interpreted to penalize the legitimate right of individuals to express, in association with others, controversial opinions, messages that lead to protest actions, and legitimate demands on public authorities about the problems affecting a population or group.<sup>329</sup>

187. The information received indicates that, in Cuba, the State has far-reaching control over demonstrations, which are reportedly monitored. In general, activities in which anti-government dissidents are involved tend to be broken up, and the participants are often violently repressed and detained for short

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<sup>326</sup> [Proyecto de Constitución de la República de Cuba \[Draft Constitution of the Republic of Cuba\]](#). Art. 61.

<sup>327</sup> Criminal Code. Law of December 29, 1987. Art. 209; Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 14.

<sup>328</sup> Criminal Code. Art. 100.- "Any persons who riotously and having either expressly or tacitly agreed to disrupt the socialist order, and do so using violence; or disrupt the holding of elections or referenda, or obstruct compliance with any judgment, legal provision or measure issued by the government, or by a civil or military authority in the exercise of their respective functions, or refuse to obey them, or make demands, or refuse to carry out their duties [...]."

<sup>329</sup> IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 92.

periods of time.<sup>330</sup> Consistent reports indicate that it is a common practice for authorities to use force to prevent the exercise of the right of assembly, including through public beatings in the streets, public humiliations, the dragging of demonstrators by their hair, and other cases of physical assault.<sup>331</sup> The IACHR has also granted precautionary measures to protect the life and integrity of persons who have been threatened and assaulted for exercising their right to social protest.<sup>332</sup> Cases involving the excessive use of force against demonstrators tend to go unpunished.<sup>333</sup>

188. Organizers and participants have also been subject to arrests—normally of short duration—detentions, assaults, and threats. According to the information received, they are frequently threatened or prosecuted for crimes such as public disorder, attack against a public authority, and contempt of public authority<sup>334</sup> (IV.C). Detainees were in some cases reportedly beaten, kept incommunicado, subjected to humiliating treatment, and even forced to recite revolutionary slogans and participate in activities in support of the regime.<sup>335</sup> Peaceful demonstrators are reportedly routinely detained, often in anticipation of future protests, for exercising or attempting to exercise the right to protest.<sup>336</sup> For example, in March 2016, just before former President Obama arrived in Havana, Ladies in White and other members of the opposition were detained after their peaceful demonstration following Sunday mass.<sup>337</sup> Police arrests and harassment of protesters often increase during the commemoration of Human Rights Day.<sup>338</sup>

189. A number of other recent incidents have also been cause for concern. In November 2016, graffiti artist Danilo Maldonado Machado was arrested for shouting “Down with Fidel! Down with Raúl!” during the live broadcast that followed Fidel Castro’s death. In May 2015, Maldonado had already been arrested on a previous occasion for putting on an artistic performance in a Havana park with two pigs that had been

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<sup>330</sup> IACHR. [Annual Report 2013. Chapter IVB Cuba](#). 2013. Para. 169; IAPA. [Report to the Midyear Meeting 2014](#).

<sup>331</sup> IACHR. [Annual Report 2016. 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. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paras. 429, 434; IACHR. [Annual Report 2014. 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](#). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Paras. 247; 250-251; IACHR. [Annual Report 2010](#). 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 Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Paras. 104-105; IACHR. [IACHR Concerned Over Assault on Beneficiary of Precautionary Measures in Cuba](#). Press Release 118/11. November 10, 2011.

<sup>332</sup> For instance, in June 2012, the IACHR granted precautionary measures on behalf of Damaris Moya Portieles and her 5-year-old daughter, in Cuba. The request for precautionary measures stated that Moya Portieles is a human rights advocate, and that she had reportedly been deprived of her liberty on repeated occasions as a result of her participation in demonstrations in her country. The request indicated that, in May 2012, during a pro-freedom vigil in Cuba, Security police officers had again detained her, beaten her, and threatened to rape her daughter. IACHR. PM 163/12. *Damaris Moya Portieles and daughter, Cuba*. Similarly, see IACHR. PM 214/10. *Reina Luisa Tamayo Danger, Cuba*. July 20, 2010.

<sup>333</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 9-34; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. Paras. 9-45; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. Paras. 6-21.

<sup>334</sup> DDC. [El poco conocido Gulag del Caribe](#) [The little-known Caribbean Gulag]. August 16, 2018.

<sup>335</sup> Martí. [Lisandra Rivera Rodríguez: ‘58 días en una celda por negarse a obedecer a sus carceleros’](#) [Lisandra Rivera Rodríguez: “58 days in a cell for refusing to obey her jailers”]. February 27, 2017; Civicus & CCDHRN. [Joint Submission to the UN Universal Periodic Review](#). October 5, 2017. P. 14.

<sup>336</sup> For example, on the eve of the meeting of the Community of Latin American and Caribbean States (CELAC) in January 2014, many opponents were arbitrarily arrested in order to prevent a demonstration that was expected to attract considerable international attention. Martí. [Comienzan reuniones previas a CELAC con arrestos a opositores](#) [Pre-CELAC meetings begin with arrests of opponents]. January 25, 2014.

<sup>337</sup> Libertad Digital. [50 detenidos en una marcha de las Damas de Blanco durante la visita de Obama a Cuba](#) [50 arrested at a march of the Ladies in White during Obama’s visit to Cuba]. March 21, 2016.

<sup>338</sup> In 2016, between 150 and 200 dissidents were arrested as a preventive measure, and some were harassed in their homes to keep demonstrations from taking place. Martí. [Gobierno cubano silencia celebraciones de la oposición en Día de Derechos Humanos](#) [Cuban Government Silences Opposition Celebrations on Human Rights Day]. December 11, 2016.

painted green and given the names Fidel and Raúl. His defense lawyer, a U.S. citizen, was reportedly arrested upon her arrival in the country in December 2016.<sup>339</sup>

190. On July 26, 2017, three demonstrators were detained in Santiago de Cuba at a protest that took place during the “emblematic celebration of the regime on July 26, 2017, the anniversary of the failed assault on the Moncada Barracks.” Alberto Antonio and Leonardo Ramírez Odio, and their father Alberto de la Caridad Ramírez Baró, members of the Citizens’ Committee for the Defense of Human Rights in Cuba, were reportedly accused of public disorder and transferred to the Aguadores prison awaiting trial. They were reportedly released in October 2017.<sup>340</sup>

191. Similarly, in June 2017, four activists from the Cuban Patriotic Union (UNPACU), two of them members of the Ladies in White, as well as seven members of the Orlando Zapata Tamayo Civic Action Group, were reportedly tried after awaiting trial for more than a year. The first four activists were reportedly arrested and taken to detention centers after participating in a demonstration on April 15, 2016, in Havana’s Parque de la Fraternidad. The other seven were reportedly arrested and released on bail. Lady in White Marta Sánchez has reportedly remained in custody since March 11, 2018<sup>341</sup> on charges of “contempt of public authority” and “resistance” for protesting during the Cuban elections.<sup>342</sup> There is also the case of Daniel Llorente, known as “the dissident with the flag,” who was arrested for publicly waving a United States flag and later held against his will in a psychiatric hospital.

192. Social protest is a manifestation of the right to freedom of expression and the right of assembly, recognized by Articles XXI and IV of the American Declaration. The Office of the Special Rapporteur has stated 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.”<sup>343</sup> Social protest is a fundamental tool for the defense of human rights, essential for critical social and political speech critical of the activities of government authorities, as well as for the establishment of positions and plans of action regarding human rights. Under Articles IV, XXI, and XXII of the Declaration,<sup>344</sup> in order for a restriction on these rights to be legitimate, it must be expressly set forth by law, clearly and precisely in both substantive and procedural terms, be justified by a compelling social interest, and be genuinely necessary in a democratic society and proportionate to the accomplishment of that purpose.<sup>345</sup>

193. General prohibitions and the establishment of authorization requirements for individuals to exercise their right to participate in peaceful protests are inherently unnecessary and disproportionate. Nor can its regulation be intended to create the basis for a ban on assembly or demonstration.<sup>346</sup> In short, the actions of

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<sup>339</sup> Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 13.

<sup>340</sup> ICLEP. [Liberados los tres activistas que se manifestaron el 26 de julio en la Catedral de Santiago](#) [Three activists who demonstrated in the Santiago Cathedral on July 26 released from custody]. October 20, 2017; Martí Noticias. [Liberan a opositores que protestaron el 26 de julio en Santiago de Cuba](#) [Opponents who protested on July 26 in Santiago de Cuba are released]. October 19, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 89.

<sup>341</sup> Martí Noticias. [Dama de Blanco Martha Sánchez sigue detenida, policía rodea sede del grupo opositor](#) [Lady in White Martha Sanchez still detained, police surround opposition group’s headquarters]. April 8, 2018.

<sup>342</sup> Diario de Cuba. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco](#) [Hours before May Day, raids and arrests of UNPACU and Ladies in White activists]. April 30, 2018.

<sup>343</sup> *United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Special Rapporteur for Freedom of Expression of the IACHR. [Joint declaration on violence against journalists and media workers in the context of protests](#)*. September 13, 2013.

<sup>344</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; UN. Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. A/HRC/23/39. 24 April 2013. Para. 47.

<sup>345</sup> IACHR. [Annual Report 2002](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV. Para. 31; [Annual Report 2005](#). Volume III. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. Para. 2; [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124. Doc. 5 rev. 1. March 7, 2006. Para. 55; UN. Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. A/HRC/20/27. May 21, 2012. Para. 15; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. A/HRC/23/39. April 24, 2013. Para. 47; [Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests](#). A/HRC/22/28. January 21, 2013. Para. 5.

<sup>346</sup> IACHR. [Annual Report 2005](#). Volume III. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly”. Paras. 91-92.

State agents should not discourage the right to assemble and participate in social protests, but rather facilitate and protect it.<sup>347</sup>

194. The use of force at public demonstrations should be exceptional, and under circumstances that are strictly necessary according to internationally recognized principles.<sup>348</sup> The IACHR has stated that “it is possible to impose reasonable limits on demonstrators to preserve the peace as well as to disperse demonstrations that are turning violent.”<sup>349</sup> Nevertheless, such measures “must not discourage the right of assembly, but rather protect it, so that the dispersal of a demonstration must be justified by the duty to protect persons.”<sup>350</sup>

## V. LIMITATIONS ON THE RIGHT TO FREEDOM OF EXPRESSION ON THE INTERNET

195. If anything has changed recently in the field of freedom of expression in Cuba, it has mainly been due to the slow and gradual development of communication technologies which, even with severe restrictions, has gained relevance in a country whose legal media are controlled by a one-party State (III.A).<sup>351</sup> In recent years, the use of the Internet and the development of digital media has opened up spaces for the circulation of information and ideas outside official control.<sup>352</sup> It has been thanks to these technologies that independent media have emerged, in addition to blogs and websites dedicated to cultural groups, activism, and social demands.<sup>353</sup>

196. The emergence of the Internet as a platform for content distribution was viewed with absolute suspicion by the Cuban authorities, who considered it a “subversive” medium.<sup>354</sup> The regime’s main cadres seem to recognize the importance of the platform, but this has not led to any changes in media policies and regulation in Cuba. Indeed, in general terms, the current political framework understands that the Internet is the main platform for the dissemination of content and knowledge, on the condition that it does not contravene the rules and principles aimed at maintaining and favoring the regime.<sup>355</sup> 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 authorities.

197. According to the information available, 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

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<sup>347</sup> IACHR. [Annual Report 2007](#). Chapter IV. Venezuela. Paras. 260-261; [Annual Report 2015](#). Chapter IV.A. “The Use of Force”. Para. 67.

<sup>348</sup> IACHR. [Annual Report 2014](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 260; IACHR. [Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Paras. 97-100; IACHR. [Annual Report 2007](#). OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Paras. 142-145.

<sup>349</sup> IACHR. [Democracy and Human Rights in Venezuela](#). OEA/SER.L/V/II. Doc. 54. December 30, 2009. Para. 134.

<sup>350</sup> IACHR. [Democracy and Human Rights in Venezuela](#). OEA/SER.L/V/II. Doc. 54. December 30, 2009. Para. 134.

<sup>351</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016.

<sup>352</sup> Infobae. May 7, 2016. [Internet en Cuba: lenta y cara, pero cada vez más masiva \[Internet in Cuba: slow and expensive, but increasingly massive\]](#); CubaNet. February 8, 2016. [ETECSA, un monopolio capitalista en Cuba](#) [ETECSA, a capitalist monopoly in Cuba]; Knight Center for Journalism in the Americas. April 16, 2016. [ISOJ 2016: Yoani Sánchez explains how technology has made Cubans more free](#).

<sup>353</sup> Digital media in Cuba began almost a decade ago with the emergence of a number of blogs that were operated on a strictly individual basis. Many of these projects are based outside Cuba and work in coordination with actors within the country. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.13.

<sup>354</sup> In 1995, Fidel Castro believed that the Internet would serve as a “Trojan horse” seeking to promote subversion and division, or an instrument for the dissemination of imperialist propaganda and the manipulation of consciences. Fidel Castro himself described the Internet in 2012 as “a revolutionary instrument that allows us to receive and transmit ideas, in both directions, something that we must know how to use.” La pupila insomne. [Fidel Castro: “Internet es un instrumento revolucionario”](#). [Fidel Castro: “Internet is a revolutionary instrument”]. March 7, 2012.

<sup>355</sup> For example, in a session before Parliament on “the computerization of Cuban society,” Miguel Díaz-Canel reportedly stated that “On the ideological side, one of the impacts has to do with the content creation, and in this regard our platforms must be oriented toward knowledge management, so that people can enhance their spiritual and cultural values. We have to be able to produce content in cyberspace in favor of the Revolution.” Granma. [Informatización de la sociedad: principios y resultados de una política](#) [Computerization of society: principles and results of a policy]. July 13, 2017; See also, Martí. [Miguel Díaz-Canel clama por controlar el contenido de Internet en Cuba](#) [Miguel Díaz-Canel calls for control of Internet content in Cuba]. July 13, 2017.

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>356</sup>

198. The Office of the Special Rapporteur recalls that the Internet is a unique tool for unlocking the enormous potential of human rights, and in particular the right to freedom of expression, across broad sectors of the population. The relevance of the Internet as a platform for the enjoyment and exercise of human rights is directly linked to the architecture of the network and the principles that govern it, including the principles of openness, decentralization, and neutrality. The work of the State, the development of public policies, and the actions of individuals in the digital environment must adhere to the principles of equal access, pluralism, non-discrimination, and privacy, as well as net neutrality and multisectoral governance as cross-cutting components of these principles.<sup>357</sup> Far from these standards for a free, open, and inclusive Internet, regulatory developments and practices in Cuba create a controlled and biased space, as evaluated in this section.

#### A. Regulating the use of web-based networks and communication

199. There is currently a set of decrees, ministerial resolutions, and different regulations governing the use of new technologies in Cuba. The Office of the Special Rapporteur refers below to some of the decrees it considers to have the greatest impact on freedom of expression.

Legal provision	Entity	Purpose
<b>Decree No. 209 of 1996</b>	Presidency of the Council of Ministers	Regulates access from Cuba to global computer networks; establishes that policy in this area must be implemented in accordance with national interests; access will be selective and subject to prior authorization from the Interministerial Commission
<b>Resolution No. 56 of 1999</b>	Ministry of Culture	Regulates the requirements and procedures for publishing Cuban serial publications on the Internet; requires that a certificate of registration be obtained in advance for each serial publication on the Internet
<b>Resolution No. 92 of 2003</b>	Ministry of Information Technology and Communications	Introduces a number of restrictions on the principal modes of Internet use
<b>Resolution No. 127 of 2007</b>	Ministry of Information Technology and Communications	Enacts the Information Technology Security Regulations that prohibit the dissemination by any person or legal entity, through public data transmission networks of information contrary to the interests of society, morals, decency, and the integrity of persons, or that harms national security.
<b>Resolution No. 179 of 2008</b>	Ministry of Information Technology and Communications	Enacts the Regulations concerning the activity and responsibilities of another group of intermediaries
<b>Resolutions No. 72 &amp; 73 of 2009</b>	Ministry of Culture	Creates the National Registry of Websites attached to the Periodicals Bureau of the Cuban Book Institute, and enacts its Regulations

<sup>356</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016

<sup>357</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. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017.

200. **Decree No. 209 of 1996 on the Republic of Cuba's Access to the Global Network.** This Decree issued by the Presidency of the Council of Ministers regulates access from Cuba to global computer networks.<sup>358</sup> Article 11 states that access to global computer networks (i.e. the WWW normally accessed from most of the world) “shall be established in order to guarantee access to full service from the Republic of Cuba to existing global computer networks, and to those that may be created in the future, in a regulated manner.” It is important to underline the reference to the notion of regulation, which is developed in the subsequent articles.

201. Thus, Article 12 states that policy in this regard must always be implemented “in accordance with national interests,” and goes on to indicate the need to ensure that “information disseminated is accurate, and that information obtained is in line with our ethical principles, and does not affect the interests or security of the country.” Articles 13 and 14 set those controls by providing that “access to the services of global computer networks shall be selective,” and by requiring administrative authorization to access the Internet, which is granted by the Interministerial Commission for Matters Concerning Global Computer Networks [*Comisión Interministerial para la Atención de lo Relacionado con Redes Informáticas de Alcance Global*].<sup>359</sup>

202. The selective nature and requirement for prior authorization to access the web run counter to the principle of universal access, according to which “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>360</sup> As the Office of the Special Rapporteur has indicated, contrary to the provisions of the Decree, this means taking actions to progressively promote universal access not only to infrastructure but also the technology necessary for its use and to the greatest possible amount of information available on the Internet, and to eliminate arbitrary barriers to access to infrastructure, technology and information online.<sup>361</sup>

203. On the other hand, the requirement to align oneself with national interests is openly at odds with pluralism and diversity, essential conditions for the process of public deliberation and the exercise of freedom of expression that must be preserved in the digital environment. Public policies on the subject must protect the multidirectional nature of the network and promote platforms that allow people to search for and disseminate information and ideas of all kinds, not just those that are in the national interest.<sup>362</sup> In addition, the requirement that the information must be “accurate and in line with the ethical principles, interests, and security of the country” can only be satisfied by subjecting web content to strict control or prior censorship, blocking access to an enormous amount of material available on the web.

204. **Resolution No. 56 of 1999 on the authorization of serial publications on the Internet.** This resolution governs the requirements and procedures for the publication of serial publications on the Internet and subjects those publications to the existing legal system for paper publications, under Resolution No. 81 of 1997, previously cited by the Office of the Special Rapporteur (III.B).<sup>363</sup> In effect, it requires that every Cuban serial publication “that intends to be circulated, printed, or disseminated over the Internet” must have the specific approval of the National Registry of Serial Publications, regardless of the node, institution, or country that it uses as a gateway to that network. In addition, it imposes the requirement that persons disseminating information on the Internet must “maintain objectivity and high professional standards,” and “exhibit the

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<sup>358</sup> Presidency of the Council of Ministers. [Decreto 209 de 1996 que regula el acceso desde Cuba a las redes informáticas de alcance global](#) [Decree 209 of 1996, regulating access from Cuba to global computer networks]. June 14, 1996.

<sup>359</sup> This Commission was created by Decree 209 of 1996, and according to Article 2 is presided over by the Minister of the Iron and Steel, Metallurgical and Electronic Industries, and is composed of the Ministries of Science, Technology, and the Environment; Communications; the Interior; the Revolutionary Armed Forces; and Justice.

<sup>360</sup> Declaration of Principles on Freedom of Expression. Principle 2.

<sup>361</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. Para. 15.

<sup>362</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. Paras. 18 & 19; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 8.

<sup>363</sup> Ministry of Culture. [Resolución 56 de 1999 sobre los requisitos y procedimientos para la inserción de publicaciones seriadas cubanas en Internet](#) [Resolution 56 of 1999 on the requirements and procedures for publishing Cuban serial publications on the Internet]. June 16, 1999.

most genuine national values,” among other things. It is also troubling to note that the registration application must present, *inter alia*, the rationale for “why—based on its objectives and thematic profile—it will be beneficial to the national interest to post the publication on the Internet [...]”<sup>364</sup>

205. The Office of the Special Rapporteur is of the opinion that this Resolution constitutes a form of prior censorship and seriously contravenes the principles of universal access, pluralism, and nondiscrimination, as well as net neutrality and multi-sectoral governance. It emphasizes that, if obtaining authorization prior to the publication of paper materials is already excessive because it involves arbitrary government interference in a fundamental element of the exercise of freedom of expression, such a requirement with respect to electronic publication is even more disproportionate and allows for a prior control that is incompatible with freedom of expression. It further recalls that “Approaches to regulation developed for other means of communication—such as telephony or broadcasting—cannot simply be transferred to the Internet.”<sup>365</sup>

206. **Resolution No. 92 of 2003 on email and chat access, and intermediary liability.** This resolution introduces a number of restrictions that are particularly relevant to two of the principal modes of Internet use: email and chat services.<sup>366</sup> It establishes that Cuban websites that offer email services “will not be able to automatically create email accounts (webmail) for individuals and legal entities that are not duly authorized.” With regard to chat services, it establishes that “They must ensure that individuals or legal entities that are only approved for access to national navigation are not able to use the International Chat service.” The Office of the Special Rapporteur considers these to be arbitrary restrictions on the free navigation and use of networks and a disproportionate interference with individual freedom without explanation or justification.

207. As for the role of intermediaries, the Office of the Special Rapporteur recalls the existing consensus on the principle of not holding them strictly liable for third-party content. According to that principle, “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.”<sup>367</sup> This rule is the opposite of a model of strict liability, whereby intermediaries are liable for unlawful content generated by third parties.<sup>368</sup>

208. A system of strict liability like the abovementioned would be contrary to the State’s duty to favor an institutional framework that protects and guarantees the right to freely seek, receive, and disseminate information and opinions.<sup>369</sup> The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that “Holding intermediaries liable for the content disseminated or created by their users severely undermines the enjoyment of the right to freedom of opinion

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<sup>364</sup> Ministry of Culture. [Resolución 56 de 1999 sobre los requisitos y procedimientos para la inserción de publicaciones seriadas cubanas en Internet](#). [Resolution 56 of 1999 on the requirements and procedures for publishing Cuban serial publications on the Internet]. June 16, 1999. Annex: Requirements and Procedure for approval of the dissemination of a serial publication via the Internet. Arts. 1.1 & 2.1.1.

<sup>365</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). Point 1(c); 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. Para. 12.

<sup>366</sup> Ministry of Information Technology and Communications. [Resolution 92 of 2003](#). October 14, 2003.

<sup>367</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). Point 2(a); This rule is covered to the fullest extent by the Communications Decency Act (CDA) of the United States. US Government Printing Office. United States Code. Section 47. §230 (c)(1); 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. Para. 94.

<sup>368</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. Para. 95.

<sup>369</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. Para. 98.

and expression, because it leads to self-protective and over-broad private censorship, often without transparency and the due process of the law.”<sup>370</sup>

209. **Resolution No. 127 of 2007 on Information Technology Security.** Through this resolution, the Ministry of Information Technology and Communications enacted the Regulations on Information Technology Security. Article 79 is of particular concern, as it prohibits “the dissemination by any individual or legal entity, through public data transmission networks, of information that is contrary to the interests of society, morals, decency, and the integrity of persons, or that harms national security.”<sup>371</sup>

210. The Office of the Special Rapporteur recalls that the mandatory blocking or suspension of entire websites, platforms, conduits, IP addresses, domain name extensions, ports, network protocols, or any other type of application, as well as measures aimed at removing links, data, and web sites from the server on which they are hosted, constitute a restriction that will be admissible only in exceptional cases.<sup>372</sup> 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.<sup>373</sup>

211. **Resolution No. 179 of 2008, Enacting the Regulations for Public Access Internet Service Providers.** This resolution enacts the regulations governing the activity and responsibilities of a group of intermediaries:<sup>374</sup> public access Internet providers (ISP). Among the obligations it imposes on these providers in Article 19, the following are of particular note: “to ensure that no software is used with cryptographic systems or encrypted file transfer”; “to take the necessary measures to prevent access to sites whose contents are contrary to the interests of society, morals, and decency; as well as the use of applications that affect the integrity or security of the State”; and “to establish procedures to identify the origin of access, as well as to record it and maintain such records for a period of not less than one (1) year.” Those ISPs that fail to perform these and various other duties correctly are subject to the temporary or permanent suspension of their contract with the Cuban Telecommunications Company (*Empresa de Telecomunicaciones de Cuba S. A. - ETECSA*), a state-owned company with a monopoly on telecommunications services.

212. Thus, direct obligations to monitor and “regulate” online content are imposed on intermediaries, in this case ISPs, on the basis of extremely vague criteria such as “content contrary to the interests of society, morals, and decency.” This vagueness, added to the strict liability regime established, would foreseeably lead to the strict censorship of any material that may be deemed to fit those criteria. In addition, the prohibition of the use of cryptographic systems to guarantee the privacy of users’ communications is contrary to the obligation of ISPs to safeguard that privacy, also suggesting that the authorities are interested in having easy access to exchanges on the Internet.

213. **Resolution No. 72 and Resolution No. 73 of 2009.** Resolution No. 72 creates the National Registry of Websites attached to the Periodicals Bureau of the Cuban Book Institute, and requires the registration of “the websites of national legal entities or legal entities based in the country [...] and; the websites of international organizations hosted on Cuban servers.”<sup>375</sup> The regulations governing the registry were enacted through

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<sup>370</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/17/27. 16 May 2011. Para. 40.

<sup>371</sup> Ministry of Information Technology and Communications. Resolution No. 127 of 2007. Art. 79.

<sup>372</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). Point 3(a); IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 149; IACHR. [Annual Report 2010](#). Volume I. Chapter IV. OEA/Ser.L/V/II. Doc. 5 corr. 1. March 7, 2011. Para. 822.

<sup>373</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. Para. 85.

<sup>374</sup> Ministry of Information Technology and Communications. [Resolución 179 de 2008 por la que se aprueba el Reglamento para los proveedores de servicios de acceso a Internet del público](#) [Resolution 179 of 2008, enacting the Regulations for Public Access Internet Service Providers]. November 13, 2008.

<sup>375</sup> [Resolution No. 72](#) of the Ministry of Culture of September 16, 2009. Art. 2.

Resolution No. 73 of the same date. It provides that those responsible for each website must submit a registration application. In view of the noted restrictions on the creation of associations in Cuba, it is of particular concern to observe that in the “case of associations, foundations, civil societies, [they must] present the endorsement of their liaison body, giving its approval of the website,” which in practice is not possible. (IV.A.ii). It is also important to note that the registration requirements include providing all the information on the website, including URLs, service provider, thematic profile, objective, target audience, content sections, services, and interactivity and multimedia resources, among others.<sup>376</sup>

214. It further states that the registration, which must be renewed each year, can be suspended, cancelled, or denied to websites that: (i) do not comply with the requirements established by the legal provisions in force regarding the use of the Internet, or other provisions; (ii) disseminate, cover, or protect unregistered sites or periodical publications not approved by the Periodicals Bureau under their domain; (iii) disseminate and/or publish content contrary to the interests of society, morals, decency, and the integrity of persons; or (iv) are inconsistent with the profile or objectives approved for the publication of the website. It also contains a general provision for the cancellation of registration, without prior notice, “in cases of serious violations of ethics and morals, or other violations incompatible with the principles of our socialist society.”<sup>377</sup> In the opinion of the Office of the Special Rapporteur, the website registration requirement is a form of prior censorship, incompatible with the exercise of the right to freedom of expression on the Internet.

## **B. Connectivity and universal access**

215. The Office of the Special Rapporteur has received information proving that the Cuban population faces serious obstacles to connectivity and universal Internet access.<sup>378</sup> Although Cuba first connected to the worldwide web in 1996, the private use of personal computers was not authorized by the State until 2008.<sup>379</sup> In spite of the government’s claims that it intends to promote the widespread use of the Internet on the island, over the years Cuba has been ranked last in Latin America in terms of the spread of information and communication technologies.

216. According to the International Telecommunication Union (ITU), in 2017, Cuba ranked 137 out of 176, having fallen two spots from the previous year.<sup>380</sup> Figures citing independent estimates and government statistics estimate that somewhere between 5% and 27% of the population have access to the Internet, but none of the estimates clearly indicate the methodology used to calculate those figures. 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>381</sup>

217. Cuba’s Ministry of Information Technology and Communications reportedly controls the Internet in the country, mainly through the state-run Cuban Telecommunications Company (ETECSA). There is a dual system: an intranet that is provided to the public, with filtered content that is subject to government restrictions; and the global Internet, which is inaccessible to the Cuban population.<sup>382</sup>

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<sup>376</sup> [Resolution No. 73](#) of the Ministry of Culture of September 16, 2009. Arts. 7, 12, 13

<sup>377</sup> [Resolution No. 73](#) of the Ministry of Culture of September 16, 2009. Arts. 10, 11, 18.

<sup>378</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 418, 453, 462, 463; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 308; 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. 227; IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 172, 173, 175, 176, 179, 180; IACHR. [Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 90; IACHR. [Annual Report 2007](#). OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Para. 134, 135, 136, 137, 138; IACHR. [Annual Report 2000. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.111. Doc. 20 rev. April 16, 2001. Para. 43.

<sup>379</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. A year earlier, the number of people who had operated a computer was 33.2%, but only 5.2% had done so from home, according to official Cuban figures.

<sup>380</sup> ITU. [Measuring the Information Society Report 2017](#). P. 31.

<sup>381</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.27.

<sup>382</sup> AI. [Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education](#). 2017; AI. [Six facts about censorship in Cuba](#). 2016; FH. [Freedom on the Net 2016: Cuba](#); FH. [Freedom on the Net 2015: Cuba](#).

218. In fact, ETECSA offers Internet access that only allows users to connect to Cuban websites (.cu) for some US\$ 0.60 per hour. However, for those who wish to connect to the global Internet, the price increases exponentially. Those fees, usually US\$ 2.00 an hour, are exorbitant in a country where the majority of formal employees work for the State and earn approximately US\$ 30.00 a month. Based on the principle of universal access, this Office places particular importance on those measures that seek to ensure that pricing structures are inclusive, so as not to hinder access.<sup>383</sup> Moreover, not all foreign sites may be accessible, since authorities have reportedly blocked access to those considered undesirable for the Cuban public (VI.C).<sup>384</sup>

219. Service for the Cuban population is reportedly provided mainly through cybercafés (*salas de navegación*). Wi-Fi hotspots can be found in hotels, at a price and on terms not affordable to Cubans, and in public parks for the price—clearly burdensome in view of the average Cuban’s income—of US\$ 2.00 an hour. Hotspots have also begun to be set up in the streets of towns and cities.<sup>385</sup> In public places, the connection is reportedly very slow. It is reportedly only available in the provincial capitals, and at times known dissidents are barred from entering. Employees are reportedly able to gain controlled access to the intranet in places of employment or government institutions.<sup>386</sup> Internet speeds are reportedly also poor, and the average download speed is reportedly 1 Mbps.<sup>387</sup> Hard-wire connection, a service also provided by ETECSA, is reportedly not accessible to the majority of the Cuban population from their homes. <sup>388</sup> Barely 5% of the population reportedly has a home Internet connection, which is very expensive.<sup>389</sup>

220. One characteristic worth noting is how the conditions of the island’s connection to the global network determine the quality of the flow of information circulating through its electronic networks. In 2007, the government began the construction of a fiber optic cable to facilitate access to the global network and increase the available bandwidth. After a few technical and administrative problems, it became operational in 2013. Also, the recent installation of a fiber optic cable between Santiago and Havana, which serves as the backbone of the Cuban Internet, has reportedly improved the country’s inferior situation in this area.<sup>390</sup> Nevertheless, for the time being, it does not seem to be meeting expectations for improvement. After the re-establishment of diplomatic relations with the United States in 2014, other initiatives to guarantee connectivity in Cuba were announced.<sup>391</sup>

221. The information available indicates that progress in the development of infrastructure is slow.<sup>392</sup> The Office of the Special Rapporteur considers that, as part of the measures to ensure the effective and universal enjoyment of the right to freedom of expression, serious efforts are required to develop and implement plans

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<sup>383</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. Para. 16.

<sup>384</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.15.

<sup>385</sup> CubaDebate. September 21, 2016. [Habr  wi-fi en todo el malec n habanero](#) [There will be wi-fi all along Havana’s Malec n].

<sup>386</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>387</sup> In contrast, according to the U.S. Federal Communications Commission, Internet download speeds in the United States must be greater than 25 Mbps in order to qualify as broadband. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.27. In November 2017, it was learned that ETECSA and United Telecommunication Services (UTS) had reportedly signed an agreement to expand broadband Internet service in Cuba. CubaNet. November 3, 2017. [ETECSA firma acuerdo para aumentar el ancho de banda de Internet](#) [ETECSA signs agreement to increase Internet bandwidth]; Cubas . November 1, 2017. [Etecsa en Fihav: S lido paso en proceso de informatizaci n](#) [Etecsa at Fihav: Solid step in the computerization process].

<sup>388</sup> FH. [Freedom of the Net 2015. Cuba](#); CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.15.

<sup>389</sup> IACHR. [Office of the Special Rapporteur for Freedom of Expression. Annual Report 2016](#). Chapter II. OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017. Para. 463.

<sup>390</sup> CIMA – NED. [Cuba’s Parallel Worlds: Digital Media Crosses the Divide](#). August 30, 2016.

<sup>391</sup> For instance, in 2018, Google and Cuba discussed how the company could help connect Cuba to the underwater fiber optic cables located relatively close to the island, which would give Cubans faster access to data stored worldwide. The New York Times. June 4, 2018. [Cuba’s New President Meets With US Senator, Google Exec](#).

<sup>392</sup> AI. [Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education](#), 2017. AI. [Six facts about censorship in Cuba](#). 2016; CIMA–NED. [Cuba’s Parallel Worlds: Digital Media Crosses the Divide](#). August 30, 2016. In January 2016, Daniel Sep lveda, the Deputy Assistant Secretary of State and U.S. Coordinator for International Communications and Information Policy at the State Department, told *OnCuba* that government representatives had been reluctant to accept offers for an underwater cable connecting Cuba and the United States. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.36.

to ensure that infrastructure and services progressively guarantee universal access. In addition, it recalls that both the Office of the Special Rapporteur and the IACHR have recalled “how important it is for the initiatives to ensure Internet connectivity in Cuba, announced following the reestablishment of diplomatic relations with the United in December 2014, to guarantee unrestricted respect for human rights, especially the right to freedom of expression.”<sup>393</sup>

222. The Cuban government maintains that, because it is not possible for its people to have Internet access at home, the collective distribution of connectivity is a better use of resources. The regulations give priority to hard-wire service for companies, universities, and other organizations and entities that have obtained the appropriate authorization.<sup>394</sup> However, this is questionable considering that foreigners can purchase Internet service from their homes, while Cubans cannot.<sup>395</sup>

223. Various sources indicate that the lack of access is related to the authorities’ apprehension about opening up the system to the flow of information contained on the Internet.<sup>396</sup> This means that Internet access and quality are considerably inadequate in Cuba. These profound shortcomings greatly affect the terms on which citizens can access Internet content and, therefore, culture, entertainment, and information not coming from official State media. To circumvent this limitation, Cubans have developed compilation and distribution mechanisms through systems that allow for alternative offline access.

224. As for mobile telephony, only some 3.3 million of a population of 11 million reportedly have a device, according to the ITU. The information received indicates that ETECSA offers mobile telephony services through the company Cubacel and mainly with 2G technology, although some 3G networks are apparently in operation, and there are plans to meet 4G standards. For this reason, mobile telephony to date offers most users voice and short message services (SMS), but no data services. Although Cubacel provides an email service called NAUTA that is accessible from mobile phones, it requires prior user registration and does not offer minimum privacy guarantees (VI.D).<sup>397</sup>

225. There is a parallel reality to the State monopoly on access service, which is the so-called *Street Net*. This is an informal web of computers that are interconnected to exchange messages, content, applications, and so on. According to the information available, in Havana these types of initiatives have managed to connect thousands of home computers to each other that would otherwise have no opportunity for interconnection of any kind.<sup>398</sup> It is also important to note what is commonly referred to as *El Paquete*. According to a CPJ study, it is a weekly delivery of content previously downloaded from the web. It is sold to the public at the price of US\$ 1.00, on USB drives and DVDs, so it can be consumed offline. It is said to be consumed by nearly half the population. Thanks to this system, a significant number of citizens are able to access content that is not accessible by other means due to connection issues and government control over the platform.<sup>399</sup>

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<sup>393</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 418; 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. 147; IACHR. [Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 189, 192, 193.

<sup>394</sup> IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 462; IACHR. [Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Para. 74.

<sup>395</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>396</sup> IACHR. Office of the Special Rapporteur. Working meeting with journalists. 168<sup>th</sup> Session. June 2018.

<sup>397</sup> FH. [Freedom of the Net 2015. Cuba](#).

<sup>398</sup> The circulation of information and ideas beyond the control of the State is also possible due to the use of electronic memory sticks (USB), flash drives, CDs, external hard drives, and other devices [The New York Times. June 4, 2018. [Cuba's New President Meets With US Senator, Google Exec](#)]. The people who manage these networks take care to avoid content of a political nature, and even establish internal rules that exclude content that serves to “attack the internal order, the security of the country, or the stability of the Cuban State.” [Reglas Generales y Código de Sanciones de SNet [SNet General Rules and Penalties Code]. Its existence is so indisputable that the official digital newspaper *CubaDebate* devoted an article to it on September 16, 2016. *CubaDebate*. [SNET: La primera comunidad inalámbrica en Cuba \[SNET: Cuba's first wireless community\]](#). September 16, 2016].

<sup>399</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). Recent reports on the content of *El Paquete* underscore the increasing absence of politically controversial content, meant to avoid a reaction from the authorities. [BBC Mundo. [Cómo hacen los cubanos para tener acceso a la TV internacional \[How Cubans access international TV\]](#). October 9, 2014; Ventana Política. [Desconectados en Cuba: sí pero cuánto? \[Disconnected in Cuba: yes but how much?\]](#). March 20, 2016.

226. The Office of the Special Rapporteur recalls that Internet access should be “universal, ubiquitous, equitable, truly affordable, and of adequate quality,”<sup>400</sup> and that it is incumbent upon the State to decide which means are the most appropriate under the circumstances to ensure implementation of these principles. This gives rise to a number of consequences that the Office of the Special Rapporteur calls upon the State to observe: the duty to progressively promote universal access not only to the Internet infrastructure, but also to the technology necessary for its use and to the maximum amount of information available on the Internet; the duty to eliminate arbitrary barriers to access to online infrastructure, technology, and information; and the duty to adopt positive differentiation measures to enable the effective enjoyment of this right by individuals or communities who so require because of their circumstances of social exclusion or discrimination.<sup>401</sup>

### C. Content blocking and censorship

227. In addition to the limited connectivity in Cuba, Internet access and use presents a number of obstacles related to content blocking and censorship. According to different sources, part of the content hosted on the global Internet is not accessible from Cuba because it is blocked or filtered by the authorities. In some cases, the blocks are temporary, but others it has proved to be impossible to access websites, platforms, and social networks like Facebook, Twitter, Youtube, Yahoo, MSN, and Hotmail.<sup>402</sup>

228. The information available indicates that the Ministry of Information Technology and Communications reportedly gives priority to accessing web pages that are a kind of national intranet and that are aimed at replicating or presenting a native version of services that are well known in the rest of the world.<sup>403</sup> For most people, the only option is the Cuban intranet, which allows access to websites that are registered with the .cu domain or are supportive of the country’s government, but as stated earlier, the majority of the population lacks access to the global web. The national intranet is a controlled network that allows users to browse certain selected international sites, as well as to have email access.<sup>404</sup>

229. Internet access and use in Cuba is also seriously hindered by the blocking of websites that criticize or dissent from the party of the government.<sup>405</sup> The websites of independent journalists, websites critical of the government, and human rights-related websites have remained blocked throughout the years.<sup>406</sup> This reportedly affects blogs, web pages, or platforms with content managed by critical voices, whether they are hosted in Cuba or abroad. According to a study by the Open Observatory of Network Interference (OONI),<sup>407</sup>

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<sup>400</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 16; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 7.

<sup>401</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. Para. 16; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 15.

<sup>402</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016; CPJ. [Attacks on the Press. Journalism on the Front Lines in 2013: Cuba](#). 2013.

<sup>403</sup> Accordingly, *CubaRed.com* is reportedly a local version of Facebook, and *EcuRed.cu* is a replica of Wikipedia. It is also important to highlight the existence of some intranets, particularly in the university and health services sectors. In addition, since the liberalization of relations with the United States, some companies in that country’s communications technology sector have begun to look toward Cuba. For instance, companies like Netflix (which already offers its on-demand content service in Cuba), Verizon (offering roaming services), Airbnb, and Paypal already have a presence on the island, within the limited possibilities still offered. Google has symbolically opened the first hotspot from which you can enjoy a free Wi-Fi connection, in the studio of a Havana artist. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016.

<sup>404</sup> IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147<sup>th</sup> Session. March 11, 2013.

<sup>405</sup> IACHR. [Annual Report 2016. 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, 461; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 350; IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 173, 174; IACHR. [Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 91.

<sup>406</sup> IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 71<sup>st</sup> General Assembly of 2015](#); IAPA. [Report to the Midyear Meeting 2015](#).

<sup>407</sup> AI. August 29, 2017. [Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education](#); Periódico Cubano. August 31, 2017. [Cuba bloquea 41 sitios de internet en los puntos Wifi, señala informe del Observatorio Abierto de Interferencias en la Red \(LISTADO\)](#) [Cuba Blocks 41 Web Sites at Wifi Points, Says Report of Open Observatory on Network Interference (LIST)]; Similarly, see CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. Pp. 16 & 23.

at least 41 websites are reportedly blocked in Cuba, including *14yMedio*, *Martí Noticias*, *Damas de Blanco*, *La Nueva Cuba*, *Diario de Cuba*, *El Estornudo*,<sup>408</sup> *CiberCuba*, and *Cubonet*.<sup>409</sup> All the sites blocked had one thing in common: they expressed criticism of the Cuban government, they covered human rights issues, or had to do with circumvention tools (techniques to get around censorship).<sup>410</sup>

230. According to reports, the number of censored websites has reportedly grown in recent years. In order to access them, Cubans use virtual private network (VPN) services or websites that function as anonymous proxies.<sup>411</sup> The information available suggests that it is not uncommon for content previously posted on the network to be removed, either as a result of government pressure on its author, or directly if it is hosted on .cu domains.<sup>412</sup>

231. *14ymedio*, the first independent news website in Cuba, founded by Yoani Sánchez, warrants special mention.<sup>413</sup> This website is hosted outside Cuba, and according to the information available, has been repeatedly blocked by authorities and therefore very difficult to access from within the country. Despite the systematic prohibition of content and the blocking of Sánchez's blog, as well as her numerous arrests, her work has shown the outside world the efforts of a significant and numerous community of journalists willing to hold the government to account, rejecting the official model of journalism.<sup>414, 415</sup>

232. These actions are reportedly based on the previously examined regulatory framework.<sup>416</sup> Closely linked is the legal status of those engaged in the dissemination of information and opinion. As noted, access to the journalistic profession is regulated and controlled by the authorities and the official union, the UPEC (III.B). Those who provide reporting and opinion outside this context are treated as if they were acting unlawfully, with the risks of persecution and repression that this entails (III.C, IV and V). Consequently, people seeking to establish channels of communication through new technologies risk not only being blocked or censored in the digital world, but also directly and personally suffering the consequences. For this reason, in many cases such journalists hide behind anonymity or use pseudonyms. In addition, the fear of being

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<sup>408</sup> Revista El Estornudo. February 26, 2018. [Nota al Censor: ¿Por qué no puede leerse El Estornudo en Cuba?](#) [Note to Censor: Why can't you read *El Estornudo* en Cuba?]; Diario Las Américas. February 26, 2018. [La revista El Estornudo denuncia que el régimen cubano bloquea su página web](#) [*El Estornudo* magazine condemns Cuban regime's blocking of its website].

<sup>409</sup> Journalist and activist Boris González Arenas stated that the website of Miami-based *Cubonet* has also been blocked at times, and blogger Taylor Torres affirmed that *Cuba Encuentro* and *Martínoticias* are also occasionally blocked. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P. 29.

<sup>410</sup> Al. [Cuba's Internet paradox: How controlled and censored Internet risks Cuba's achievements in education](#). August 29, 2017; Periódico Cubano. August 31, 2017. [Cuba bloquea 41 sitios de internet en los puntos Wifi, señala informe del Observatorio Abierto de Interferencias en la Red](#) [Cuba Blocks 41 Web Sites at Wifi Points, Says Report of Open Observatory on Network Interference]; IACHR. [Office of the Special Rapporteur for Freedom of Expression. Annual Report 2017](#). Chapter II. OEA/Ser.L/V/II. Doc. 210/17 December 31, 2017. Para. 395.

<sup>411</sup> 14ymedio. [Recetas para sortear la censura en internet](#) [How to circumvent censorship on the Internet]. August 9, 2017.

<sup>412</sup> FH. [Freedom of the Net 2015. Cuba](#)

<sup>413</sup> The site *14ymedio* was developed by Yoani Sánchez following the success of her personal blog *Generación Y*. This blog unquestionably influenced the future development of digital communication in the country. This influence was bolstered when Sánchez received several international prizes (including the 2008 Ortega y Gasset Prize for journalism in Spain). She and her husband (a journalist who was fired from the official publication *Juventud Rebelde*) also started a training academy for citizen journalists in their Havana apartment.

<sup>414</sup> International Journalists Network. [Beyond Yoani Sanchez, 4 Cuban Bloggers to Know](#). April 15, 2015; The New York Times. [Cuba's Promising New Online Voices](#). December 23, 2014; El País. [El periodismo que sacude conciencias](#) [Journalism that shakes consciences]. May 29, 2013.

<sup>415</sup> Yoani Sánchez's situation has received special attention from the IACHR and the Office of the Special Rapporteur. On November 9, 2012, the IACHR issued precautionary measures on behalf of Yoani Sánchez and her family. The IACHR asked the Cuban State to take the necessary measures to guarantee their lives and physical integrity, to agree on the measures to be taken with the beneficiary and her representatives, and to report on the actions taken to investigate the events that led to the adoption of precautionary measures. IACHR. [PM 350/12 – Yoani María Sánchez Cordero](#). Cuba. November 9, 2012.

<sup>416</sup> Ministry of Information Technology and Communications. [Resolución 179 de 2008 por la que se aprueba el Reglamento para los proveedores de servicios de acceso a Internet del público](#) [Resolution 179 of 2008, enacting the Regulations for Public Access Internet Service Providers]. November 13, 2008. Article 19.

subjected to similar acts or being arrested reportedly leads many independent journalists to censor themselves.<sup>417</sup>

233. As the Special Rapporteurs for Freedom of Expression have stated,<sup>418</sup> “Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure—analogue to banning a newspaper or broadcaster—which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.” The Office of the Special Rapporteur similarly recalls that “Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.”<sup>419</sup>

#### D. Surveillance

234. The Office of the Special Rapporteur has received information on alleged surveillance activities to monitor Internet users, contrary to the right to privacy and data protection. This is either as a consequence of using email and messaging services, or through software used for general surveillance of the web, especially of those users connecting from cybercafés.

235. Indeed, access to email and messaging services is a matter of concern. According to the information available, there is a single service, called NAUTA, authorized for use either through the mobile phone or the Wi-Fi connection points provided by ETECSA, through Cubacel. The use of this service reportedly requires the full identification of the user to the authorities, who have the power to cancel it in the event of misuse.<sup>420</sup> Different sources have indicated that this service does not offer minimum guarantees of privacy in communications.<sup>421</sup>

236. It was also recently reported that the new messaging application toDus, created by the University of Information Science (UCI) and ETECSA, would endanger users’ personal data held by the government. In particular, it was reported that the application asks “to connect with friends and family and exchange photos and videos with them, and gives ToDus access to your contacts, photos, media, and general files stored on your device.” In addition, according to the terms of service, the user would reportedly agree “not to make comments that are offensive or contrary to morality, as well as those that denigrate or offend governments or government policies.”<sup>422</sup>

237. A related problem noted by the Office of the Special Rapporteur concerns the use of mobile phone messages or SMS. Various digital newspapers linked to the political opposition reported that Cubacel was censoring SMS containing words such as “democracy,” “human rights,” and “hunger strike.” Various sources cite the experience of a certain number of users, as well as the tests carried out by the sources themselves. Apparently, messages containing phrases such as these have not reached their intended recipients on a significant number of occasions.<sup>423</sup>

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<sup>417</sup> For instance, this is the case of OnCuba, which is registered as a foreign media outlet and therefore has legal status. This status has reportedly led it to engage in “a significant exercise of moderation and self-censorship in order to keep from losing its current status.” CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P. 16.

<sup>418</sup> United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

<sup>419</sup> IACHR. [Annual Report 2016. 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>420</sup> FH. [Freedom of the Net 2015. Cuba](#).

<sup>421</sup> FH. [Freedom of the Net 2015. Cuba](#).

<sup>422</sup> Martí. [Nueva App creada en la UCI compromete información de usuarios, alerta Yoani Sánchez](#) [New App created at UCI puts user information at risk, Yoani Sanchez warns]. July 5, 2018; Cubanos por el mundo. [Yoanis Sánchez advierte que el “Whatsapp cubano” compromete información de usuarios](#) [Yoanis Sánchez warns that “Cuban Whatsapp” puts user information at risk]; Civicus & CCDHRN. [Joint Submission to the UN Universal Periodic Review](#). October 5, 2017. P. 13.

<sup>423</sup> 14ymedio. [Cubacel censura los SMS con las palabras “democracia” y “huelga de hambre”](#). [Cubacel censors SMS containing the words “democracy” and “hunger strike”]. September 3, 2016; AI. [Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education](#). 2017; IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 72nd General Assembly 2016](#).

238. The information available also indicates that Web traffic is “routed through the software program Ávila Link, which has monitoring capabilities.”<sup>424</sup> Several cases have been reported of personal online profiles being hacked, as well as cases of tracking and monitoring of web browsing data and telephones.<sup>425</sup> The legal framework regulating the provision of Internet service has allowed the government to have access to information contained on the personal pages and in the emails of Internet users in Cuba.<sup>426</sup> According to Resolution 179 of 2008 of the Ministry of Information Technology and Communications, a service provider must record and store Internet traffic for at least a year and ensure that users do not use “encrypted software or share encrypted files.”<sup>427</sup>

239. It is of particular concern that, in recent years, government surveillance of web activity has reportedly been used as a way to identify independent journalists and political dissidents, leading to patterns of harassment—traditionally used against the print media—against those engaged in these types of online activities, as well as to arbitrary arrests and even prosecution for crimes associated with the exercise of freedom of expression through the Internet.<sup>428</sup>

240. For instance, according to the information available, journalists Sol García Basulto and Henry Constantín of *La Hora de Cuba*, have reportedly been spied on repeatedly and have been the victims of cyber-harassment through social media.<sup>429</sup> The same has reportedly happened to journalist Iris Mariño García, also of *La Hora de Cuba*.<sup>430</sup> Cuban journalists and bloggers have also reportedly told the CPJ and Amnesty International that they have been subjected to State surveillance.<sup>431</sup> Other critical bloggers have reported being harassed by online “trolls” that are suspected to be organized and encouraged by the State.<sup>432</sup>

241. The Office of the Special Rapporteur underscores that respect for privacy is a guiding principle of the digital environment. The right to privacy, according to which no one may be subject to arbitrary or abusive interference with his privacy, family, home, or correspondence, is a prerequisite for the exercise of the right to freedom of expression online, which must be protected by law and strictly promoted in public policy.<sup>433</sup> This point is closely linked to the State’s obligation to create a safe environment for the exercise of freedom of expression, as the violation of communication privacy has a chilling effect and hinders the full enjoyment of the right to communicate.<sup>434</sup>

242. Internet surveillance, in any of its forms, constitutes interference in the private lives of people and, when conducted illegally, can also affect the rights to due process and a fair trial, freedom of expression, and

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<sup>424</sup> FH. [Freedom of the Net 2015: Cuba](#); CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P. 34.

<sup>425</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>426</sup> FH. [Freedom on the Net 2017: Cuba](#); FH. [Freedom on the Net 2016: Cuba](#).

<sup>427</sup> Ministry of Information Technology and Communications. [Resolución 179 de 2008 por la que se aprueba el Reglamento para los proveedores de servicios de acceso a Internet del público](#) [Resolution 179 of 2008, enacting the Regulations for Public Access Internet Service Providers]. November 13, 2008. Art. 19(e).

<sup>428</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>429</sup> IAPA. [Cuba](#). October 26, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 81.

<sup>430</sup> IAPA. [Cuba](#). October 26, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 81.

<sup>431</sup> CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. Pp. 18 & 27; AI. [Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education](#). August 29, 2017.

<sup>432</sup> The CPJ reported, for instance, in 2013, that a video was posted of an interview with Eliécer Ávila, a former student of the University of Information Science, who stated that he had participated in a project known as “Operation Truth.” According to Ávila, his participation in the project (allegedly linked to the Communist Party Youth), was to monitor online conversations in search of signs of dissidence, and to write comments attacking the reputation of journalists and bloggers who criticized the government. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P. 34.

<sup>433</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. Para. 130; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 10.

<sup>434</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. Para. 23; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 10.

access to information.<sup>435</sup> There is international consensus that surveillance practices and the unlawful or arbitrary interception and collection of personal data affect the right to privacy and freedom of expression, and may be contrary to the principles of a democratic society.<sup>436</sup> The Office of the Special Rapporteur calls upon the Cuban State to cease any form of internet surveillance, as it constitutes interference with privacy.<sup>437</sup>

243. To protect privacy on the Internet, the confidentiality of personal online data must be guaranteed,<sup>438</sup> through any email, messaging, or other service. The Cuban State must adopt policies to prohibit data processing—including storage, analysis, and disclosure of personal data—except when authorized or when the person affected has given informed consent. It should take regulatory measures to prohibit these practices and establish effective and independent oversight mechanisms.<sup>439</sup>

244. The right to privacy includes the preservation of anonymous platforms for content exchange and the use of proportionate authentication services.<sup>440</sup> Anonymity is a means of protecting privacy, and its connection to freedom of expression has been particularly noteworthy because it facilitates participation in the public discourse without the need to identify oneself, thereby preventing potential retaliation for an opinion, which is particularly relevant in the Cuban context.<sup>441</sup> This applies especially to the relationship between journalists and their sources. Cuban Internet regulations, far from containing provisions designed to guarantee such privacy, are rather aimed at preserving ongoing and effective access by the authorities to the data of individuals communicating through networks from or to the island.

245. Encryption is also a means of protecting the privacy of information in the digital age and the inviolability of communications. Measures aimed at restricting encryption reduce people's ability to protect themselves against illegitimate invasions of their privacy.<sup>442</sup> The most burdensome measures include legal prohibitions on private encryption, as in the case of Cuba, which, as noted, expressly requires Internet service providers to ensure that no software is used with cryptographic systems or encrypted files.

## VI. CONCLUSIONS AND RECOMMENDATIONS

### A. Conclusions

246. Cuba continues to be the only country in the hemisphere where there are no guarantees for the exercise of the right to freedom of expression. A State in which there is a persistent and serious failure to observe the essential elements of freedom of expression, representative democracy, and its institutions. Despite the years that have passed and the repeated recommendations in this regard, intolerance continues to be the norm for the Cuban authorities towards all forms of criticism or opposition, and the main limitation to fundamental rights and freedoms in Cuba.

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<sup>435</sup> IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 212; UN. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#). A/HRC/23/40. 17 April 2013.

<sup>436</sup> UN. General Assembly. Resolution 68/167 adopted on 18 December 2013. The right to privacy in the digital age. A/RES/68/167. 21 January 2014. Para. 4.

<sup>437</sup> Internet surveillance can come in different forms and nuances, including documentation, monitoring of activities and communications, or mass or targeted collection of online communications or activity. Targeted surveillance is generally protected in criminal proceedings or other kinds of investigations, and involves collecting and/or monitoring the communications of an identified or identifiable individual, and IP address, a specific device, a specific account, etc. Mass data and communications surveillance involves tapping and monitoring entire cables, networks, or equipment, or buying server or intermediary data from a third party, then accessing all the data collected that has not been encrypted. IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 210.

<sup>438</sup> IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 204.

<sup>439</sup> IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 205.

<sup>440</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 23.

<sup>441</sup> IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 227.

<sup>442</sup> UN. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye](#). A/HRC/29/32. May 2015; UN. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye](#). Encryption and Anonymity follow-up report. A/HRC/38/35/Add.5. 13 July 2018.

247. The State continues to have a monopoly on the media, and it is still against the law to establish private media, all of which is incompatible with international standards on freedom of expression. The selective and deliberate persecution of independent media and journalists continues, and even intensifies at times. As extensively noted in this report, this persecution—carried out by State bodies or tolerated by the State—takes the form of arbitrary detentions, threats, and acts of harassment or censorship against journalists who disseminate ideas, opinions, and information critical of the ruling party. It is also reflected in the multiple acts and threats by authorities and public servants to intimidate anyone who expresses critical ideas about the country's politics and institutions, such as artists, human rights defenders, political dissidents, and others.

248. Today's repressive practices seem to be based on a rationale that is outside the legal framework, but they are far from disappearing. On the contrary, they are strongly replicated in the new media. With respect to the Internet, the extremely restrictive and ambiguous legal provisions, the limited connectivity of the Cuban population, the blocking and censorship of critical media, and surveillance seriously impede the exercise of the rights to freedom of expression and privacy on the Internet.

249. The Cuban legal system—from the Constitution itself, to the legal and regulatory provisions outlined in this report—is designed to repress dissent and criticism. Thus, in the opinion of the Office of the Special Rapporteur, the main problem with current legislation is its overtly repressive approach to freedom of expression. Far from protecting the exercise of freedom of expression and other fundamental rights and freedoms, it provides the State with legal tools to repress it. It also facilitates serious discrimination on political grounds in the exercise of human rights, since anyone who thinks or wants to express themselves differently from the socialist regime cannot exercise their rights without repression.

250. Although the current Constitution and the Draft Constitution affirm that Cuba is a democratic State governed by the rule of law, it will not be so until freedom of expression is truly respected and fully guaranteed. The Office of the Special Rapporteur is confident that the constitutional reform process can serve as an opportunity to achieve a freer Cuba, in which everyone can enjoy their right to think and express themselves based on their own ideas and perspectives, in which they can deliberate and participate in the construction of the type of society in which they wish to live. In order to contribute to the achievement of this objective, the Office of the Special Rapporteur makes the following recommendations.

## **B. Recommendations**

### **Regulatory framework**

1. Bring the Constitution into line with the inter-American standards on freedom of expression and information, protecting these rights unconditionally and definitively, within the framework of a plural, diverse, and open understanding of public and media space, as well as in direct connection with the principle of democracy. In particular, by (i) not providing for any form of prior censorship dictated by the aims of socialist society or otherwise, (ii) ending the State monopoly on the media and the prohibition against the operation of private media, and (iii) not including the potential criminalization of the exercise of freedom of expression.
2. Repeal and/or amend the current criminal laws on the exercise of freedom of expression, in particular: (i) the provisions of the Criminal Code of 1987, (ii) Law No. 88 of 1999 for the Protection of National Independence, and (iii) la Law No. 80 of 1996, for the Reaffirmation of Cuban Dignity and Sovereignty, referred to in sections II.B and IV.C, to make them compatible with the inter-American standards cited in this report.
3. Repeal the laws that establish the offense of contempt of public authority, in whatever form, given that such provisions are contrary to inter-American standards and restrict public debate, an essential element of a functioning democracy.
4. Amend the criminal defamation laws to eliminate the use of criminal proceedings to protect honor and reputation when information is disseminated about matters of public interest, public servants, or candidates for public office.
5. Eliminate any provision that authorizes prior censorship by any State body, as well as any prior conditions that may entail censorship of freedom of expression, such as prior requirements related to the veracity, timeliness, and impartiality of information.
6. Have clear, proportionate, and appropriate legislation to protect freedom of expression and information. In particular, the exercise of journalistic activities and the establishment of means of

communication must be permitted and facilitated by law, and the State should abstain from imposing administrative or other obstacles that allow it to maintain control over access to the public sphere. Fundamental principles such as the protection of sources, the conscience clause, and the right of reply should be appropriately and proportionately regulated.

7. Repeal Executive Order No. 199 of 1999 and its supplemental provision, Resolution No. 1, "Regulations on the security and protection of official information," issued by the Ministry of the Interior on December 26, 2000; and enact effective legislation, policies, and practices that permit access to information and equal participation in accordance with principles and guidelines for the design and implementation of access laws in the region.

#### **Free and independent journalism in Cuba**

8. Take legislative and other measures necessary to guarantee pluralism, including laws preventing the existence of public or private monopolies, and adjusting institutional frameworks in order to not only prevent the power of the State from being used to reward or punish media according to their editorial line, but to foster pluralism and diversity in public debate.
9. Take the necessary measures to ensure that State media are subject to appropriate legislation and regulation, and undertake the necessary transformation processes to turn them into providers of a public service aimed at meeting the needs and interests of citizens, in a manner completely independent of any form of political or ideological control by State institutions or the Cuban Communist Party.
10. Guarantee the conditions for the free exercise of journalism, establish legal guarantees to ensure unfettered press freedom, and allow non-State media to exist.
11. Adopt appropriate prevention mechanisms to deter violence against journalists, including public condemnation of all attacks on journalists and the training of public servants, especially police and security forces; and conduct serious, impartial, and effective investigations into attacks, threats, and acts of intimidation committed against journalists and media workers.
12. Abstain from using the power of the State to punish or reward media and journalists for their editorial line or coverage of certain information, whether through the discriminatory and arbitrary placement of government advertising or other indirect means aimed at preventing the communication and circulation of ideas and opinions.
13. Encourage democratic debate through public statements, practices, and policies that promote tolerance and respect for all people, on equal terms, whatever their thoughts or ideas.

#### **Criminalization of criticism and politically motivated discrimination against different population groups**

14. Put an end, as soon as possible, to the practice of harassment, including summonses, detentions of any duration, and harassment of any person for reasons related to the exercise of their freedom of expression, freedom of association, assembly, or other related freedoms.
15. Abstain from making unlawful or arbitrary arrests, and in the event that a person is deprived of his or her liberty, ensure that it is an exceptional measure and that all guarantees for the restriction of this right are observed, including that of being brought immediately before a judge.
16. Take the necessary measures to prevent and eradicate the criminalization of persons who exercise the right to freedom of expression and association, including artists, political dissidents, human rights defenders, and others.
17. Take the necessary measures to bring laws, procedures, and practices into line with international human rights standards on due process and access to justice. In particular, amend legislation to ensure due process guarantees, and amend the Constitution with a view to ensuring the independence of the judiciary.
18. Amend cultural policy laws to allow freedom of artistic expression not conditioned on the aims of socialist society or otherwise, and immediately cease any act that inhibits the exercise of such freedom.
19. Immediately cease attacks on human rights defenders; ensure that they are able to carry out their work and cooperate freely with human rights mechanisms without fear of intimidation or retaliation, and without undue restrictions on their right to freedom of movement.
20. Promote a human rights culture that publicly and unequivocally recognizes the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law in society.

21. Amend the Associations Act, Law No. 54 of 1985, to allow for the creation of media outlets and a professional guild.
22. Guarantee citizens and political groups the right to political participation and freedom of expression without fear of reprisal, allowing and encouraging a plural, broad, and robust public debate.
23. To take the necessary measures to fully guarantee the right of all Cuban persons to leave the country, to move within its borders, to choose their place of residence, and to enter or re-enter the country of their citizenship. This includes, in particular, not preventing or in any way obstructing the departure from or entry into the country of persons to participate in events linked to the human rights situation in Cuba.

#### **Social protests and demonstrations**

24. Recognize and protect the right to peaceful assembly and freedom of expression, without discrimination on the basis of political opinion.
25. Take the necessary measures to prevent violence against journalists during public demonstrations, as well as against the demonstrators taking part in them.
26. Establish reasonable limits, governed by the principles of legality, necessity, and proportionality, to ensure the peaceful holding of protests and social demonstrations.

#### **Limitations on the right to freedom of expression on the Internet**

27. Adapt the regulations referred to in this report and others that could affect the nature of the digital environment in Cuba, in accordance with the aforementioned principles of equal access, pluralism, nondiscrimination, and privacy, as well as net neutrality and multisectoral governance as cross-cutting components of these principles.
28. Facilitate citizens' unrestricted connection to the Internet, and guarantee free access to the Internet to all citizens without discrimination; this includes, but is not limited to, making Internet access cheaper and expanding unrestricted connectivity.
29. Lift blocks on content as soon as possible, especially blocks on censored independent media.
30. Ensure that intermediaries are not subject to a regulatory regime that establishes strict liability for the content they distribute or requires them to exercise supervisory functions over it.
31. Abstain from any kind of data surveillance or handling, including the storage, analysis, and disclosure of personal data, except where it is legitimate to do so or with the informed consent of the person concerned; and take regulatory measures to prohibit such practices and establish effective and independent oversight mechanisms.

# WOMEN JOURNALISTS AND FREEDOM OF EXPRESSION. DISCRIMINATION AND GENDER-BASED VIOLENCE FACED BY WOMEN JOURNALISTS IN THE EXERCISE OF THEIR PROFESSION

## INTRODUCTION

1. The Americas have made progress in formally recognizing women's right to freedom of expression under equal and non-discriminatory conditions and in removing legal barriers that have traditionally prevented their full exercise. More and more women are involved in building and strengthening a representative, transparent, and accountable government in many countries and an increasing number of journalists and human rights defenders are engaged in the exercise, promotion, and protection of the right to freedom of opinion and expression.<sup>1</sup> In particular, information and communication technologies have facilitated and expanded the possibilities for millions of women to participate actively in political, economic, cultural, and social life, including the media.

2. Despite these remarkable advances, women in the region still face structural obstacles and discriminatory practices that exclude many women from public debate<sup>2</sup> and prevent them, forcibly and persistently, from exercising their right to express their ideas and opinions publicly and to receive information on an equal footing with men.<sup>3</sup> Many of these obstacles and practices are manifestations of gender-based discrimination, in addition to other factors, such as race, ethnicity, religion or belief, age, class, sexual orientation, and gender identity, that women in the region face, and they continue to create disparities in women's exercise of the right to freedom of expression in comparison to their male peers.

3. The impact of these discriminatory practices is particularly pronounced on women who actively exercise freedom of expression and have a high public profile, such as women journalists, women human rights defenders, and women politicians.<sup>4</sup> These groups of women are doubly attacked for exercising freedom of expression and because of their gender. In addition to the risks of threats and violence faced by all human rights defenders and journalists in the region, women belonging to these groups are exposed to additional or specific risks. By challenging chauvinistic stereotypes that disapprove of their participation in public life, they face a situation of violence and gender-based discrimination against women, as well as differentiated forms of violence from State and non-State actors.<sup>5</sup> At the same time, they face a lack of protection and obstacles to access to justice that are also differentiated from their male counterparts.

4. The right of women to freedom of expression has been part of the work agenda of the IACHR's Office of the Special Rapporteur since its inception. In 1999, the Office released the report "Women and Freedom of

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<sup>1</sup> Human Rights Council. [Resolution 23/2. The role of freedom of opinion and expression in women's empowerment.](#) A/HRC/RES/23/2. 23 June 2013.

<sup>2</sup> IACHR. [Annual Report 2008. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter IV (A hemispheric agenda for the defense of freedom of expression). OEA/Ser.L/V/II. 134. Doc. 5. 25 February 2009. Para. 100.

<sup>3</sup> IACHR. [Annual Report 2008. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter IV (A hemispheric agenda for the defense of freedom of expression). OEA/Ser.L/V/II. 134. Doc. 5. 25 February 2009. Para. 100.

<sup>4</sup> See: Front Line Defenders. [Annual report on human rights defenders at risk in 2017.](#) P. 13; Programas Somos Defensores. [Piedra en el Zapato. Annual Report 2017.](#) P. 83. See also: IACHR. March 27 2018. Press Release. [IACHR Urges Colombia to Adopt Urgent Measures to Protect Human Rights Defenders and Social Leaders.](#); UN General Assembly. [Resolution 68/181.](#) A/RES/68/181. 18 December 2013, p. 2; United Nations. [End of mission statement by the United Nations Special Rapporteur on the situation of human rights defenders.](#) Michel Forst. Visit to Mexico. 16 - 24 January 2017.

<sup>5</sup> IACHR. November 29 2017. [Press Release 192/17 - IACHR Calls on States to Recognize and Protect the Work of Women Human Rights Defenders.](#) 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; IACHR. [Toward a Comprehensive Policy to Protect Human Rights Defenders.](#) OEA/Ser.L/V/II. Doc. 207/17. December 29 2017. Para. 43; IACHR. [Criminalization of Human Rights Defenders.](#) OEA/Ser.L/V/II. Doc. 49/15. December 31 2015. P. 37. The IACHR has defined human rights defenders as every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally. The identifying criterion of who should be considered a human rights defender is the activity undertaken by the person and not other qualities, such as whether or not they are paid for their work or whether or not they belong to a civil society organization. [See: IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas.](#) OEA/Ser.L/V/II. Doc. 66. December 31 2011].

Expression,”<sup>6</sup> examining for the first time the relationship between the status of women and its repercussions on the right to freedom of expression and information, and underscored those factors that lead to inequality and discrimination against women and that directly influence the exercise of freedom of expression and information, such as “women’s inequality in educational opportunities, violence against women and the need for women to become more politically involved.” Since then, it has promoted, through various mechanisms and in collaboration with the IACHR’s Rapporteurship on the Rights of Women, the development of standards to guarantee women’s right to freedom of expression and access to information as a tool to combat gender-based violence against women.<sup>7</sup>

5. For several years now, the Office of the Special Rapporteur, together with the international community, has made efforts to draw attention to the forms of gender-based violence faced by women journalists in the exercise of their profession, as well as to the disproportionate impact of certain forms of discrimination in their work.<sup>8</sup> The Office of the Special Rapporteur has paid close attention to the situation of violence against women journalists and the special or additional risks they face in their work because of their gender, and it has been part of the Office’s work agenda on an ongoing basis. In particular, the Office of the Special Rapporteur has drawn attention to the increase in violence against women journalists, including murder, sexual violence, and online violence. In addition to being subjected to the wide range of human rights violations affecting journalists in general, “Women journalists, however, disproportionately and routinely face gender-based violence in the workplace and in the field.”<sup>9</sup>

6. Women journalists and women working in other areas of communication must deal with specific threatening environments that restrict their work and/or have a disproportionate impact on the exercise of their right to freedom of expression. From inequality at work, sexist and misogynist comments, sexual violence and gender-based killings of women (or femicide), these threats or risks tend to be invisible and are not recognized as undue restrictions on freedom of expression by most colleagues, the media, and state authorities. In turn, the lack of a protection against this type of violence and in the investigation of crimes committed against them, makes it difficult to adequately address the particular situation of women journalists and effectively guarantee the exercise of their right to freedom of expression.

7. Both the universal human rights system and the Inter-American system have developed norms and standards that underscore the State’s obligation to address special risks and particular factors that hinder or prevent women journalists from exercising their right to freedom of expression as part of its obligation to respect, protect, and guarantee the exercise of this right. This includes adopting the necessary positive measures to create and maintain a safe and supportive environment for women journalists to be able to work under equal conditions and free from discrimination. States also have an obligation to protect persons under their jurisdiction from undue third-party interference with their right to freedom of expression, including by companies. All companies, including the media and online platforms, in turn have a responsibility to respect human rights, in accordance with the standards developed in this area.

8. The objective of this report is to highlight the situation of women journalists in the region and to examine the obligations of States, as well as the role of the private sector, in eliminating the main obstacles and special or additional risks faced by women journalists in the exercise of their freedom of expression that

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<sup>6</sup> IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter C (Women and Freedom of Expression). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000.

<sup>7</sup> See e.g.: IACHR. [Access to Information on Reproductive Health from a Human Rights Perspective](#). OEA/Ser.L/V/II. Doc. 61. November 22, 2011; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Access to Information, Violence against Women, and Administration of Justice in the Americas). OAS/Ser.L/V/II.154. Doc. 19. March 27, 2015; IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 250-269; IACHR. Report No. 72-14. Merits. Case 12.655. I.V. Bolivia. 15 August 2014.

<sup>8</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 251.

<sup>9</sup> UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 8.

are related to inequality and gender-based discrimination against women. The report seeks to support States in meeting their obligations and to contribute to the efforts of civil society, business, and other private actors.

9. The report is divided into three sections. In the first part, based on information received and testimonies gathered, the report documents the situation of discrimination and gender-based violence against women experienced by journalists in the Americas. In the second section, the report then addresses the obligations of States to ensure the substantive equality of women journalists and examines some of the obligations of the private sector in this area. Finally, the report concludes with a number of recommendations.

10. The Office of the Special Rapporteur recalls that a functional definition of journalists is used in this report. As expressed in other opportunities,<sup>10</sup> journalists are those who observe, describe, document, and analyze events, statements, policies, and any proposal that may affect society, with the purpose of systematizing that information and gathering facts, analyses, and opinions to inform sectors of society or society as a whole. Such a definition includes media workers and support staff, as well as community media workers, “citizen journalists,” and others who may be using the new media as a tool to reach out to the public, as well as opinion leaders who become targets by exercising their right to freedom of expression.

#### **I. THE SITUATION OF WOMEN JOURNALISTS IN AMERICA**

11. Since its establishment, the Office of the Special Rapporteur has paid particular attention to the situation of freedom of the press and the safety of those who practice journalism. In its annual and country reports, the Office of the Special Rapporteur has documented multiple attacks on press freedom and hundreds of episodes of violence against journalists from different parts of the region, including disappearances, killings, threats, harassment, and other attacks. These acts not only seek to suppress the right of journalists to express themselves freely but also affect society's right to be informed.

12. In the case of women journalists, the obstacles and violence that journalism often faces in the region are either exacerbated or take specific forms as a result of gender inequalities for the fact of being women. Although women journalists face the same risks as their male peers when they investigate and report on corruption, organized crime, and human rights violations, they also face specific gender-based risks due to the fact of being women and at the intersection of other identities such as race and ethnicity. The intersection of these multiple identities may increase the risk of certain women facing obstacles or difficulties in the full exercise of the right to freedom of expression or may have a differentiated effect on certain groups of women. These factors often also lead to particular forms of discrimination against those who make up these groups. As the IACHR has stated, “the discrimination of women based on sex and gender is inextricably linked with other factors [...] such as race, ethnicity, religion, or belief, health, status, age, class, caste, sexual orientation and gender identity.”<sup>11</sup>

13. These risks are part of the widespread phenomenon of women's exclusion from public life. It is a multidimensional phenomenon that includes various forms and practices of discrimination that affect women throughout their lives, such as gender-based violence, the prevalence of discriminatory sociocultural patterns, lack of access to equal education, poverty and lack of economic resources, barriers to access to the media, and the digital divide. These factors prevent, hinder, or heighten the risk that women face in exercising their freedom of expression, and diminish their ability to seek, receive, and disseminate ideas and information that is meaningful and relevant to their empowerment.

14. In particular, acts of violence against women, and especially against women journalists, are not isolated acts, but are symptomatic of a pattern of structural discrimination against women, which is rooted in concepts of inferiority and subordination of women. Machismo and gender stereotypes rooted in the societies

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<sup>10</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

<sup>11</sup> IACHR. [The Situation of People of African Descent in the Americas](#). OEA/Ser.L/V/II. Doc.62. December 5, 2011. Para. 60. See also: IACHR. [Indigenous Women and their Human Rights in the Americas](#). OEA/ Ser.L/V/II. Doc.44/17. April 17, 2017. Para. 38; United Nations, Committee on the Elimination of Discrimination against Women (CEDAW). [General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW](#). October 19, 2010. Para. 18.

of the countries of the region increase the risk facing women journalists and prevent them from fully exercising their rights to freedom of expression and to live free from violence.

#### **A. Discrimination against women journalists in the media**

15. The IACHR has indicated that gender discrimination includes “any difference in treatment made on the basis of sex, which intentionally or in practice, places women in a disadvantageous situation and impairs the full recognition of their rights in the public or private spheres.”<sup>12</sup> The Convention of Belém do Pará expressly recognizes “the right of women to be free from all forms of discrimination” and “The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.” At the international level, the CEDAW establishes that the State and its agents have the obligation to eradicate discrimination against women in all of its forms. Article 1 of the CEDAW defines discrimination against women as: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” In this regard, the IACHR has emphasized that “an action or omission may have a discriminatory result or effect in practice, even though it may appear unbiased.”<sup>13</sup>

16. Although in recent years more and more women have been practicing journalism,<sup>14</sup> social norms and gender stereotypes still “present an enormous challenge to the ability of women to begin, and pursue, a career in journalism on equal terms with men.”<sup>15</sup> In many contexts, “perceptions persist [...] that journalism is not an ‘appropriate’ profession for women, resulting in sometimes severe social pressure not to enter the profession, or to leave it.”<sup>16</sup>

17. Analysis of the types of positions women have access to once they enter the media shows that, although progress has been made, discriminatory social norms and gender stereotypes also limit women’s opportunities for career development during their professional lives. However, the information available indicates that in recent years the percentage of women among news presenters or reporters in the region has increased, and this percentage is even slightly higher than the global average.<sup>17</sup> According to the findings of the Global Media Monitoring Project, in Latin America, 43% of news presenters and reporters in 2015 were women—15% more than in 2000. In the Caribbean, that same year, the figure was 45%.

18. However, this progress has not been uniform throughout the region.<sup>18</sup> In particular, in the United States, the number of women reporters and media presenters decreased from 46% in 2000 to 38% in 2015.<sup>19</sup>

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<sup>12</sup> IACHR. [The Road to Substantive Democracy: Women’s Political Participation in the Americas](#). OEA/Ser.L/V/II. Doc. 79. April 18, 2011. Para. 18.

<sup>13</sup> IACHR. [The Road to Substantive Democracy: Women’s Political Participation in the Americas](#). OEA/Ser.L/V/II. Doc. 79. April 18, 2011. Para. 18.

<sup>14</sup> International Federation of Journalists (IFJ). [Gender Snapshot: International Women’s Day 2016](#). March 8, 2016. According to the source, “There are 70% of women in journalism schools and newsrooms [have begun] to have more women journalists than men.”

<sup>15</sup> UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 6.

<sup>16</sup> UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 6.

<sup>17</sup> Worldwide, in 2015, women accounted for 37% of the people who reported news stories in newspapers and on television and radio news programs. In the same year, 49% of the people presenting news on radio and television were women. GMMP. [Gender Inequality in the News 1995-2015. Highlights of Findings](#). No date.

<sup>18</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. P. 52 & Table 36. P. 53. Disaggregated data for reporters and presenters by region can be found in Tables 38 and 40 of the study.

In Argentina, in 2016, the Office of the Ombudsperson monitored all news programs broadcast on the five publicly and privately managed channels operating in the City of Buenos Aires. The study found that 71.8% of the news items that had a presenter were presented by a male columnist, while 23.4% were presented by a female journalist, with the remaining 4.8% were presented by different combinations of men and women. Office of the Ombudsperson for Audiovisual Communication Services. [Monitoreos de Programas Noticiosos de Canales de Aire de la Ciudad de Buenos Aires](#) [Monitoring of Broadcast News Programs in the City of Buenos Aires]. P. 46.

<sup>19</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. Pp. 11 & 53. In the case of the United States, the report of the Women’s Media Center on the Status of Women in the Media 2017, indicated that

19. Women in the region are also over-represented among those who report news covering issues traditionally related to “female interest”<sup>20</sup> and under-represented in the coverage of topics considered to be of particular interest, such as those related to politics and government or economics. In Latin America, 41% of government and political news covered in 2015 was reported by women, a figure that stands at 28% in North America.<sup>21</sup> This pattern might contribute to making the work of women journalists and media workers less visible and less valued, which can result in a pay gap vis-à-vis their male colleagues<sup>22</sup> and access to fewer contractual protections.<sup>23</sup>

20. There are also few women in government and senior management positions in newspaper companies.<sup>24</sup> According to data gathered by the International Federation of Journalists (IFJ), the representation of women in leadership positions in Latin American media companies is less than 25%.<sup>25</sup> This Office’s own experience in numerous meetings with media associations, owners, and managers confirms that women who succeed in attaining managerial positions in the public and private media remain a minority in the region.<sup>26</sup>

21. Women journalists and media workers are also affected by “inflexible working hours, limited or no access to affordable quality childcare, poor parental leave policies and social attitudes [by virtue of which women are assigned unremunerated care tasks], among many other factors.”<sup>27</sup> The impact of these patterns of discrimination, which also affect other groups of women, is exacerbated by the long working hours typical

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the gender gap between news reporters continues to exist in the main traditional newspapers, television news programs, and digital media, especially in television: men broadcast 74.8% of the news, as opposed to 25.2% for women, a figure that shows a decrease in the presence of women compared to previous measurements. These and other data are broken down in: Women’s Media Center. March 2017. [Women’s Media Center Report: Women journalists report less news than men: TV gender gap most stark](#). Similarly, according to information received during the joint official visit to Mexico by the Special Rapporteurs on Freedom of Expression of the Inter-American Commission on Human Rights and the United Nations, women journalists continue to be a minority in editorial positions in that country.

<sup>20</sup> UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 7.

<sup>21</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. Table 44. P. 57.

<sup>22</sup> According to a study by the International Women’s Media Foundation (IWMF), the greatest wage gap is reportedly in corporate governance positions - where men earn twice as much as women - and in the top echelons of senior management positions. The patterns identified in relation to salaries for other positions were inconsistent. International Women’s Media Foundation (IWMF). [Global Report on the Status of Women in the News Media](#). P. 146; See also: International Federation of Journalists (IFJ). [Gender Snapshot: International Women’s Day 2016](#). March 8, 2016; Office of the Human Rights Ombudsman & Internews. [Diagnóstico sobre el entorno de trabajo de las mujeres periodistas y comunicadoras sociales en El Salvador. Informe 2018](#) [Assessment of the work environment of women journalists and media workers in El Salvador. 2018 Report]. No date. P. 26.

<sup>23</sup> UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 7.

<sup>24</sup> International Women’s Media Foundation (IWMF). [Global Report on the Status of Women in the News Media](#). P. 9. See also: UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 7. With regard to public media, the preliminary results of a worldwide survey conducted by the Global Alliance on Media and Gender and UNESCO indicate that, out of a sample of 32 countries, only 15% have allocated budgets to the promotion of gender equity among state-owned media staff. Thirty percent of these countries have policies to ensure gender balance in media management positions. Eighteen percent have policies in place to ensure this balance among the staff of journalists. GAMAG. [Global Survey on Gender and Media. Preliminary Findings](#), 2016.

<sup>25</sup> International Federation of Journalists (IFJ). [Gender Snapshot: International Women’s Day 2016](#). March 8, 2016.

<sup>26</sup> In 2011, men held 74.1% of government positions and 72.7% of senior management positions in more than 500 radio, print, and television news organizations surveyed throughout the world. In the Americas, according to the same study, while the presence of women in news management and chief editor positions was around 46.4%, they were highly underrepresented in the most senior positions in media companies. Women held one-fifth (21.5%) of media governance positions (boards or committees) and less than one-third (30.5%) of upper management positions (executive directors, CEOs, CFOs). The situation varied significantly from country to country. International Women’s Media Foundation (IWMF). [Global Report on the Status of Women in the News Media](#). P. 23; See also: United Nations. [Statement submitted by World Association for Christian Communication, a non-governmental organization in consultative status with the Economic and Social Council](#). E/CN.6/2018/NGO/155. 18 December 2017. P. 3. In 2008, the World Association of Community Radio Broadcasters noted that while community radio stations tended to have a better representation of women than the public and commercial media, they were still underrepresented, particularly in areas of decision-making and technical skills. WACRB-WIN. [Gender Policy for Community Radio](#). March 8, 2008. P. 5 (Adopted by the World General Assembly of the WACRB in 2010 in La Plata, Argentina).

<sup>27</sup> UN Women. Occupational Segregation. No date. Available at: <http://interactive.unwomen.org/multimedia/infographic/changingworldofwork/en/index.html>

of the organizational culture of many media outlets.<sup>28</sup> In this regard, “For working mothers, attaining a home/work balance within newsrooms [...] has been identified as a difficulty.”<sup>29</sup>

22. In several countries in the region, women journalists of African descent are often disproportionately under-represented in the traditional media and in decision-making positions in those media.<sup>30</sup> In Brazil, 86% of the 500 journalists interviewed by the Journalists' Union in a survey conducted in 2016 considered that their Afro-descendant colleagues had fewer opportunities to access the traditional media.<sup>31</sup> Research carried out by civil society confirmed that Afro-Brazilian journalists and media workers held the lowest-level positions. According to the study, in Brazil, the most powerful positions in media companies are still held by “white men, followed by black men, and only then by white women, followed by black women.”<sup>32</sup>

23. Also, during the consultation meeting for this report held in Bogotá in February 2017, Colombian journalists noted the limited access of Afro-Colombian journalists to the media. According to the participants, this situation is the result of multiple and intersectional discrimination experienced by Afro-Colombian women and the persistence of negative stereotypes and prejudices against them and different symbols of their identity, such as wearing “Afro hair.”<sup>33</sup>

24. According to information provided to the Office of the Special Rapporteur, indigenous women journalists face the “stigmatization” of their communication spaces by those who operate the community media outlets where they seek to perform their work. In particular, the prevalence of gender stereotypes and prejudices means that their work is undervalued and that they encounter significant barriers to accessing key programming schedules and covering issues of general interest or the political agenda, while their own colleagues push them to focus on the coverage of issues traditionally considered “feminine,” according to gender stereotyping<sup>34</sup>

25. Several studies have highlighted that discrimination against women journalists and media workers in the workplace is reflected both in the low participation of women in the media agenda and in the way in which they are represented when they do appear in the news. Women's testimonies, experiences, and concerns tend to be invisible on the media agenda. This is evidenced by the fact that women constitute only 29% of the people who are read, seen, or heard about in the news in both traditional media (print, television, and radio) and online media in Latin America,<sup>35</sup> a situation that has remained constant in recent years.<sup>36</sup>

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<sup>28</sup> UNESCO. [Gender-Sensitive Indicators for Media](#). 2012; World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. P. 49; International Federation of Journalists (IFJ). [Gender Snapshot: International Women's Day 2016](#). March 8, 2016.

<sup>29</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. P. 49.

<sup>30</sup> Information received during the consultation meeting with experts held by the Office of the Special Rapporteur in Bogotá on February 20, 2018; See also: Women's Media Center. [Women's Media Center Report: Women journalists report less news than men; TV gender gap most stark](#). March 2017; Journalists' Union of the Federal District [Brazil]. [Desigualdade de Gênero no Jornalismo](#). [*Gender Inequality in Journalism*]. September 2017.

<sup>31</sup> Journalists' Union of the Federal District [Brazil]. [Desigualdade de Gênero no Jornalismo](#). [*Gender Inequality in Journalism*]. September 2017. It is worth noting that female journalists make up 64% of the total number of journalists in Brazil. National Federation of Journalists. [Federação Nacional dos Jornalistas (Fenaj)]. [Perfil do jornalista brasileiro-Síntese](#) [Profile of the Brazilian Journalist - Summary]. 2012.

<sup>32</sup> Article 19. [Gênero & Mídia. Aplicação dos indicadores de equidade de gênero para mídia da Unesco](#) [Gender & Media. Application of UNESCO gender equity indicators]. Received via email on February 28, 2018. Pp. 12 & 14

<sup>33</sup> Information received during the consultation meeting with experts held by the Office of the Special Rapporteur in Bogotá on February 20, 2018; See also: *Red Colombiana de Periodistas con Visión de Género* / Sandra Valoyes. No date. [Mujeres afro en los medios: resistiendo a los estereotipos](#) [Women of African descent in the media: resisting stereotypes]; *Coletivo de Jornalistas Feministas Nísia Floresta*. July 25, 2016. [Mulheres negras na mídia: onde estão?](#) [Black women in the media: Where are they?].

<sup>34</sup> Information received during the consultation meeting with experts held by the Office of the Special Rapporteur in Bogotá on February 20, 2018.

<sup>35</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. P. 9. See also: World Association for Christian Communication - WACC. [América Latina. Proyecto de Monitoreo Global de Medios 2015. Informe Regional](#) [Latin America. Global Media Monitoring Project 2015. Regional Report], Summary and Conclusions. No date.

Women make up 38% of the people who are read about, seen, or heard about in the traditional media in the United States and 27% in Canada. World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. Annex 6. Table: Newspapers, radio and television news: Overall presence of women as subjects and sources. 1995 -2015.

<sup>36</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. P. 9. On this point, see also: UNESCO. [World Trends in Freedom of Expression and Media Development](#). P. 34; pp. 43-44; International

According to the results of the Global Media Monitoring Project,<sup>37</sup> this percentage is slightly higher than that reported worldwide (24%)<sup>38</sup> and slightly lower than in North America (36%).<sup>39</sup>

26. In Latin America, women account for 25% of people in the news covering political and economic issues, according to data from 2015. Paradoxically, that same year, the region topped the ranking of countries with the most women in high-level political positions.<sup>40</sup>

27. The IACHR has also noted with concern the lack of participation of people of African descent in the media and the tendency for the participation of these professionals to be linked to the “folklorization” and “exoticization”<sup>41</sup> sought by some media, which contribute to perpetuating stereotypes and prejudices against them and their realities. Similarly, indigenous women have also reported that their experiences and problems continue to be underreported in the public and private media.<sup>42</sup> In particular, they have stressed that the media tend to represent them in a way that does not respect their dignity<sup>43</sup> and reinforces the social perception that they are victims or targets of human rights violations, thus ignoring the fact that they “have played and continue to play a consequential role in the history of the struggle for the self-determination of their peoples, their collective and individual rights, and their rights as women.”<sup>44</sup> The impact of these portrayals is aggravated by stigmatization, persecution, criminalization, and other obstacles that negatively impact indigenous communicators’ initiatives to advance community media.<sup>45</sup>

## B. Gender-based violence against women journalists

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Federation of Journalists (IFJ). [Gender Snapshot: International Women’s Day 2016](#). March 8, 2016; Chaheer. S (Comp.). [Políticas públicas de comunicación y género en América Latina: un camino por recorrer](#) [Public policies on communication and gender in Latin America: a way forward]. 1<sup>st</sup> ed. - Buenos Aires. Comunicación para la Igualdad Ediciones/ Fundación Friedrich Ebert. 2014.

<sup>37</sup> The Global Media Monitoring Project has been carried out every five years since 1995 and gathers information from 114 countries. The study is coordinated by the World Association for Christian Communication (WACC), and is supported by international agencies such as UN Women and UNESCO.

<sup>38</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. P. 9. On this point, see also: UNESCO. [World Trends in Freedom of Expression and Media Development](#). P. 34; pp. 43-44; International Federation of Journalists (IFJ). [Gender Snapshot: International Women’s Day 2016](#). March 8, 2016; Chaheer. S (Comp.). [Políticas públicas de comunicación y género en América Latina: un camino por recorrer](#) [Public policies on communication and gender in Latin America: a way forward]. 1<sup>st</sup> ed. - Buenos Aires. Comunicación para la Igualdad Ediciones/ Fundación Friedrich Ebert. 2014.

<sup>39</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. P. 33.

<sup>40</sup> World Association for Christian Communication - WACC. [Global Media Monitoring Project. Who Makes the News?](#) 2015. P. 35. Disaggregated data on women’s presence in the news by main topic can be found in Annex 6. P. 128 *et seq.* of the report.

<sup>41</sup> IACHR. [The situation of people of African descent in the Americas](#). OEA/Ser.L/V/II. Doc. 62. December 5, 2011. Para. 58.

<sup>42</sup> In Guatemala, “Indigenous peoples continue to be excluded from the media.” When they do appear in the media, indigenous women are mostly represented as victims. CERIGUA. [Monitoreo de la Información de Pueblos Indígenas \[Monitoring Indigenous Peoples’ Information\]](#). November 12, 2015. P. 158.

The communications messages that appear in the print, radio, and television media in Bolivia, Ecuador, and Peru also tend to reinforce the disadvantaged status and position of indigenous women. Initiative on “Participation of indigenous women: capacity-building for decision-making through information and communication technologies in Latin America.” CHIRAPAQ. [Monitoreo de la Imagen de las Mujeres Indígenas en los Medios de Comunicación](#) [Monitoring the Image of Indigenous Women in the Media] (Bolivia, Ecuador, Peru). 2008.

<sup>43</sup> United Nations. [Statement submitted by CHIRAPAQ - Centro de Culturas Indígenas del Perú, a non-governmental organization in consultative status with the Economic and Social Council](#). E/CN.6/2018/NGO/55. 1 December 2017; SOCIALTIC. [Comunicadoras Indígenas y Afrodescendientes ocupan los medios y las redes sociales](#) [Indigenous and Afro-descendant communicators occupy the media and social networks]. 15 October 2015; Permanent Committee for Consultation with Indigenous Peoples and Organizations (Colombia). [Plan de Televisión Indígena Unificado](#) [Unified Indigenous Television Plan]. December 2017. P. 20; IACHR. [2016 Annual Report. 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. 22/17. March 15, 2017. Para. 1267.

<sup>44</sup> IACHR. [Indigenous Women and their Human Rights in the Americas](#). OEA/ Ser.L/V/II. Doc.44/17. April 17, 2017. Para. 37.

<sup>45</sup> IACHR. [Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression 2017](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 210/17. December 31, 2017. Paras. 636, 679, 681; IACHR/OHCHR. [Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico, 27 November- 4 December 2017](#). December 4, 2017. Para. 21; Federal Telecommunications Institute of Mexico. International Forum on Indigenous and Community Media. [Panel: Sesión 3. Obstáculos a la libertad de expresión de los medios comunitarios e indígenas](#) [Panel: Session 3: Obstacles to freedom of expression for community and indigenous media]. Presentation of Article 19 Mexico. August 2017. Video [9:38:45].

28. Gender-based violence against women is a form of discrimination against women and a violation of their human rights. It is a type of violence that is directed against a woman because of the fact that she is a woman, and/or that affects women disproportionately. Gender-based violence affects women throughout their life cycle and takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty<sup>46</sup>.

29. On numerous occasions, the IACHR has highlighted the close link between gender discrimination and the prevalence of various forms of violence against women. Similarly, this Office has emphasized 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>47</sup> The Office of the Special Rapporteur has noted that violence against women journalists and women media workers “is manifested in different ways, from murder and sexual violence—including sexual harassment—to intimidation, abuse of power, and threats based on gender.”<sup>48</sup> This Office has also observed that, “violence against women is perpetrated by different actors, including State agents, sources of information, and colleagues, and it takes place in diverse contexts and settings, including the street, the workplace, and State offices or institutions.”<sup>49</sup>

30. In recent years, there has been an increase in the murders of women journalists worldwide. According to data collected by UNESCO, between 2012 and 2016, at least 38 women journalists were killed because of their work, representing 7% of all murders of journalists in that period.<sup>50</sup> Data from the Committee to Protect Journalists (CPJ) indicate that eight women journalists were murdered in 2017 worldwide, accounting for 19% of the total number of cases reported by the organization that same year.<sup>51</sup>

31. This Office reported the murder of seven women journalists, communicators and media workers for reasons reportedly linked to the practice of their profession that took place between 2012 and 2018 in Mexico and Colombia. On April 28, 2012, journalist Regina Martinez was brutally killed at her home in Veracruz, Mexico.<sup>52</sup> On May 3, 2012, Irasema Becerra, an administrative employee of a Mexican state newspaper, and three photographers working for the same newspaper were found murdered.<sup>53</sup> In October 2014, Twitter user @Miut3—María del Rosario Fuentes Rubio—was murdered in Mexico.<sup>54</sup> On September 10,

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<sup>46</sup> United Nations. Committee on the Elimination of Discrimination against Women (CEDAW). [General Recommendation No. 25 on gender-based violence against women](#). July 26, 2017. Para. 14.

<sup>47</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 251.

<sup>48</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 251.

<sup>49</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 251. The Office of the Special Rapporteur cites different sources, including: CIMAC. [Informe diagnóstico. Violencia contra mujeres periodistas. México 2010-2011](#) [Diagnostic report. Violence against women journalists. Mexico 2010-2011]. September 7, 2012. P. 11; Committee to Protect Journalists (CPJ). June 7, 2011. [The silencing crime: Sexual violence and journalists](#).

<sup>50</sup> While the number of women journalists killed worldwide in 2012 was five, in 2016 it was ten. UNESCO. [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report](#). 2018. Pp. 153-154.

<sup>51</sup> Cases of murdered women journalists documented by CPJ are available at: [https://cpj.org/data/killed/2017/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=journalist&gender%5B%5D=Female&end\\_year=2017&group\\_by=location](https://cpj.org/data/killed/2017/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=journalist&gender%5B%5D=Female&end_year=2017&group_by=location). In the Americas, two cases were reported during 2017: Colombian indigenous journalist Efigenia Vázquez and Mexican journalist Miroslava Breach.

<sup>52</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights April 30, 2012. [Press Release R41/12. Office of the Special Rapporteur Condemns Murder of Journalist in Veracruz](#).

<sup>53</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights May 4, 2012. [Press Release R44/12. Office of the Special Rapporteur Condemns Murders of Four Media Workers in Veracruz, Mexico](#).

<sup>54</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights November 3, 2014. [Press Release R 129/14. Office of the Special Rapporteur Condemns Murders of Two Communicators in Mexico](#).

2015, journalist Flor Alba Núñez was murdered in Pitalito, Huila department, southwestern Colombia.<sup>55</sup> Journalist Miroslava Breach was killed leaving her home in Chihuahua, Mexico, on March 3, 2017.<sup>56</sup> On October 8, 2017, Efigenia Vásquez Astudillo, a journalist with the indigenous radio station Renacer Kokonuko, was murdered in the Cauca region of Colombia.<sup>57</sup> On February 5, 2018, journalist and blogger Leslie Ann Pamela Montenegro del Real was murdered in Acapulco, Mexico.<sup>58</sup>

32. Nevertheless, as UNESCO has noted, “Killings [...] are only the tip of the iceberg and women face certain gender-based threats.”<sup>59</sup> In 2017, 48% of the nearly 400 journalists from 50 countries who responded to an IFJ online survey indicated that they had experienced various forms of work-related gender-based violence.<sup>60</sup>

33. The most common acts of gender-based violence reported by journalists participating in the IFJ survey include verbal abuse (63%), psychological abuse (41%), economic exploitation (21%), and physical violence (11%). These forms of violence are perpetrated both by people outside the workplace (sources, politicians, readers, or other audiences) and by bosses or superiors. Also, 44% of women surveyed reported being harassed online.<sup>61</sup>

34. Women journalists and media workers point out that gender is not only a factor that is reflected in specific forms of violence against them, but it also means that the acts of violence usually committed against journalists in general have a differentiated impact on their lives and those of their families. In this regard, they have reported that acts of violence designed to intimidate or silence them are perpetrated against their family environment, including their children.<sup>62</sup>

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<sup>55</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights September 14, 2015. [Press Release R 102/15. Office of the Special Rapporteur Condemns Murder of Journalist Flor Alba Núñez in Colombia.](#)

<sup>56</sup> Mexico Office of the United Nations Entity for Gender Equality and the Empowerment of Women, Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), and Mexico Office of the United Nations Office of the High Commissioner for Human Rights (OHCHR). March 23, 2017. Press Release [R38/17 - Organismos internacionales expresan su firme condena por el asesinato de la periodista Miroslava Breach en Chihuahua, Chihuahua.](#) [International Bodies Strongly Condemn Murder of Journalist Miroslava Breach in Chihuahua, Chihuahua].

<sup>57</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights October 30, 2017. [Press Release R171/17. Office of the Special Rapporteur calls to investigate and determine the circumstances of the murder of community journalist Efigenia Vásquez.](#)

<sup>58</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights February 15, 2018. [Press Release R28/18. Office of the Special Rapporteur Condemns Murder of Citizen Journalist in Mexico.](#) Cases of murdered women journalists documented by CPJ are available at: [https://cpj.org/data/killed/2017/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&gender%5B%5D=Female&end\\_year=2017&group\\_by=location](https://cpj.org/data/killed/2017/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&gender%5B%5D=Female&end_year=2017&group_by=location). In relation to violence against women journalists in Mexico, where most of the murders reported by this Office have occurred, the organization CIMAC has documented and condemned a significant increase in violence against women journalists in that country and the impunity surrounding it. The organization's report *Violencia contra Mujeres Periodistas 2014-2015* [Violence against Women Journalists 2014-2015] described the violence against women journalists in Mexico. The organization said the expansion of violence against women journalists has been intended as an intimidation mechanism to silence and deter their investigations. CIMAC. [El Poder del cacicazgo: Violencia contra Mujeres Periodistas 2014-2015](#) [The Power of the *Cacicazgo*: Violence against Women Journalists 2014-2015]. 2016. P. 8.

<sup>59</sup> UNESCO. [Time to Break the Cycle of Violence Against Journalists: Highlights from the UNESCO Director-General's 2016 Report on the Safety of Journalists and the Dangers of Impunity.](#) 2016. P. 3.

<sup>60</sup> International Federation of Journalists (IFJ). [IFJ survey: One in two women journalists suffer gender-based violence at work.](#) November 24, 2017. Three years earlier, the International News Safety Institute (INSI) and the International Women's Media Foundation (IWMF) conducted a survey that gathered responses between August 2013 and January 2014 from 1078 people, 977 of whom identified themselves as women. It included journalists from newspapers and magazines, television, radio, and online media. The survey was answered by employed journalists and freelancers. Almost two thirds of the women surveyed reported experiencing some form of intimidation, threat, or abuse in connection with their work. UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General.](#) A/72/290. 4 August 2017. Para. 8; International Women's Media Foundation (IWMF) / International News Safety Institute (INSI). *Violence and harassment against women in the news media. A global picture.* 2014. [Executive Summary](#)

<sup>61</sup> International Federation of Journalists (IFJ). [IFJ survey: One in two women journalists suffer gender-based violence at work.](#) November 24, 2017.

<sup>62</sup> Expert consultation meeting held on 20 February in Bogotá. See also: Marcela Turati. “*Mujeres Periodistas, nuestros retos*” [Women Journalists: our challenges], in CIMAC. [El poder de cacicazgo. Violencia contra mujeres periodistas 2014-2015](#) [The Power of the *Cacicazgo*: Violence against Women Journalists 2014-2015]. 2016; FECOLPER. *Sociedad, guerra y periodistas: La información en tiempos de fusiles* [Society, War and Journalists: Information in Times of Rifles]. October 2017. P.157.

35. As the Office of the Special Rapporteur has emphasized, violence and sexual harassment are also among the most frequent manifestations of gender-based violence against women journalists and media workers.<sup>63</sup> The Secretary General of the United Nations has also made a similar statement.<sup>64</sup> In addition, in recent years, this Office has reiterated that women journalists have also experienced an increasing number of acts of online violence.<sup>65</sup>

## 1. Violence and sexual harassment

36. Sexual violence in the workplace can include a range of behavior, such as unwanted comments or advances, 'jokes', brief physical contact and sexual assault.<sup>66</sup> Sexual harassment is a form of sexual violence that commonly occurs in the world of work, and it is frequently categorized in two ways: "*quid pro quo*" or "hostile working environment."<sup>67</sup> Violence and sexual harassment constitute a "continuum of unacceptable behaviors and practices"<sup>68</sup> that "can be horizontal and vertical, from internal and external sources (including clients and other third parties and public authorities)—in the public or private sector."<sup>69</sup> The Inter-American Court has recognized that "sexual violence includes actions of a sexual nature committed against an individual without her consent, which in addition to the physical invasion of the human body, may include acts that do not involve penetration or even physical contact"<sup>70</sup>.

37. Journalism and the media are no strangers to these forms of violence.<sup>71</sup> In recent years, a number of initiatives have documented the different forms of violence, sexual harassment, and related forms of gender-based violence experienced by women journalists and media workers in various countries of the region. Many of them have been led by journalists' organizations themselves, which have done an outstanding job of identifying these different forms of violence that affect journalists and other media workers.

38. The documented attacks took three distinct forms: rape against journalists in retaliation for their work, sexual abuse of journalists in captivity or detention, and sexual violence by mobs against journalists covering public events<sup>72</sup>. A global survey made between 2017 and 2018 by the International Women's Media Foundation<sup>73</sup>, shows that 63% of the 597 female journalists who completed the survey have been threatened or harassed online, 58% indicated they have been threatened or harassed in person, and 26% indicated that they have been physically attacked. The percentage of women journalists that have experienced physical violence increases to 31% in cases of women working outside the United States. According to the survey, women journalists all over the world reported doing their work against a backdrop of gender-based discrimination and violence. "Gender plays a significant role. 78 percent of US based women journalists indicated that gender was a contributing factor to their attacks and threats. Among women who work abroad,

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<sup>63</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 251.

<sup>64</sup> UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 9.

<sup>65</sup> UNESCO. 2018. [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report](#). P. 155.

<sup>66</sup> ILO. [Ending violence and harassment against women and men in the world of work](#). First edition 2017, p. 11.

<sup>67</sup> As the ILO explains it, "'Quid pro quo' sexual harassment is when a worker is asked for a sexual favour, and submitting or rejecting that request is used to make a decision about that worker's job. 'Hostile working environment' harassment covers conduct that creates an intimidating, hostile or humiliating working environment." ILO. [Ending violence and harassment against women and men in the world of work](#). First edition 2017. P. 11.

<sup>68</sup> ILO. [Report of the Director General. Fifth Supplementary Report: Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work](#). Appendix I. Conclusions adopted by the Meeting. GB.328/INS/17/5, 2016. Para. 3.

<sup>69</sup> ILO. [Report of the Director General. Fifth Supplementary Report: Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work](#). Appendix I. Conclusions adopted by the Meeting. GB.328/INS/17/5, 2016. Para. 4

<sup>70</sup> 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.

<sup>71</sup> ILO. [Ending violence and harassment against women and men in the world of work](#). First edition 2017. P. 12; ILO. [Report of the Director General. Fifth Supplementary Report: Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work](#). Appendix I. Conclusions adopted by the Meeting. GB.328/INS/17/5. 2016. Para. 3.

<sup>72</sup> Committee to Protect Journalists. June 7, 2011. [The silencing crime: Sexual violence and journalists](#).

<sup>73</sup> International Women's Media Foundation. [Attacks and Harassment: The Impact on Female Journalists and Their Reporting](#). 2018.

68 percent indicated that gender was the main factor in their attacks- both online and off.” Also, among journalists responding to an online survey conducted in 2017, 37% of journalists responding to the gender-based violence survey reported having experienced sexual harassment.<sup>74</sup>

39. In Latin America, the few data collected reveal that the situation is equally serious. In Colombia, on March 8, 2018, the Colombian Federation of Journalists (FECOLPER) noted that “the special circumstances of being a female journalist are often embodied in abuses involving sexual harassment and coercion, intimidation, abuse of power, and threats based on gender status.”<sup>75</sup> In the same vein, several Colombian journalists have publicly denounced having suffered violence and sexual harassment in the practice of their profession.<sup>76</sup> In this context, the Colombian Network of Journalists with a Gender Perspective [*Red Colombiana de Periodistas con Visión de Género*] launched the campaign *#PeriodistasSinAcoso* to acknowledge and denounce sexual harassment in the media.<sup>77</sup>

40. In 2017, the Association of Journalists of El Salvador (APES) reported that sexual harassment is one of the problems affecting the practice of journalism in that country.<sup>78</sup> In El Salvador, all of the women journalists who participated in a study conducted by the Office of the Human Rights Ombudsman and Internews reported that they experienced sexual harassment during their fieldwork, and 96.15% were reportedly subjected to sexual harassment within their own media organizations. The main offenders included security employees (National Civil Police, Armed Forces, and private security groups), members of the Legislative Assembly, Executive Branch officials, and even their own colleagues and bosses, according to the assessment.<sup>79</sup>

41. During 2017, the U.S. media published a series of reports and investigations into acts of harassment and sexual violence allegedly committed by prominent journalists and media executives, both inside and outside the workplace.<sup>80</sup> At the same time, the *#MeToo* movement, which emerged in the United States, helped to create a space for women around the world, including journalists and media workers, to bring to light the harassment and sexual assault they suffer in different areas of their professional, work, or academic lives.<sup>81</sup>

42. In 2017, the Brazilian Association of Investigative Journalism (*Associação Brasileira de Jornalismo Investigativo*) and the *Gênero e Número* initiative released their research on “Women in Brazilian Journalism”

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<sup>74</sup> IFJ. [IFJ survey: One in two women journalists suffer gender-based violence at work](#). November 24, 2017.

<sup>75</sup> FECOLPER. [#ManifiestoFECOLPER. Periodistas hacen llamado por un periodismo en equidad y libre de violencias](#) [*#FECOLPERManifest. Journalists call for fair and violence-free journalism*]. March 8, 2018.

<sup>76</sup> Mabel Lara, Paola Ochoa, Claudia Morales, and Claudia Julieta Duque publicly denounced having been subjected to these types of acts. FECOLPER. [Annual Report 2017](#). P. 24. In Spanish; *Fundación para la Libertad de Prensa. Informe sobre el estado de la libertad de prensa en Colombia 2017. Estado depredador [Report on the state of freedom of the press in Colombia 2017. Predatory state]. February 2018. P. 47 *et seq.*; El Tiempo. November 27, 2018. [Yo también](#) [Me Too]; El Espectador. January 19, 2018. [Una defensa del silencio](#) [A Defense of Silence]; El Tiempo. February 9, 2018. [Organizaciones de mujeres respaldan a la periodista Claudia Morales](#) [Women’s organizations support journalist Claudia Morales]; El Espectador. January 28, 2018. [Claudia Julieta Duque dice que exfiscal Gómez Méndez la acosó en 2003. él dice que esto nunca pasó](#) [Claudia Julieta Duque says that ex-prosecutor Gomez Mendez harassed her in 2003, he says this never happened].*

<sup>77</sup> *Red Colombiana de Periodistas con Visión de Género. Periodistas sin acoso* [Journalists without harassment]. February 9, 2018.

<sup>78</sup> IACHR. [Annual Report 2017. 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. 210/17. December 31, 2017. Para. 550.

<sup>79</sup> Office of the Human Rights Ombudsman (El Salvador) / Internews. [Diagnóstico sobre el entorno de trabajo de las mujeres periodistas y comunicadoras sociales en El Salvador. Informe 2018](#). [Assessment of the work environment of women journalists and media workers in El Salvador. 2018 Report]. The sample for this study consisted of 52 journalists from print, radio, television, digital, and social media in the western, central, sub-central, and eastern regions of the country.

<sup>80</sup> The New York Times. April 19, 2017. [Bill O’Reilly Is Forced Out at Fox News](#); El País. April 20, 2017. [La Fox despide a su presentador estrella, Bill O’Reilly, tras varias denuncias por acoso sexual](#) [Fox fires its star host, Bill O’Reilly, after several complaints of sexual harassment]; CBS. [CBS News suspends Charlie Rose over sexual misconduct allegations](#); CNN. November 21, 2017. [CBS despide a periodista Charlie Rose tras 8 denuncias de acoso sexual](#) [CBS fires journalist Charlie Rose after 8 sexual harassment complaints]; Plano Informativo. March 8, 2018. [Periodistas enfrentan violencia de género y desigualdad laboral](#) [Journalists face gender-based violence and inequality in the workplace].

<sup>81</sup> UN WOMEN. [Timeline: Gender Equality, 2017 Year in Review](#); New York Times. April 16, 2018. [New York Times and New Yorker Share Pulitzer for Public Service](#).

(*Gênero no Jornalismo*).<sup>82</sup> Seventy-five per cent of female journalists in Brazil who responded to an online questionnaire as part of this research indicated that they had received comments about their clothing, body, or appearance while working in their profession that made them feel uncomfortable.<sup>83</sup>

43. In Paraguay,<sup>84</sup> Brazil,<sup>85</sup> and Mexico,<sup>86</sup> women journalists have also publicly reported being victims of violence and sexual harassment while covering sports events.

## 2. Online violence against women journalists

44. Online violence against women has been understood as “any act of gender-based violence against women that is committed, assisted or aggravated in part or fully by the use of ICT, such as mobile phones and smartphones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately.”<sup>87</sup>

45. Female journalists are one of the groups of women particularly affected by this form of gender-based violence.<sup>88</sup> Women journalists and media workers are not only more exposed to online attacks than their male counterparts<sup>89</sup> but, in addition, in recent years, they “have experienced increasing online abuse, stalking and harassment.”<sup>90</sup> Online attacks targeting women journalists take on specific characteristics because of their gender; they are generally misogynistic, with sexualized content. This type of violence leads to self-censorship and “is a direct attack on women’s visibility and full participation in public life.”<sup>91</sup>

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<sup>82</sup> Associação Brasileira de Jornalismo Investigativo (ABRAJI) / *Gênero e Número. Pesquisa Gênero no Jornalismo. 2017* [Gender and Number. Research on Gender in Journalism. 2017]. Available at: <http://gnjb-spa.surge.sh/#section1>

<sup>83</sup> Similarly, in 2018, within the framework of International Women’s Day, the Brazil office of the organization Article 19 launched the documentary “*Mulheres de Expressão*,” which includes the work done together with AMARC Brazil to learn about the violence and discrimination experienced by women in radio in that country, and to develop strategies for confronting these situations and strengthening women’s freedom of expression. In the documentary, several women testified about the discrimination they have faced in journalism. Article 19. [Documentário “Mulheres de Expressão” traz a voz das comunicadoras](#). March 12, 2018.

<sup>84</sup> On August 26, 2017, journalist Clara Martínez of the Paraguayan Communications Network (RPC) was harassed by fans of the Cerro Porteño soccer club who kissed her while she was conducting interviews outside the stadium to cover the aftermath of a soccer match. As a result of this case, the Paraguayan Journalists’ Union issued a statement rejecting all forms of violence and discrimination against women journalists. For its part, the board of the Soccer Club also condemned the violence and expressed its solidarity with the reporter. IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2017](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 210/17. December 31, 2017. Para. 978.

<sup>85</sup> Emol.com. March 15, 2018. [Periodista fue acosada en previa a partido entre el Vasco de Gama y la “U”](#): “*Soy mujer y merezco ser respetada*” [Journalist harassed before the match between Vasco de Gama and “La U”: “I am a woman and I deserve to be respected”]. In March 2018, a group of Brazilian sports journalists launched the Let Her Do Her Job [#deixaetrabalhar] campaign, after a series of cases in which journalists were kissed and harassed during their work in and around soccer stadiums. Committee to Protect Journalists. [Brazil’s “Let her do her job” campaign demands respect for female sports reporters](#). April 18, 2018.

<sup>86</sup> Infobae. April 26, 2018. [Una periodista golpeó a un fanático de Chivas que la acosó en vivo](#) [Journalist beats up Chivas fan who harassed her during live broadcast]; Infobae. April 27, 2018. [Con #NoMeToques y #UnaSomosTodas, periodistas deportivas en México rechazan el acoso en los estadios](#). [With #NoMeToques and #UnaSomosTodos, sports journalists in Mexico reject stadium harassment].

<sup>87</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. 18 June, 2019. Para. 23. Nevertheless, the Rapporteur notes that “The rapid development of digital technology and spaces, including through artificial intelligence (AI), will inevitably give rise to different and new manifestations of online violence against women. [...] As digital spaces morph and develop, so too must the application and implementation of human rights norms to these areas.”

<sup>88</sup> UNESCO. [World Trends in Freedom of Expression and Media Development: Special Digital Focus 2015](#). P. 193. See also: APC. [Mapping Technology-Based Violence against Women. Take Back the Tech!](#) March, 2015. According to this study, gender-based violence related to technology mainly affects three groups of women: a) those in a relationship with a violent partner; b) professionals with a public profile who participate in communication spaces (for example, journalists, researchers, activists, and artists); and c) women survivors of physical or sexual violence. Women between the ages of 18 and 30 are reportedly the most vulnerable in digital spaces.

<sup>89</sup> Based on a study by the Demos organization, UNESCO has indicated that women journalists and TV news anchors have been exposed to approximately three times more abuse on Twitter than their male counterparts (a result that was reversed in the other categories analyzed: politicians, celebrities, and musicians). UNESCO. [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report](#). P. 157.

<sup>90</sup> UNESCO. [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report. Executive Summary](#). P. 20. See also: UNESCO. [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report 2017](#). Pp. 154-155.

<sup>91</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. 18 June, 2019. Para. 29. See also: United Nations. March 8, 2017. Press release. [Expertos de la ONU instan a los Estados y las empresas para abordar el abuso en línea](#)

46. UNESCO has underscored that the most frequent forms of online violence against women journalists and media workers include monitoring and stalking, posting personal data, trolling, smearing, defamation or disparagement, and viral hatred.<sup>92</sup> Various civil society organizations have also emphasized the prevalence of acts of “electronic spying on women journalists and human rights defenders in the region... [aimed] at controlling, silencing, intimidating, or extorting women who defy the status quo.”<sup>93</sup>

47. The kind of subject matter addressed by women journalists is also a relevant factor in analyzing the prevalence of online violence against them. According to the Secretary General of the United Nations, “Women who cover topics such as politics, law, economics, sport, women’s rights, gender, and feminism are particularly likely to become targets of online violence. While men journalists are also subject to abuse online, abuse directed against women journalists tends to be more severe.”<sup>94</sup> This trend has also been noted by UNESCO.<sup>95</sup> By the same token, online violence often manifests itself with particular force when women journalists cover topics traditionally covered by male journalists (political, judicial, or sports-related) or when they address issues related to women’s rights and/or the LGBTI community, and when they speak out to denounce gender-based discrimination.<sup>96</sup>

48. As several recent reports from civil society organizations in the region have emphasized, “violence by electronic means is not something new or unique to platforms”<sup>97</sup> but a further manifestation of the patterns of gender-based violence and discrimination in the region. Thus, online violence “is an extension of a structural situation of systematic violence perpetrated by partners, former partners, acquaintances, strangers, and even government institutions and other relevant actors.”<sup>98</sup> At the same time, online violence leads to and feeds back into various forms of gender-based violence in non-virtual spaces.<sup>99</sup>

49. Various civil society organizations have also identified problems in the response of private intermediaries<sup>100</sup> to online gender-based violence in the region. These problems include the lack of reliable, easy-to-use, and transparent complaint mechanisms for the procedures to be followed after a complaint is received.<sup>101</sup> Many of the complaints filed by social network users go unanswered,<sup>102</sup> are not addressed

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[basada en el género, pero alertan contra la censura](#) [UN experts urge States and companies to address online gender-based abuse but warn against censorship].

<sup>92</sup> UNESCO. [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report. 2017](#). P. 156. See also: Luchadoras, et al. [La violencia en línea contra las mujeres en México. Informe para la Relatora sobre Violencia contra las Mujeres, Ms. Dubravka Šimonović](#) [Online violence against women in Mexico. Report for the Rapporteur on Violence against Women, Ms. Dubravka Šimonović]. November 1, 2017. P. 20, *et seq.*

<sup>93</sup> Paz Peña Ochoa/Asociación por los Derechos Civiles (ADC), et al. [Reporte de la situación de América Latina sobre la violencia de género ejercida por medios electrónicos](#) [Report on the situation of online gender-based violence in Latin America]. November 2017. P. 14. See also: Luchadoras, et al. [La violencia en línea contra las mujeres en México. Informe para la Relatora sobre Violencia contra las Mujeres, Ms. Dubravka Šimonović](#) [Online violence against women in Mexico. Report for the Rapporteur on Violence against Women, Ms. Dubravka Šimonović]. November 1, 2017. P. 20, *et seq.*

<sup>94</sup> UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General. A/72/290](#). 4 August 2017. Para. 10.

<sup>95</sup> UNESCO. [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report. 2017](#). P. 157.

<sup>96</sup> Fundación Karisma. [Misoginia en internet: bombardeo a campo abierto contra las periodistas](#) [Misogyny on the Internet: open-air bombing of women journalists]. February 24, 2016; Reporters Without Borders, [Women's Rights: Forbidden Subject](#), March 2018. P. 10.

<sup>97</sup> Paz Peña Ochoa/Asociación por los Derechos Civiles (ADC), et al. [Reporte de la situación de América Latina sobre la violencia de género ejercida por medios electrónicos](#) [Report on the situation of online gender-based violence in Latin America]. November 2017.

<sup>98</sup> Luchadoras, et al. [La violencia en línea contra las mujeres en México. Informe para la Relatora sobre Violencia contra las Mujeres, Ms. Dubravka Šimonović](#) [Online violence against women in Mexico. Report for the Rapporteur on Violence against Women, Ms. Dubravka Šimonović]. November 1, 2017. P. 37.

<sup>99</sup> Fundación Karisma. February 24, 2016. [Misoginia en internet: bombardeo a campo abierto contra las periodistas](#) [Misogyny on the Internet: open-air bombing of women journalists].

<sup>100</sup> “Intermediaries thus range from Internet service providers (ISPs) to search engines, and from blogging services to online community platforms.” United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27](#). May 16, 2011. Para. 38.

<sup>101</sup> APC, et al. [Statement on Facebook's internal guidelines for content moderation](#). August 2017.

<sup>102</sup> Courtney C. Radsch. Laws, Norms and Block Bots: A Multifaceted Approach to Combatting Online Abuse en OSCE. [New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists](#). 2016. P. 36.

promptly.<sup>103</sup> or are dismissed on the grounds that the reported acts of online gender-based violence do not violate community standards, several organizations report. There is also no clear information on who makes these decisions, which makes it difficult to determine whether algorithms or moderators are used to resolve these complaints and, if so, whether the moderators are adequately trained in women's rights and have a good understanding of the contexts in which violence occurs.<sup>104</sup> Civil society organizations have also emphasized the lack of public information on how to address complaints;<sup>105</sup> the limited proactive use of available technology to address online gender-based violence more effectively;<sup>106</sup> and the lack of awareness-raising actions against gender-based violence on the Internet focused on the region.<sup>107</sup>

50. As the Special Rapporteur has indicated, online violence has a chilling effect on the exercise of freedom of expression.<sup>108</sup> In particular, "While there are countless women journalists who choose to continue reporting in the face of violence, threats or harassment, others resort to self-censorship, shutting down their digital accounts, and/or leaving the profession." In the opinion of the Secretary General of the United Nations, "Attacks can also have a chilling effect on other women journalists. The effect is an absence of women's voices and perspectives in the media on a wide range of issues, with serious implications for a free, pluralistic media." This exclusion exacerbates discrimination and inequality.<sup>109</sup>

### 3. Violence against community and indigenous journalists

51. Violence against female community and indigenous journalists has different characteristics due to, among other factors, the lack of adequate recognition and promotion of community media in general, and of indigenous community media in particular, which has led to persecution, harassment and sometimes criminalization of their members throughout much of the region. In this regard, in recent years, the Office of the Special Rapporteur has uncovered several cases of raids, harassment, and obstruction of community media reporting in Guatemala,<sup>110</sup> Honduras,<sup>111</sup> Argentina, Chile,<sup>112</sup> and other countries of the region. This

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<sup>103</sup> Luchadoras (Coord.). *La violencia en línea contra las mujeres en México. Informe para la Relatora sobre Violencia contra las Mujeres. Ms. Dubravka Šimonović* [Online violence against women in Mexico. Report for the Rapporteur on Violence against Women, Ms. Dubravka Šimonović]. November 1, 2017.

<sup>104</sup> "It is also not known who makes these decisions about the reported cases, to such an extent that it is not even known whether they know how to speak Spanish or Portuguese, and whether they understand the contextual subtleties of the cultural realities of our countries." Asociación por los Derechos Civiles (ADC) et al. *Reporte de la situación de América Latina sobre la violencia de género ejercida por medios electrónicos* [Report on the situation of online gender-based violence in Latin America]. November 2017. P. 38.

<sup>105</sup> "There are even fewer public statistics on these complaints: types and number of cases reported by users in each country, results of the complaints, and any data that, while preserving the anonymity of the victims, contributes to creating better public policies and platform solutions, based on evidence." Asociación por los Derechos Civiles (ADC) et al. *Reporte de la situación de América Latina sobre la violencia de género ejercida por medios electrónicos* [Report on the situation of online gender-based violence in Latin America]. November 2017. P. 39.

<sup>106</sup> "By using the same algorithmic technology, platforms can also work on solutions that help victims find redress. For example, and only recently, Facebook, Messenger, and Instagram have implemented the "hashing" (or virtual fingerprinting) of photos to combat non-consensual 'pornography,' in order to identify contested material on all the profiles, pages, and platforms where it is published, thus relieving victims of the colossal task of having to report each piece of content individually." Asociación por los Derechos Civiles (ADC) et al. *Reporte de la situación de América Latina sobre la violencia de género ejercida por medios electrónicos* [Report on the situation of online gender-based violence in Latin America]. November 2017. P. 39

<sup>107</sup> Asociación por los Derechos Civiles (ADC) et al., *Reporte de la situación de América Latina sobre la violencia de género ejercida por medios electrónicos* [Report on the situation of online gender-based violence in Latin America]. November 2017. Pp. 38-39. These patterns have also been examined by Amnesty International. *#ToxicTwitter*. Chapter 4 – The reporting process.

<sup>108</sup> IACHR. *Annual Report 2016. 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>109</sup> UN General Assembly. *The safety of journalists and the issue of impunity. Report of the Secretary General*. A/72/290. 4 August 2017. Para. 12. See also: Fundación Karisma. *Misoginia en internet: bombardeo a campo abierto contra las periodistas* [Misogyny on the Internet: open-air bombing of women journalists]. February 24, 2016.

<sup>110</sup> IACHR. *Annual Report 2016. 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. 22/17. March 15, 2017. Para. 672.

<sup>111</sup> IACHR. *Annual Report 2016. 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. 22/17. March 15, 2017. Para. 708.

<sup>112</sup> IACHR. *Annual Report 2016. 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. 22/17. March 15, 2017. Paras. 1267 & 1269.

Office has also observed with concern the situation of indigenous journalists in Mexico,<sup>113</sup> Guatemala,<sup>114</sup> and other countries of the region, and the obstacles they face in the performance of their work.

52. In the particular case of indigenous women journalists, the risk of experiencing violence as a result of their work may increase due to the combination of structural patterns affecting community media; intersectional discrimination against indigenous women; and the high public profile they may acquire in defense of the rights of indigenous peoples and/or the rights of women in their territories. The combination of these factors often exposes indigenous women journalists to a greater risk of stigmatization and persecution in certain contexts, whether by State or non-state actors.<sup>115</sup>

### C. Barriers to access to protection and justice

53. The Office of the Special Rapporteur acknowledges the efforts made by some countries in the region to establish protection programs and mechanisms, but the high rates of violence against journalists in the region indicate that major challenges persist. In particular, this Office has identified the absence of specific protection mechanisms and programs in some countries, as well as shortcomings associated with the design and effective implementation of existing mechanisms.<sup>116</sup> In this regard, the Office of the Special Rapporteur has received information indicating that many current protection programs and mechanisms are reactive and not comprehensive. Although existing mechanisms conduct risk analyses, the training and number of experts may be insufficient in some cases. The Office has insisted on the need to maintain an adequate and sufficient budget for the implementation of the measures adopted, and to address shortcomings in the inter-institutional coordination between the different agencies with competence in this area.<sup>117</sup>

54. The Office of the Special Rapporteur has also received testimony from journalists and media workers about the absence or inadequacy of a gender-based and differential approach to both risk assessment and the development of protective measures. In particular, protection plans often neglect the specific characteristics of the beneficiaries' family situation, such as having school-age children, the fact that many acts of violence – like threats – are exercised against people who collaborate with the care of their descendants. Neither do they

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<sup>113</sup> For instance, it recently drew attention to the “particularly difficult conditions” faced by indigenous journalists because they work in remote areas, with few resources and rudimentary equipment, and because “they often work in regions involving the extractive industry, with additional restrictions imposed by non-state actors, sometimes in cooperation with local authorities.” IACHR/OHCHR. [Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico, 27 November- 4 December 2017](#). December 4, 2017. Para. 21.

<sup>114</sup> The IACHR and the Office of the Special Rapporteur have also referred on several occasions to the “serious obstacles that keep the community media outlets of indigenous peoples from accessing the radio spectrum and the public resources needed to achieve sustainability.” in Guatemala. IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2017](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere/OEA/Ser.L/V/II. Doc. 210/17. December 31, 2017. Para. 679; IACHR/OHCHR. [Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico, 27 November- 4 December 2017](#). December 4, 2017. Para. 21; See also: United Nations. [Statement submitted by CHIRAPAO - Centro de Culturas Indígenas del Perú, a non-governmental organization in consultative status with the Economic and Social Council](#). E/CN.6/2018/NGO/55. 1 December 2017; SocialTIC. [Comunicados Indígenas y Afrodescendientes ocupan los medios y las redes sociales](#) [Indigenous and Afro-descendant communicués occupy the media and social networks]. October 15, 2015.

<sup>115</sup> IACHR. [Annual Report 2017. 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. 210/17. December 31, 2017. Para. 679; IACHR/OHCHR. [Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico, 27 November- 4 December 2017](#). December 4, 2017. Para. 21; See also: United Nations. [Statement submitted by CHIRAPAO - Centro de Culturas Indígenas del Perú, a non-governmental organization in consultative status with the Economic and Social Council](#). E/CN.6/2018/NGO/55. 1 December 2017; SocialTIC. [Comunicados Indígenas y Afrodescendientes ocupan los medios y las redes sociales](#) [Indigenous and Afro-descendant communicués occupy the media and social networks]. October 15, 2015.

<sup>116</sup> In 2017, the Mexico Office of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), and the Mexico Office of the United Nations Office of the High Commissioner for Human Rights (OHCHR), jointly condemned the murder of Mexican journalist Miroslava Breach, and noted that although the Mechanism for the Protection of Human Rights Defenders and Journalists issued an alert in August 2016 for the protection of journalists and human rights defenders in Chihuahua—where she was shot and killed—her murder “is a sad reminder that the actions taken have failed to halt the violence against them.” Mexico Office of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), and the Mexico Office of the United Nations Office of the High Commissioner for Human Rights (OHCHR). March 23, 2017. [Press Release R38/17 - Organismos internacionales expresan su firme condena por el asesinato de la periodista Miroslava Breach en Chihuahua, Chihuahua](#) [International Bodies Strongly Condemn Murder of Journalist Miroslava Breach in Chihuahua, Chihuahua].

<sup>117</sup> IACHR/OHCHR. [Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico, 27 November- 4 December 2017](#). December 4, 2017. Paras. 23-28; Meeting on the Mechanisms for the Protection of Human Rights Defenders and Communicators in Latin America, held on 19 and 20 October 2017 in Montevideo; IACHR. 163<sup>rd</sup> Session. Public Hearing [Situation of Freedom of Expression in Colombia](#). July 5, 2017. See also: FLIP. [Estado Depredador. Informe sobre el estado de la libertad de prensa en Colombia 2017](#) [Predatory State. Report on the State of Press Freedom in Colombia 2017]. 2018. Pp. 20–22; Article 19. [Violações à liberdade de expressão relatório anual 2016](#). Pp. 34, *et seq.*

properly consider the domestic work, school supervision, and unpaid care tasks that fall disproportionately on women, all of which exacerbate the impact of violence.

55. In relation to acts of gender-based violence, the IACHR also “has found that State authorities—the police in particular—fail to fulfill their duty to protect women victims of violence against imminent threats,”<sup>118</sup> in many cases being suspicious of the allegations made by women victims of violence and perceiving such matters as private and low priority.<sup>119</sup> Among other manifestations, this omission leads to “[serious flaws in the] enforcement and supervision of restraining orders and other court-ordered protective measures.”<sup>120</sup> Women journalists and media workers do not escape this situation.

56. In addition to the shortcomings in the adoption of effective protection measures, the Office of the Special Rapporteur has stressed that the lack of reporting is one of the persistent challenges vis-à-vis attacks on women journalists and media workers.<sup>121</sup> In this regard, the Secretary General of the United Nations has noted that “most women journalists do not report or make public the violence they experience.”<sup>122</sup>

57. This situation is part of a general context of low utilization of the justice system by women victims of gender-based violence.<sup>123</sup> According to the IACHR, the factors contributing to these low reporting levels include the secondary victimization that women victims experience when they attempt to report the violence perpetrated against them; the lack of judicial protections and guarantees to safeguard the dignity and safety of victims and witnesses during prosecution of cases; the economic cost of judicial proceedings, and the geographic location of the judicial bodies where such complaints have to be filed.<sup>124</sup> In the case of women journalists and media workers, the decision not to report these acts is also influenced by the fear of the potential consequences of such reporting on the practice of their profession (i.e. stigmatization, loss of employment, isolation, etc.), as well as the fear of retaliation by the perpetrator.<sup>125</sup>

58. In those cases where acts of violence against women journalists are reported, impunity remains the rule rather than the exception.<sup>126</sup> This is due to a number of factors, such as deficiencies in the law, institutional failings (i.e. lack of technical capacity, adequate resources, and specialized personnel on the part of investigative bodies), lack of evidence, as well as, in some contexts, the lack of independence and impartiality of the authorities responsible for conducting investigations and related judicial proceedings. It may also be due to a lack of political will, and/or the existence of powerful criminal groups that may weaken the State's capacity to defend, guarantee, and promote human rights.<sup>127</sup> Taken together, these shortcomings

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<sup>118</sup> IACHR. [Access to justice for women victims of violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 9.

<sup>119</sup> IACHR. [Access to justice for women victims of violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 9.

<sup>120</sup> IACHR. [Access to justice for women victims of violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 9.

<sup>121</sup> IACHR. [Annual Report 2016. 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. 299.

<sup>122</sup> UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 11.

In keeping with this analysis, the IFJ's 2017 online survey cited above found that two thirds of journalists who reported violence did not file a formal complaint. IFJ. [IFJ survey: One in two women journalists suffer gender-based violence at work](#). November 24, 2017. In addition, the *International Women's Media Foundation* found that most incidents of harassment and violence cited by women journalists in its global study were never reported, although most of the women who experienced them said they were psychologically affected. International Women's Media Foundation (IWMF) / International News Safety Institute (INSI). Violence and harassment against women in the news media. A global picture. 2014. [Executive Summary](#)

<sup>123</sup> IACHR. [Access to justice for women victims of violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 6.

<sup>124</sup> IACHR. [Access to justice for women victims of violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 12.

<sup>125</sup> Information provided during the consultation meeting with journalists and experts convened by the Special Rapporteur on February 20, 2018 in Bogotá. See also: UN General Assembly. [The safety of journalists and the issue of impunity. Report of the Secretary General](#). A/72/290. 4 August 2017. Para. 11; United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#). A/HRC/20/17. 4 June 2012. Para. 52; FLIP. [Estado Depredador. Informe sobre el estado de la libertad de prensa en Colombia 2017](#) [Predatory State. Report on the State of Press Freedom in Colombia 2017]. 2018. P. 49.

<sup>126</sup> IACHR. [Annual Report 2016. 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. 4.

<sup>127</sup> IACHR. [Annual Report 2016. 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. Paras. 258-265; IACHR/OHCHR. [Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on](#)

result in inaction, unjustified delays, and irregularities in judicial proceedings, a very small percentage of which result in trials and convictions commensurate with the seriousness of the offenses.<sup>128</sup>

59. Discriminatory socio-cultural patterns also have an impact on the investigation, prosecution, and punishment of cases of violence against women. In particular, the IACHR has explained that, due to prevailing gender stereotypes, judicial officials tend to consider that cases of violence are not a priority, and they do not obtain the evidence that is key to the investigation and punishment of the perpetrators. In addition, they give little credibility to the victims' claims; they discredit them; they hold them accountable for the acts reported, "because of [their] manner of dress, [their] occupation, [their] sexual conduct, relationship or kinship to the assailant,"<sup>129</sup> and treat them inappropriately when they attempt to assist in the investigation of the facts.<sup>130</sup>

60. There are also specific failings in the investigation, prosecution, and punishment of online gender-based violence. Online violence against women journalists is often not adequately considered or addressed as a form of gender-based violence, as women's testimonies regarding its occurrence, severity, and impact on their lives and fundamental rights are dismissed.<sup>131</sup> In this regard, during the Office of the Special Rapporteur's joint visit to Mexico in 2017, the Special Rapporteur received information about inefficient investigations into online threats and harassment of journalists and others, stalled by burdensome legal requirements such as the psychological testing of victims, and lack of real coordination among protection mechanisms.<sup>132</sup>

61. One of the factors contributing to the prevalence of these shortcomings in the prevention, comprehensive protection, and investigation, prosecution, and punishment of acts of gender-based violence is "deficiencies in the availability, quality, and completeness of the public information"<sup>133</sup> on the subject. Many States in the region also fail to produce comprehensive statistics that are properly disaggregated by factors such as sex, race, ethnicity, age, social status, sexual orientation, gender identity, and disability, and other criteria to assess the actual incidence of violence and discrimination against specific groups of women, including women journalists and media workers. The IACHR has found that, even in those States that have institutionalized mechanisms for the compilation, processing, and production of information on violence against women, often the dissemination of such information tends to be insufficient.<sup>134</sup> Given this omission, States do not have the qualitative and quantitative information they need to adopt normative frameworks, public policies and other actions aimed at addressing the obstacles that prevent women journalists from having effective access to justice in the face of acts of violence and discrimination against them.

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[freedom of expression of the IACHR following their joint visit to Mexico, 27 November- 4 December 2017](#). December 4, 2017. Paras. 32-33. In 2012, the organization *Comunicación e Información de la Mujer* [Communication and Information for Women] (CIMAC) In 2012, the organization Communication and Information for Women (CIMAC) identified a set of factors that contributed to the high levels of impunity and lack of access to justice surrounding violence against women journalists in Mexico. These factors included the failure to pursue lines of investigation linked to women journalists' professional activities that include a gender perspective and a human rights approach; flaws in the custody and securing of evidence, which hinder the investigation and affect the thoroughness, speed, and effectiveness of judicial investigations; and the failure to adopt immediate protection measures, which prevents and inhibits the free and safe practice of women's journalistic work. CIMAC. [Violencia e impunidad contra mujeres periodistas en México](#) [Violence and impunity against women journalists in Mexico]. Executive Summary. 2012.

<sup>128</sup> IACHR. [Access to justice for women victims of violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 8.

<sup>129</sup> IACHR. [Access to justice for women victims of violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 155.

<sup>130</sup> IACHR. [Access to justice for women victims of violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 8.

<sup>131</sup> See, e.g., Fundación Karisma, [Misoginia en internet: bombardeo a campo abierto contra las periodistas](#) [Misogyny on the Internet: open-air bombing of women journalists]. February 24, 2016; Luchadoras, et al. [La violencia en línea contra las mujeres en México. Informe para la Relatora sobre Violencia contra las Mujeres, Ms. Dubravka Šimonović](#) [Online violence against women in Mexico. Report for the Rapporteur on Violence against Women, Ms. Dubravka Šimonović]. November 1, 2017. Pp. 7 & 37;

<sup>132</sup> IACHR/OHCHR. [Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico, 27 November- 4 December 2017](#). December 4, 2017. Para. 35.

<sup>133</sup> IACHR. [Access to Information, Violence against Women, and the Administration of Justice in the Americas](#). OAS/Ser.L/V/II.154. Doc. 19. March 27, 2015. Para. 13.

<sup>134</sup> IACHR. [Access to Information, Violence against Women, and the Administration of Justice in the Americas](#). OAS/Ser.L/V/II.154. Doc. 19. March 27, 2015. Para. 87.

## II. INTERNATIONAL LEGAL FRAMEWORK

62. International human rights law affords robust protection to the right of women to enjoy the right to freedom of expression on equal terms and without gender-based discrimination. In the inter-American system for the protection of human rights, the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”) guarantee the right of women to exercise freedom of expression free from discrimination and violence. Article 13 of the American Convention, in relation to Article 1.1 thereof, recognizes that all persons are entitled to the right to freedom of expression, “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” The Convention of Belém Do Pará provides that “Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments.” In particular, it states that “Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.” The Inter-American Convention against racism, racial discrimination and related forms of intolerance provides that “every human being is equal under the law and has a right to equal protection against racism, racial discrimination, and related forms of intolerance in any sphere of life, public or private”. The treaty also recognizes that “multiple or aggravated discrimination is any preference, distinction, exclusion, or restriction based simultaneously on two or more of the criteria set forth in Article 1.1 (of the American Convention), or others recognized in international instruments, the objective or result of which is to nullify or curtail, the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties, in any area of public or private life”.

63. In the universal human rights protection system, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights also protect women’s right to equal enjoyment and exercise of the right to freedom of expression. Article 19 of the Covenant recognizes the right to freedom of expression of all persons without discrimination on the basis of sex, and Article 3 ensures “the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.” The CEDAW sets out broad obligations aimed at eliminating discrimination against women in all its forms, and Article 7 provides that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country.”

64. The international human rights framework is complemented by other international instruments that recognize the central importance of freedom of expression, the media, and information and internet technologies for the empowerment of women and girls. For instance, the Beijing Platform for Action adopted in 1995 recognized the media’s potential to contribute to the advancement of women. In turn, in the Millennium Development Goals, States pledged to make efforts to achieve universal and affordable access to the Internet in developing countries by 2020 (Goal 9c). Under Agenda for Sustainable Development 2030, the States pledged to ensure that women and men have equal access to basic services, including new technology (Goal 1.4) and to “enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women” by 2030 (Goal 5b). States also committed themselves to ensuring public access to information and protecting fundamental freedoms (Goal 16.10) and to measuring the progress of this goal through, *inter alia*, collecting data on the number of verified cases of homicide, kidnapping, forced disappearance, arbitrary detention and torture of journalists and associate members of the media, preferably disaggregated by variables such as sex. Similarly, in the Plan of Action of the World Summit on the Information Society, States parties agreed to “Strengthen programs focused on gender-sensitive curricula in formal and non-formal education for all and enhancing communication and media literacy for women with a view to building the capacity of girls and women to understand and to develop ICT content” (target 23 h). In addition, they undertook to “work on removing the gender barriers to ICT education and training” (target 11g) and agreed that “gender-specific indicators on ICT use and needs should be developed” (target 28d).

65. The importance attached to the exercise of women’s right to freedom of expression derives, *inter alia*, from the role of this right in achieving effective gender equality and strengthening democracy. Gender equality is equally integral to freedom of expression as a fundamental right, and the exercise of freedom of expression is a key instrument for promoting gender equality.

66. Understood as “equal visibility, empowerment, responsibility and participation of both women and men in all spheres of public life, including the media,”<sup>135</sup> gender equality is essential to achieving universal enjoyment of the right to freedom of expression.<sup>136</sup> Similarly, the full and unrestricted exercise of the right to freedom of expression enables women to play a leading role in promoting the legal, political, and social changes necessary to eradicate discrimination against them<sup>137</sup> and “to play a greater and more active role in denouncing abuses and in finding solutions that mean greater respect for all their basic rights.”<sup>138</sup>

67. Restrictions and obstacles to the exercise of women’s right to freedom of expression only reinforce their exclusion from public space, and structural discrimination prevents them from freely exercising their right to freedom of expression. In this regard, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that denying women the full enjoyment of this right also limits their exercise of other fundamental rights, such as the rights to development, education, health, political participation, and a life free from violence.

68. The right to freedom of expression and gender equality are also essential elements of democracy. Women represent half of the population, and without their participation, democratic governance is seriously undermined. In this regard, the Inter-American Democratic Charter recognizes that freedom of expression is one of its “essential components” and the Inter-American Human Rights System has emphasized that “discrimination against women is an obstacle to achieving genuine, inclusive, and participatory democracy.”<sup>139</sup> The CEDAW Committee has likewise underscored that, “The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both.”<sup>140</sup>

69. According to these international norms and commitments, States are under an obligation to take positive measures aimed at ensuring the substantive equality of women in the exercise of freedom of expression and the transformation of institutions, systems, roles, and stereotypes that perpetuate their inequality and exclusion from public debate. In the case of women journalists, this entails, first of all, the obligation of States to include a gender perspective<sup>141</sup> in all initiatives aimed at creating and maintaining a safe and favorable environment for free and independent journalism. It is not enough to guarantee women journalists the same treatment as their male colleagues. Substantive equality may require differentiated approaches according to the specific needs and risks of women journalists in each context. In particular, government policies and programs aimed at preventing, protecting, and seeking justice in cases of crimes against journalists must adequately address the risks to women journalists, who in addition to facing the same risks of threats and violence faced by all journalists in the region, are also exposed to additional or gender-specific risks. The Office of the Special Rapporteur emphasizes that gender-neutral policies in this area have a discriminatory impact on women journalists and can increase their vulnerability. In addition, guaranteeing equality implies adopting effective strategies to transform the role of women in and through the

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<sup>135</sup> Council of Europe. [Recommendation CM/Rec \(2013\)1 of the Committee of Ministers to member States on gender equality and media](#). July 10, 2013.

<sup>136</sup> United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue](#). A/HRC/14/23. 20 April 2010. Para. 47; United Nations. Human Rights Council. [Report of the Working Group on the issue of discrimination against women in law and in practice](#). A/HRC/23/50. April 19, 2013. Para. 34

<sup>137</sup> IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter C. (Women and freedom of expression). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000.

<sup>138</sup> IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter C. (Women and freedom of expression). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000. Similarly, see United Nations. Human Rights Council. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue](#). A/HRC/14/23. 20 April 2010. Para. 47.

<sup>139</sup> IACHR. [The Road to Substantive Democracy: Women’s Political Participation in the Americas](#). OEA/Ser.L/V/II. Doc.79. April 18, 2011. Para. 2.

<sup>140</sup> Committee on the Elimination of Discrimination Against Women. General Recommendation 23. U.N. Doc. A/52/38. 16<sup>th</sup> session. 1997. Para. 14. Available at: [https://conf-dts1.unog.ch/1%20SPA/Tradutek/Derechos\\_hum\\_Base/CEDAW/00\\_4\\_obs\\_grales\\_CEDAW.html#GEN23](https://conf-dts1.unog.ch/1%20SPA/Tradutek/Derechos_hum_Base/CEDAW/00_4_obs_grales_CEDAW.html#GEN23)

<sup>141</sup> According to the IACHR, “[the] gender perspective is a key tool to combat discrimination and violence against women and people with diverse sexual orientations and gender identities; and a concept that seeks to make visible the position of inequality and structural subordination of women to men based on their gender. IACHR. December 15, 2017. [Press Release 208/17 - IACHR regrets the prohibition of gender teaching in Paraguay](#). Washington, D.C.

media, ensuring the eradication of institutions, systems, stereotypes, and prejudices that cause or perpetuate violence and discrimination against women journalists.

70. These obligations not only relate to the actions of State authorities and institutions, but include the duty to protect women journalists against undue interference by third parties—including private companies—in their right to freedom of expression. Furthermore, all companies, including media outlets and online platforms, have a responsibility to respect human rights in accordance with the standards developed in this area.

71. This section analyzes the content of these obligations, based on applicable international norms and standards, and identifies necessary legal and public policy reforms and measures.

## **A. The safety of journalists: a gender perspective**

### **1. State obligations**

72. The safety of journalists is a prerequisite for the exercise of the right to freedom of expression and freedom of the press. The IACHR has recognized 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.”<sup>142</sup>

73. As the Office of the Special Rapporteur has pointed out on several occasions, violence against journalists and media workers may jeopardize their rights to humane treatment, life, and freedom of thought and expression, as recognized in Articles 4, 5, and 13 of the American Convention on Human Rights.<sup>143</sup> In the same vein, the Inter-American Court has recognized that respect for and the guarantee of the rights to life, humane treatment, and freedom of expression of journalists and media professionals are closely interrelated.<sup>144</sup>

74. In light of these provisions, the Office of the Special Rapporteur has affirmed that States have a negative obligation to ensure that their agents do not interfere with the rights of journalists and media workers and that they refrain from acts that may directly violate or jeopardize these rights. This obligation applies to all acts and omissions by State agents in the performance of their duties, even when they exceed the scope of their competence. At the same time, the States have three sets of positive obligations: the obligation to prevent, the obligation to protect, and the obligation to investigate, try and criminally punish those responsible for acts of violence against journalists and media workers. As the Office of the Special Rapporteur has indicated, these obligations are complementary to each other.<sup>145</sup>

75. In the specific case of acts of gender-based violence against women journalists, the Office of the Special Rapporteur has stated that these general obligations to prevent, protect and seek justice “are complemented and reinforced” by the obligations deriving from the Convention of Belém do Pará.<sup>146</sup> Article 1 of the Convention of Belém do Pará provides that “violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.” In addition, “Violence against women shall be understood to include physical, sexual and psychological violence [...] that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health

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<sup>142</sup> IACHR. [Declaration of Principles on Freedom of Expression](#). 2000.

<sup>143</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

<sup>144</sup> I/A Court H.R. [Case of Vélez Restrepo and family v. Colombia](#). Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 176; I/A Court H. R. [Case of Carvajal Carvajal et al. v. Colombia](#). Merits, Reparations and Costs. Judgment of March 13, 2018. Series C No. 352. Para. 176. In Spanish.

<sup>145</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 31.

<sup>146</sup> 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. 193.

facilities or any other place; and [...] that is perpetrated or condoned by the state or its agents regardless of where it occurs.” According to Article 7(a) of that Convention, the States should “refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation.” Clause (b) of the same Article requires the State to act with due diligence to prevent, investigate, and impose penalties for violence against women.

76. The Office of the Special Rapporteur has emphasized that the fulfillment of all these obligations entails integrating a gender perspective to ensure that women journalists are adequately protected and can exercise their right to freedom of expression without undue restrictions. Similarly, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity reaffirms the importance of giving these policies and strategies “a gender-sensitive approach.”<sup>147</sup> Similarly, in its 2017 resolution on the *Right to freedom of thought and expression and the safety of journalists and media workers*,<sup>148</sup> the General Assembly of the OAS recognized “that the work done by journalists, especially those who investigate and report on human rights violations, organized crime, corruption, and other serious wrongdoings, exposes them to being victims of aggressions and other acts of violence detrimental to their integrity and whose existence dissuade them to pursue their work and in consequence deprive society of information of public interest” and expressed concern “at the particular risks faced by women who practice journalism, who, in addition, are victims of discrimination, harassment and sexual violence, including online.”

77. Similarly, the resolution on *The safety of journalists and the issue of impunity* adopted by the UN General Assembly in 2017<sup>149</sup> acknowledged “the specific risks faced by women journalists in the exercise of their work, and underlining in this context the importance of taking a gender-sensitive approach when considering measures to address the safety of journalists, including in the online sphere, in particular to effectively tackle gender-based discrimination, including violence, inequality and gender-based stereotypes, and to enable women to enter and remain in journalism on equal terms with men while ensuring their greatest possible safety, to ensure that the experiences and concerns of women journalists are effectively addressed and gender stereotypes in the media are adequately tackled.”

78. Online violence against women journalists must also be addressed from a gender perspective to ensure that this group of women can exercise their right to freedom of expression both offline and online. On this regard, the resolution on *The promotion, protection and enjoyment of human rights on the Internet* the UN Human Rights Council “condemn[ed] unequivocally online attacks against women, including sexual and gender-based violence and abuse of women, in particular where women journalists, media workers, public officials or others engaging in public debate are targeted for their expression”, and called “for gender-sensitive responses that take into account the particular forms of online discrimination.”<sup>150</sup>

## 1.1 Prevention

79. States have an obligation to take measures to prevent violence against journalists. The Office of the Special Rapporteur has indicated that, as part of this duty of prevention, States have a number of obligations, including, in particular, “the obligation to ensure its public statements contribute to preventing violence against journalists; the obligation to instruct its security forces to respect the media; the obligation to respect the right of journalists to the confidentiality of their sources, notes and personal and professional files; the obligation to punish violence against journalists; and the obligation to maintain precise statistics on violence against journalists.”<sup>151</sup>

80. Some of these preventive measures apply to cases of violence against female and male journalists alike, such as the obligation to respect the right of journalists to the confidentiality of their sources of

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<sup>147</sup> UNESCO. [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Principles. CI-12/CONF.202/6. No date.

<sup>148</sup> OAS. General Assembly. [“Right to freedom of thought and expression and the safety of journalists and media workers” in: AG/RES. 2908 \(XLVII-O/17\). Promotion and protection of human rights](#). Adopted at the 3rd plenary session, on 21 June 2017.

<sup>149</sup> United Nations. General Assembly. [The safety of journalists and the issue of impunity](#). A/C.3/72/L.35/Rev.1. 13 November, 2017. P. 5.

<sup>150</sup> United Nations. Human Rights Council. [The promotion, protection and enjoyment of human rights on the internet](#). A/HRC/38/L.10/Rev.1. July 4, 2019.

<sup>151</sup> IACHR. [Annual Report 2016. 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. 156.

information, notes, and personal and professional files. Others may have special connotations based on the dimension of gender-based violence against women journalists. What is important is that States ensure a comprehensive prevention strategy or public policy aimed at preventing violence against this group of women.

81. In this regard, as the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) has underscored, the prevention of violence against women is a central tenet of the obligations set out in the Convention of Belém do Pará, “and compliance with those obligations is essential in order to successfully achieve the goal of guaranteeing women the full exercise of the right to live a life free from violence, eradicate all forms of violence against them and protect their human rights.”<sup>152</sup> The prevention of gender-based violence against women requires States to take “a series of internal measures which include adjustment of the entire government apparatus and structures that represent public power, with the ultimate goal of ensuring governmental behavior that is respectful of the human rights of women and is directed at eradicating the sociocultural patterns and gender stereotypes that reinforce violence and discrimination.”<sup>153</sup>

82. On this basis, the Office of the Special Rapporteur is of the view that the obligation to prevent gender-based violence against women journalists entails, at the very least, the implementation of the following measures and actions:

83. *Public acknowledgement.* States should publicly recognize that the gender-based discrimination and violence faced by women journalists constitute attacks on freedom of expression. Sexist abuse, workplace inequality, sexual harassment, and online violence against women journalists in the course of their work also pose risks to freedom of expression that must be appropriately condemned and addressed. In particular, online violence against women journalists should not be trivialized by state authorities and should be expressly recognized as a problem that threatens press freedom and democratic deliberation.<sup>154</sup> One of the most effective prevention measures is a public discourse that, in addition to recognizing the importance of the work of women journalists for democratic societies, unequivocally condemns the special risks they face in the exercise of freedom of expression and gender.

84. *Appropriate and effective penalties.* States must ensure that there is an adequate legal framework in place for the effective punishment of gender-based violence against women journalists in the course of their work and that it enables the authorities to act effectively in response to complaints. To this end, States must ensure that there are legal provisions and institutions in place to address such attacks and to remove legal barriers to access to justice for women victims.

85. For instance, the IACHR has maintained that States should “adopt legislative measures to make sexual harassment a punishable offense in the criminal, civil and administrative jurisdictions, and support these measures with the regulations and training that law enforcement personnel require.”<sup>155</sup> Legislation in this area should define sexual harassment in a manner consistent with applicable international human rights standards and establish mechanisms to provide redress for women victims of violence. As the UN Special Rapporteur on violence against women, its causes, and consequences has stated, “This could be done by defining sexual harassment as a crime under the penal code or, especially with regard to educational institutions and the workplace, by recognizing sexual harassment as a violation of women’s equality in violation of the constitutional and legislative provisions governing gender equality.”<sup>156</sup>

86. With regard to online violence, consideration should be given to the need for legislative reform, including the enactment of specific legislation to prohibit the various forms of gender-based violence

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<sup>152</sup> MESECVI. [Third Hemispheric Report on the Implementation of the Belém do Pará Convention: Paths to Follow](#). OEA/Ser.L/II.7.10 MESECVI/CEVI/doc.242/17. 2017. Para. 52.

<sup>153</sup> MESECVI. [Third Hemispheric Report on the Implementation of the Belém do Pará Convention: Paths to Follow](#). OEA/Ser.L/II.7.10 MESECVI/CEVI/doc.242/17. 2017. Para. 63.

<sup>154</sup> OSCE. [Recommendations following the Expert Meeting New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists](#). September 17, 2015.

<sup>155</sup> IACHR. [The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights](#). OEA Ser.L/V/II.143 Doc.59. November 3, 2011. Para. 58, citing IACHR. [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser.L./V.II.110 doc. 52. March 9, 2001. Para. 169.

<sup>156</sup> United Nations. Economic and Social Council. [Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy](#). E/CN.4/1997/47. 12 February 1997. Para. 48.

facilitated by information technology, in accordance with the States' duty of due diligence. In her most recent report, the UN Special Rapporteur on violence against women, its causes, and consequences observed with concern that many States lack an adequate legal framework to combat online violence against women, which leads to impunity for the perpetrators.<sup>157</sup> Bearing this in mind, the Special Rapporteur has recommended that States "clearly prohibit and criminalize online violence against women, in particular the non-consensual distribution of intimate images, online harassment and stalking. The criminalization of online violence against women should encompass all elements of this type of abuse, including subsequent 're-sharing' of harmful content. The threat to disseminate non-consensual images must be made illegal so that advocates and prosecutors may intervene and prevent the abuse before it is perpetrated."<sup>158</sup>

87. This office underscores the importance of these legal reforms being designed and drafted so as to ensure their compatibility with international human rights law, including the principles and standards governing the imposition of restrictions on freedom of expression and the dissemination of online content. According to Article 13.2 of the American Convention, this type of restriction must be provided for by law, pursue legitimate objectives, and respect the principles of necessity and proportionality.

88. In addition, restrictions imposed to penalize discriminatory speech that incites violence must be adopted in accordance with Article 13.5 of the Convention, which stipulates 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." States should refrain from introducing new criminal provisions that may lead to arbitrary restrictions on the right to freedom of expression and should refrain from imposing an obligation on Internet intermediaries to restrict content on the basis of vague legal provisions or without prior review by a court or independent authority.

89. When gender-based violence against women, including sexual violence, is perpetrated by public servants and/or committed in state institutions, the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) has recommended that States' regulatory frameworks include provisions aimed at punishing these forms of gender-based violence against women, in accordance with the definition of violence against women contemplated in the Convention of Belém do Pará, either as specific criminal offenses or as aggravating circumstances, civil, administrative, and others, that are considered necessary.<sup>159</sup>

90. *Awareness campaigns and media and digital literacy.* Prevention should include measures to raise awareness among society about gender-based violence against women journalists as an attack on freedom of expression, as well as to disseminate clear information on the legal services and mechanisms available to protect victims of such acts. In this regard, the IACHR has emphasized that it is essential for States to undertake outreach actions to raise awareness among the general public about the duty to respect women's rights, the services and remedies available to women whose rights have been violated, and the legal consequences for perpetrators.<sup>160</sup> These efforts should include programs aimed at journalists, in partnership with women's networks, civil society organizations, the media, and international bodies.

91. States should also implement educational measures to promote media and digital literacy as key elements of human rights education and gender equality efforts. The Committee of Ministers of the Council of Europe recommended States to "promote gender sensitive media literacy for the young generation, prepare young people to approach different forms of media content responsibly and enable them to acquire a critical view of media representations of gender and to decode sexist stereotypes."<sup>161</sup> Similarly, the IACHR has recommended to States promoting digital literacy for all users of the Internet and other digital technologies,

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<sup>157</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. June 18, 2018. Para. 23.

<sup>158</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. June 18, 2018. Paras. 101-102.

<sup>159</sup> MESECVI. [Second Hemispheric Report on the Implementation of the Belém do Pará Convention](#). OEA/Ser.L/II.6.10. April 2012. P. 38.

<sup>160</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 298.

<sup>161</sup> Council of Europe. [Recommendation CM/Rec\(2013\)1](#) of the Committee of Ministers to member States on gender equality and media. July 10, 2013.

without discrimination based on sex or gender, and to promote gender equality at all levels of education, including online education.<sup>162</sup> The MESECVI has stated that the general prevention of violence against women requires positive measures that include “processes for sensitivity training and cultural transformation; the self-regulation of the media—including [ICTs]—and corresponding oversight by independent organizations that include citizen participation.”<sup>163</sup>

92. *Training of State personnel and judicial officers.* States should properly educate public officials, including law enforcement officers, about women journalists' right to work free from gender-based violence and the impact that violations of this right by State officials can have on the exercise of their right to freedom of expression. This may require the adoption of protocols and guidelines for action for public officials who interact with journalists and media workers, the implementation of systematic training programs for officials on the subject, and the introduction of accountability mechanisms to ensure that effective penalties are imposed upon officials who commit acts of violence against women journalists.<sup>164</sup> Public servants should be adequately trained on conduct that constitutes discrimination, harassment, and sexual violence, as well as online violence, and on the existing legal framework for addressing these types of violence, which are often overlooked and normalized throughout the region.

93. States should train public servants, security forces, and judicial officials to ensure that they have the necessary knowledge to identify acts and manifestations of online violence against women journalists, protect them in dangerous situations, and investigate and prosecute perpetrators. This should include the provision of tools and training on technical and legal aspects of such crimes.<sup>165</sup> To this end, States should also “develop specialized, clear, efficient and transparent internal and external protocols and codes of conduct for its law enforcement officials addressing online violence against women to enable them to better understand that online violence is a form of gender-based violence that warrants a serious, trauma-informed response.”<sup>166</sup>

94. *Information gathering.* Prevention includes the obligation to gather qualitative and quantitative information on the causes, consequences, and frequency of gender-based violence against women experienced by women journalists (Article 8.h of the Belém do Pará Convention).<sup>167</sup> This information should be used as a basis for designing, monitoring and evaluating the effectiveness of the regulatory frameworks, public policies, and other measures adopted in this area, and to encourage civil society to monitor the policies implemented.<sup>168</sup> This information should be disaggregated according to factors such as race, ethnicity, age, disability, social status, and other criteria to assess the real incidence of violence among specific groups of women journalists and media workers.<sup>169</sup> In addition, “States must have appropriate legal and administrative mechanisms to ensure ample access to that information, establish vehicles for circulating it, and encourage public debate and scrutiny of the policies being implemented in that realm.”<sup>170</sup>

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<sup>162</sup> IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 36; United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. June 18, 2018. Para. 97.

<sup>163</sup> MESECVI. [Third Hemispheric Report on the Implementation of the Belém do Pará Convention: Paths to Follow](#). OEA/Ser.L/II.7.10 MESECVI/CEVI/doc.242/17. 2017. Para. 88(3).

<sup>164</sup> IACHR. [Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators](#). OEA/Ser.L/V/II CIDH/RELE/INF.12/13. December 31, 2013. Para. 47.

<sup>165</sup> OSCE. [Recommendations following the Expert Meeting New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists](#). 17 September, 2015.

<sup>166</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. June 18, 2018. Para. 106.

<sup>167</sup> IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Access to Information, Violence against Women, and the Administration of Justice in the Americas). OAS/Ser.L/V/II.154. Doc. 19. 2015. Para. 50.

<sup>168</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 42; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Access to Information, Violence against Women, and the Administration of Justice in the Americas). OAS/Ser.L/V/II.154. Doc. 19. 2015. Para. 50.

<sup>169</sup> IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Access to Information, Violence against Women, and the Administration of Justice in the Americas). OAS/Ser.L/V/II.154. Doc. 19. 2015. Para. 77.

<sup>170</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 43.

95. In this regard, addressing gender-based violence online also requires States to document, produce, and disseminate qualitative and quantitative data on the causes, consequences, incidents, and frequency of such acts against women journalists, including in cooperation with online intermediaries and platforms.<sup>171</sup> It is particularly important that States have and regularly disseminate information to assess the effectiveness of existing regulatory frameworks and public policies implemented to address online violence.<sup>172</sup>

96. *Structural reforms.* States should promote a favorable working environment for women journalists to be able to practice journalism without fear of workplace discrimination. In particular, states should ensure that a policy for the prevention of and response to workplace and sexual harassment is established and clearly displayed in every workplace. This policy should be developed in consultation with staff, management, trade unions, and other stakeholders such as civil society organizations.<sup>173</sup> It should be applicable to both the public and private spheres and should guarantee effective complaint mechanisms and the protection of women from retaliation.

97. *Elimination of discriminatory stereotypes and patriarchal sociocultural patterns.* The elimination of gender-based violence against women journalists will only be possible if discriminatory stereotypes and patriarchal structures and systems are explicitly addressed in prevention strategies. Therefore, States should complement these measures with actions aimed at dismantling and transforming patriarchal structures, systems, and practices that are sustained and reproduced in various spheres of society. In this regard, the Third Hemispheric Report on the Implementation of the Belém do Pará Convention on the Prevention of Violence against Women in the Americas recognized that:

Urgently addressing the patriarchal culture is an imperative because, in fact, it undergirds and shapes the way in which general and special prevention measures are operationalized. Actions of duty bearers, whose obligation it is to prevent VAW, are strongly influenced by the patriarchal culture. Policy makers, legislators, law enforcement agents, prosecutors and judges act in accordance with the ideological framework that they embrace. The biased action and often, the non-action of these critical players, therefore, fall short in fulfilling State obligation to stem the tide of VAW and protect women's human rights. At the same time victims/survivors are equally socialized to accept the patriarchal culture, which conditions them to passively accept, rather than reject, violence as part of the fabric of their daily lives.<sup>174</sup>

98. *Participation of women journalists.* Finally, it is imperative that States promote and ensure the full participation of women journalists in the design and implementation of the prevention strategies outlined herein.<sup>175</sup> It is especially important to ensure opportunities for participation by women journalists from traditionally marginalized groups, such as indigenous and Afro-descendent women.

### 1.2.1 Protection

99. The Office of the Special Rapporteur has stressed that States have an obligation to protect journalists and media workers from acts of violence. This obligation presumes the existence of a real and imminent risk and a reasonable possibility of preventing or avoiding such harm.<sup>176</sup> The protection measures should “[be

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<sup>171</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of expression and the internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 41; IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Standards for a free, open, and inclusive Internet). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 66.

<sup>172</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. June 18, 2018. Para. 101-102.

<sup>173</sup> Committee on Economic, Social and Cultural Rights. [General comment No. 23 on the right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23. April 27, 2016. Para. 48.

<sup>174</sup> MESECVI. [Third Hemispheric Report on the Implementation of the Belém do Pará Convention: Paths to Follow](#). OEA/Ser.L/II.7.10 MESECVI/CEVI/doc.242/17. 2017. Para. 38.

<sup>175</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and Internet). OEA /Ser.L/V/II.149 Doc. 50, para. 41; IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Standards for a free, open, and inclusive Internet). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 61.

<sup>176</sup> IACHR. [Annual Report 2016. 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. 170 *citing* I/A Court H.R. [Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs](#). Judgment of January 31, 2006. Series C No. 140. Para. 123; I/A Court H.R. [Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs](#). Judgment of March 29, 2006. Series C No. 146. Para. 155; I/A Court H.R. [Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs](#).

adapted] to the individual circumstances of the person at risk, including the person's gender, the need or desire to continue carrying out the same professional activities, and the person's social and economic circumstances."<sup>177</sup>

100. The IACHR has similarly underscored that States should take the necessary steps to ensure "that women at risk for or subjected to violence have access to effective judicial protection and guarantees."<sup>178</sup> In particular, under Article 7(d) of the Belém do Pará Convention, the States Party must "adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property." These measures may be civil or criminal in nature.<sup>179</sup>

101. The IACHR has stressed the importance of protective measures that are "vital" to guaranteeing the obligation of due diligence in cases of gender-based violence.<sup>180</sup> These measures should be available without the need to bring civil or criminal proceedings and should be implemented expeditiously. States should take account of the fact that "as a result of delays in issuing these measures, some women end up not filing a report out of fear of retaliation by their assailants."<sup>181</sup> According to the Inter-American Court, States must also adopt these measures whenever they become aware of a situation of special risk to an individual, even in the absence of a prior request from the beneficiary.<sup>182</sup>

102. Including a gender perspective in the protection of journalists means ensuring that the entire process and its stages—from the receipt and orientation of the request for protection, to the assessment of risk, to the adoption of special protection measures—are geared to addressing the particular needs and specific risks that women journalists face, and ensuring that they observe the principles of preferential attention, intersectionality, transparency, and participation. To this end, States should issue and widely disseminate special protocols.<sup>183</sup> The most relevant aspects include:

103. *Preferential attention.* Cases involving women journalists who are at real and imminent risk of gender-based violence in the performance of their work should receive preferential attention from the authorities responsible for providing protection. In this regard, we should reiterate that the IACHR and this Office of the Special Rapporteur have maintained that the risk faced by women journalists should be classified as greater, due to their dual vulnerability as journalists in situations of heightened conflict or violence and in contexts that reinforce gender subordination.<sup>184</sup>

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Judgment of November 27, 2008. Series C No. 19. Para. 78; I/A Court H.R. [Case of González et al. \("Cotton Field"\) v. Mexico](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. Para. 280.

<sup>177</sup> IACHR. [Annual Report 2016. 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. 171, *citing* The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. [Joint Declaration on Crimes against Freedom of Expression](#). June 25, 2012.

<sup>178</sup> IACHR. [The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination](#). OEA/Ser.L/V/II.117. Doc. 44. March, 7 2003. Paras. 103-105.

<sup>179</sup> OAS. MESECVI. [Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#). 2014. P. 47.

<sup>180</sup> IACHR. [Report No. 80/11](#). Case 12.626. Merits. Jessica Lenahan (Gonzales), et al. United States. July 21, 2011. Para. 163.

<sup>181</sup> OAS. MESECVI. [Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#). 2014. P. 49.

<sup>182</sup> I/A Court H.R. [Case of Human Rights Defender et al. v. Guatemala](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Para. 155.

<sup>183</sup> A best practice in this area is the "Specific Protocol with a Gender and Women's Rights Perspective" of the National Protection Unit of Colombia, which provides for the creation of a Committee for Risk Assessment and Recommendation of Measures (CERREM) for Women, with the participation of women's organizations, State bodies working on gender issues, such as the Presidential High Council on Women's Equity, and representatives of international bodies such as UN Women. CERREM Women holds special and exclusive sessions to address cases of women seeking protection. Ministry of the Interior of Colombia. [Resolution 0805: Specific Protocol with a Gender and Women's Rights Perspective](#). May 14, 2012. In Spanish.

<sup>184</sup> IACHR. [Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators](#). OEA/Ser.L/V/II CIDH/RELE/INF.12/13. December 31, 2013. Para. 263.

104. *Dissemination of protection programs.* It is particularly important that States ensure the widest possible dissemination of and access to the information necessary for women journalists to be aware of the protection measures provided for under the law in the event of a real and imminent risk, as well as the ways in which such measures can be requested.

105. *Differentiated risk analysis.* Processes and protocols should explicitly recognize that sexual and other forms of gender-based violence are specific risk factors to which women journalists are exposed and that they warrant specialized approaches. Protocols should ensure the effective analysis of forms of gender-based violence, including sexual harassment and online violence, against women journalists. In turn, when the requesting journalist is responsible for the care of children, parents, or others, the family members' situation should be considered in assessing the needs and risk of the women journalists. Similarly, protocols and processes should integrate an intersectional approach that recognizes the diversities of women and groups of women journalists for reasons including "their race, ethnicity, age, [or] sexual orientation, among others."<sup>185</sup>

106. *Design and adoption of special protection measures.* When designing and adopting protection measures, States should take into account the gender-specific risks faced by women journalists and ensure the participation of women beneficiaries in this process. Operational security measures such as police protection or relocation to a safe place should ensure, to the extent reasonably possible, that women journalists can continue to work safely. States should also ensure that protective material is adapted to women's needs, such as customized bulletproof vests for women's body shape and size, and consider alternatives to the presence of armed men in homes, which may include female police officers or the use of unarmed escorts.<sup>186</sup>

107. It is also important that protection measures include, where necessary, restraining orders against assailants. Complementary measures should also be considered to ensure the health, social welfare, and well-being of women journalists and their families (e.g. fathers, children); measures to support the beneficiary and her/his family members in accessing the education system; and measures to assist breastfeeding mothers, pregnant women, and children in the care of the beneficiary.<sup>187</sup> Protection measures should also include comprehensive rehabilitation mechanisms for victims,<sup>188</sup> including access to comprehensive psychosocial services and care for women victims of sexual violence by staff properly trained in gender sensitivity and trauma care.<sup>189</sup>

108. Protection should also include measures to ensure the safety of women journalists from gender-based online threats or attacks. In addition to implementing digital security strategies, States should provide quick and easy mechanisms for women journalists to obtain orders from independent authorities—and in cooperation with online intermediaries and platforms—to prevent the non-consensual redistribution or sharing of private images and other forms of online harassment or violence.<sup>190</sup> This is essential to ensure that women journalists do not have to withdraw or reduce their online or public presence to feel safe.

109. *Participation of groups and organizations of women journalists.* States need to be able to create spaces for participation so that women journalists' groups and civil society organizations working to defend the rights of women journalists have the opportunity to be heard on their specific protection needs. In particular,

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<sup>185</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 262.

<sup>186</sup> IACHR. [Toward a Comprehensive Policy to Protect Human Rights Defenders](#). OEA/Ser.L/V/II. Doc. 207/17. December 29, 2017. Para. 305.

<sup>187</sup> Ministry of the Interior of Colombia. [Resolution 0805: Specific Protocol with a Gender and Women's Rights Perspective](#). May 14, 2012. In Spanish.

<sup>188</sup> OAS. MESECVI. [Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#). 2014. Pp. 49-50.

<sup>189</sup> IACHR. [Toward a Comprehensive Policy to Protect Human Rights Defenders](#). OEA/Ser.L/V/II. Doc. 207/17. December 29, 2017. Para. 305.

<sup>190</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. June 18, 2018. Paras. 101-102.

it is important to ensure participation spaces for women journalists who are part of traditionally marginalized groups, such as indigenous and Afro-descendant women.

110. *Personnel trained in gender issues.* For all this to be possible, it is crucial that State personnel responsible for enforcing the protection of journalists are properly trained in the area of gender and women's rights. The Office of the Special Rapporteur has recommended that those countries with specialized mechanisms for the protection of journalists and human rights defenders ensure that they have focal points or public servants with advanced knowledge of gender issues, and that they participate in the examination of such cases. This is crucial to prevent the process from leading to the revictimization of journalists requesting protection.

### 1.3 Pursuit of justice

111. Once they become aware of acts of gender-based violence against women journalists, States must investigate these acts, identify, prosecute, and punish the perpetrators, and provide comprehensive reparations to the victims. This obligation arises from Articles 13.1, 8.1, and 25 of the ACHR, within the framework of the general obligation to guarantee rights set forth in Article 1.1 of the ACHR. It is also enshrined in Article 7 of the Convention of Belém do Pará, which requires the State to use due diligence and adopt the necessary regulatory framework to investigate and punish violence against women (paragraphs b and c).<sup>191</sup>

112. Based on these provisions, State authorities have the obligation to “initiate, *ex officio* and without delay, a serious, impartial and effective investigation using all available legal means, aimed at determining the truth and the pursuit, capture, prosecution and eventual punishment of all the perpetrators of the facts.”<sup>192</sup> The investigation “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.”<sup>193</sup> In this regard, “the investigating body must use all available means to carry out all necessary actions and inquiries in an effort to obtain the intended result.”<sup>194</sup>

113. States also have an obligation to exhaust all logical lines of investigation that allow for the identification, prosecution, and punishment of the perpetrators.<sup>195</sup> The Office of the Special Rapporteur has stressed that this obligation “is particularly important in cases of violence against journalists, where an investigation that fails to take into account contextual factors such as a journalist’s professional activities will be both less likely to succeed and prone to questions about the authorities’ political will to solve the crime in question.”<sup>196</sup> In the case of acts of gender-based violence against women journalists, it is also necessary to “investigate *ex officio* the possible gender-based discriminatory connotations”<sup>197</sup> of these acts, particularly when they occur within a context of violence against women in a given country or region.<sup>198</sup>

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<sup>191</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. 287; I/A Court H.R. [Case of Gutiérrez Hernández et al v. Guatemala](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C No. 339. Para. 147 (only in Spanish).

<sup>192</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. 290.

<sup>193</sup> I/A Court H.R. [Case of Velásquez Rodríguez v. Honduras](#) Merits. Judgment of July 29, 1988. Series C No. 4. Para. 177.

<sup>194</sup> I/A Court H.R. [Case of Yarce et al. v. Colombia](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325. Para. 295 (only in Spanish).

<sup>195</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 167; I/A Court H.R. [Case of Yarce et al. v. Colombia](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, para. 295 (only in Spanish).

<sup>196</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: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 203.

<sup>197</sup> 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. 187.

<sup>198</sup> 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. 187.

114. Both the determination of the lines of investigation and all other aspects of the investigation of acts of violence against women journalists must have a gender perspective, which implies actively investigating the unequal power relations that operate in the context of the case, and be free from the influence of discriminatory gender stereotypes. In this regard, the Inter-American Court has made clear that “the opening of lines of investigation into the prior social or sexual behavior of victims in cases of gender-based violence is nothing more than the manifestation of policies or attitudes based on gender stereotypes”<sup>199</sup> about the socially acceptable roles and behaviors of women in their interpersonal relationships.

115. At the same time, these stereotypes “affect the objectivity of the government officials responsible for investigating complaints, influencing their perception of whether or not an act of violence has occurred, their assessment of the credibility of witnesses and the victim herself,” and their assessment of the evidence.<sup>200</sup> They also create “a tacit assumption of the victim's responsibility for the acts, whether because of her manner of dress, occupation, sexual conduct, or relationship or kinship with the assailant. This is reflected in the inaction of prosecutors, police officers, and judges in response to reports of violent acts.”<sup>201</sup> According to the Court, these practices not only constitute a form of discrimination against women on the basis of gender (Article 24 of the ACHR),<sup>202</sup> but they also violate women’s right to a life free from violence (Article 3 of the Convention of Belém do Pará) and prevent them from exercising their right to access justice in cases of gender-based violence.<sup>203</sup>

116. Far from tolerating these practices, States must eradicate their underlying gender stereotypes and ensure that criminal investigations of gender-based violence include a gender perspective and are conducted by officials trained in investigating such cases and in dealing with victims of gender-based discrimination and violence.<sup>204</sup>

117. States should also adopt specific protocols outlining the legal principles and obligations of persons responsible for investigating crimes against freedom of expression in which women journalists are victims. They should set a common standard on how to conduct a timely, diligent, independent, and transparent investigation into such cases, in keeping with international human rights standards and best practices and in consultation with civil society. These special protocols should include rules on victim participation and protection, the transparency of investigations, and accountability mechanisms to monitor progress in the investigation of such cases.

118. When it comes to allegations of sexual violence, the State’s obligations include certain special duties. The Inter-American case law has developed specific standards in relation to the obligation of due diligence in the investigation, prosecution, and punishment of acts of sexual violence against women, pursuant to the provisions of Articles 8.1 and 25 of the ACHR and Article 7 of the Convention of Belém do Pará. In cases where sexual violence involves an act of rape that constitutes torture, States also have a heightened obligation to investigate such acts impartially, *ex officio*, and immediately, in accordance with Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.<sup>205</sup>

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<sup>199</sup> I/A Court H.R. [Case of Gutiérrez Hernández et al v. Guatemala](#). *Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 24, 2017. Series C No. 339. Para. 147 (only in Spanish); 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. 209.

<sup>200</sup> I/A Court H.R. [Case of Gutiérrez Hernández et al v. Guatemala](#). *Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 24, 2017. Series C No. 339. Para. 147 (only in Spanish); 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. 173.

<sup>201</sup> I/A Court H.R. [Case of Gutiérrez Hernández et al v. Guatemala](#). *Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 24, 2017. Series C No. 339. Para. 170 (only in Spanish).

<sup>202</sup> I/A Court H.R. [Case of Gutiérrez Hernández et al v. Guatemala](#). *Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 24, 2017. Series C No. 339. Para. 176 (only in Spanish); I/A Court H.R. [Case of Velásquez Paiz et al. v. Guatemala](#). *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 19, 2015. Series C No. 307. Para. 183 (only in Spanish).

<sup>203</sup> I/A Court H.R. [Case of Gutiérrez Hernández et al v. Guatemala](#). *Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 24, 2017. Series C No. 339. Para. 176 (only in Spanish).

<sup>204</sup> I/A Court H. R., [Case of Favela Nova Brasília v. Brazil](#). *Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333. Para. 254 (only in Spanish).

<sup>205</sup> I/A Court H. R., [Case of Favela Nova Brasília v. Brazil](#). *Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333. Para. 252 (only in Spanish).

119. As the Inter-American Court has pointed out, sexual violence covers the whole range of acts of a sexual nature committed against a person without his or her consent, and may include acts that do not involve penetration or even physical contact.<sup>206</sup> The Court has also made clear that sexual violence constitutes “a particular type of violence that, in general, is characterized by occurring in the absence of persons other than the victim and the perpetrator or perpetrators.”<sup>207</sup>

120. These characteristics of acts of sexual violence have an impact on the type of evidence available and on the way in which evidence should be considered in the investigation and prosecution of such acts. In particular, “the existence of graphic or documentary evidence [of the occurrence of such acts] cannot be expected.”<sup>208</sup> On the contrary, the victim’s statement “constitutes fundamental proof of [sexual violence].”<sup>209</sup>

121. The Inter-American Court has also stressed that, given the traumatic nature of acts of sexual violence, a lack of precision in the statements made by victims and/or discrepancies in the content of some of their statements does not mean that their testimony is false or that the facts reported are untrue.<sup>210</sup> The absence of medical evidence also does not diminish the veracity of the victim’s statement. This is because, although severe suffering is inherent in acts of sexual violence,<sup>211</sup> not all of these acts cause physical injury or ailments that can be verified through medical examinations.<sup>212</sup>

122. With regard to the conditions under which statements should be obtained from women who have suffered sexual violence, and the manner in which they should be treated in the investigation of the facts, it is essential to “avoid revictimization or the re-experiencing of the profoundly traumatic experience each time the victim remembers or testifies about what happened.”<sup>213</sup> To that end, the victim should be able to give a statement in a comfortable and safe environment that provides privacy and trust. The statement should be recorded in such a way as to avoid or limit the need for its repetition.<sup>214</sup>

123. Women who have experienced sexual violence also have the right to access comprehensive medical care, both on an emergency basis and on an ongoing basis if required. In particular, immediately after the event has occurred, “a complete and detailed medical and psychological examination should be made immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible.” During this examination, a woman has the right to ask to be accompanied by someone she trusts.<sup>215</sup>

124. In addition, “the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim’s clothes, immediate

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<sup>206</sup> 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. 119.

<sup>207</sup> 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. 323.

<sup>208</sup> 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. 323. Internal citations omitted.

<sup>209</sup> 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. 323. Internal citations omitted.

<sup>210</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. 150.

<sup>211</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. 193.

<sup>212</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. 153.

<sup>213</sup> 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. 196.

<sup>214</sup> 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; 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. 344.

<sup>215</sup> 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; 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. 344.

examination of the scene of the incident, and the proper chain of custody of the evidence.” A woman has the right to free legal aid at all stages of the process.<sup>216</sup>

125. Compliance with these measures by the agencies of the justice system should be monitored. Civil servants who fail to comply with regulations and protocols on violence against women journalists should be subject to appropriate disciplinary actions.

### 1.3 Reparation

126. Women journalists who are victims of gender-based violence against women also have the right to obtain comprehensive reparation for the harm done, and the State is obligated to guarantee this right. Reparation measures should take account of the specific needs and priorities of women journalists and the perspective of the beneficiaries, and should include guarantees of restitution, compensation, rehabilitation, satisfaction, and non-repetition, in accordance with the principles recognized by international human rights law. States should, in addition, ensure the existence of judicial, administrative, or other remedies for obtaining reparation.

127. The victim’s opinion should be considered in reparation processes.<sup>217</sup> In order to determine the scope of reparation, the State must assess the impact of violence against women journalists and investigate their idea of justice. It is essential that reparation seeks to restore the full exercise of the victim’s freedom of expression and reverse the silencing effects of violence. When it comes to indigenous or Afro-descendant women, the process of determining the content of reparations should additionally include a cultural and intersectional perspective. In cases of sexual violence, the process must guarantee reparation free of all forms of re-victimization and should be supported by the appropriate coordination between State institutions to provide the services required by the victims.<sup>218</sup>

128. The bodies of the system have emphasized that reparations must be provided with a transformational purpose, with a view to reforming the context of discrimination that perpetuates gender-based violence against women. As the Inter-American Court held in its judgment in the “Cotton Field” case,<sup>219</sup> the designing of reparations to change the situation involves not only restorative, but also corrective dimensions that address the structural situation of violence and discrimination that served as the context for the violence.

## 2 Role of the private sector

129. As the Office of the Special Rapporteur has stated, “although the obligations to prevent, protect, and investigate are the international responsibility of States, there is no doubt that other actors are key for the protection of at-risk journalists, especially in areas in which the risk is higher due to the characteristics of the context, such as in the case of silenced zones.”<sup>220</sup>

130. Indeed, although international and regional human rights law “does not as a general matter directly govern the activities or responsibilities of private business,” there are a number of documents and initiatives designed to provide guidance to corporations in the area of human rights. These initiatives include the Guiding Principles on Business and Human Rights (“the Guiding Principles”), endorsed by the UN Human Rights Council in 2011, “provide a framework for the consideration of private business responsibilities in the

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<sup>216</sup> 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; 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. 344.

<sup>217</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II. Doc. 63. December 9, 2011. Para. 110.

<sup>218</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II. Doc. 63. December 9, 2011. Para. 112.

<sup>219</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. 450.

<sup>220</sup> IACHR. [Annual Report 2016. 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. 318.

information and communications technology sector worldwide, independent of State obligations or implementation of those obligations.”<sup>221</sup>

131. The Guiding Principles underscore that the responsibility to respect human rights requires business enterprises to “Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.” At the same time, businesses should “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”<sup>222</sup> In this regard, the Guiding Principles establish that “should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”<sup>223</sup> Due diligence “should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.”<sup>224</sup> In view of the Guiding Principles, private actors should take robust measures to ensure transparency in relation to their operating practices or procedures that directly affect the public.<sup>225</sup>

132. In this regard, the Joint Declaration on Media Independence and Diversity in the Digital Age underscores that “Media outlets and online platforms, as (often) powerful corporate actors, should take seriously their responsibility to respect human rights.”<sup>226</sup>

## 2.1 The media

133. The Office of the Special Rapporteur has recognized on several occasions that the media have a decisive role to play in ensuring the protection of journalists and other workers—not only those who have an employment relationship with the media, but also freelancers.<sup>227</sup> At the conclusion of their joint visit to Mexico in December 2017, the United Nations and IACHR Special Rapporteurs on Freedom of Expression indicated that “The media should play a key role in the safety of their journalists and should provide safety and self-protection training for their employees—both permanent and freelance—by providing adequate safety equipment, working conditions, and life insurance.”<sup>228</sup>

134. The United Nations General Assembly has emphasized “the important role that media organizations can play in providing adequate safety, risk awareness, digital security and self-protection training and guidance to journalists and media workers, together with protective equipment and insurances, where necessary.”<sup>229</sup> The OSCE Representative has similarly affirmed that “Journalists, editors and media owners are responsible for taking all possible measures to safeguard the physical safety of members of the media

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<sup>221</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, David Kaye](#). UN Doc. A/HRC/32/38. May 11, 2016. Para.10.

<sup>222</sup> Human Rights Council. [Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#). A/HRC/17/31. 21 March 2011. Principle 13.

<sup>223</sup> Human Rights Council. [Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#). A/HRC/17/31. 21 March 2011. Principle 17.

<sup>224</sup> Human Rights Council. [Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#). A/HRC/17/31. 21 March 2011. Principle 17.

<sup>225</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of expression and the internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 41; IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Standards for a free, open, and inclusive Internet). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 99.

<sup>226</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. [Joint Declaration on Media Independence and Diversity in the Digital Age](#). May 2, 2018.

<sup>227</sup> IACHR. [Annual Report 2016. 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. Pág. 319.

<sup>228</sup> IACHR/OHCHR. [Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico, 27 November- 4 December 2017](#). December 4, 2017. Para. 64; See also: United Nations. Organization for Education, Science and Culture (UNESCO). International Program for the Development of Communication. [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#). 2012. Points 5.16, 5.17, 5.22.

<sup>229</sup> United Nations. General Assembly. [The safety of journalists](#). Resolution A/HRC/27/L.7. September 19, 2014.

operating in areas of conflict and on dangerous assignments, including providing personal insurance, training and support systems.”<sup>230</sup> The United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity urges “all stakeholders, and in particular the media industry and its professional associations, to establish general safety provisions for journalists, including but not limited to safety training courses, health care and life insurance, access to social protection and adequate remuneration for free-lance and full-time employees.”<sup>231</sup>

135. The media should take measures to ensure the safety of women journalists when faced with gender-based risks. They should also develop self-protection guides and provide safety training and coaching for women journalists to help minimize the risk of gender-based violence, especially sexual and online violence, during the performance of journalistic work, field assignments, and on-site reporting. They should also provide protective equipment.

136. In the specific case of sexual harassment of women journalists in the workplace or while they are out reporting, it is troubling to note that most media companies do not have internal protocols or rules that adequately address the needs of female victim journalists. In the Americas, internal “mediation” mechanisms continue to be the norm rather than effective remedies that afford protection to the victim and hold the perpetrator accountable. Sexual harassment from a source is generally trivialized. This lack of victim protection creates impunity, sends a negative message to women journalists that can incite further violence against them, and leads to silence.

137. Companies should establish internal policies with specific provisions on sexual harassment and violence. These policies should be developed with the active participation of the women who work at each company, and be accompanied by systematic training for all media personnel on the content and scope of their provisions in order to encourage full respect for them. In addition, there should be internal procedures and independent reporting and accountability mechanisms that guarantee the rights of women journalists and all parties involved.<sup>232</sup> This is particularly relevant, given that the perpetrators of these abuses are often men in power within the media industry. In this regard, it bears recalling that the employer may be liable for cases of sex discrimination if it has failed to take appropriate preventive measures.

138. Digital media outlets should adopt and implement community standards and policies on moderation and participation on their websites, including for comments on blogs or articles, to ensure that women journalists are not victims of gender-based violence when interacting with their audiences through these platforms. While it is important to recognize the vital importance of discussion in these forums, threats, harassment, and other forms of online violence against women journalists should not be tolerated.

## 2.2 Online platforms

139. Online intermediaries and platforms also play an important role in the prevention of and protection from online gender-based violence against women journalists. As stated by the UN Rapporteur on Violence against Women, its causes and consequences, “research indicates that inadequate and substandard responses from intermediaries concerning online gender-based violence can have a negative effect on freedom of expression, resulting in censorship by platforms, self-censorship or censorship by other users, and do not provide victims of harassment with any form of redress.”<sup>233</sup>

140. An effective approach to this issue necessarily requires the commitment of intermediaries to respect women's rights and to voluntarily adopt concrete measures to eradicate gender-based online violence and guarantee the right of women journalists to freedom of expression in the digital space. Indeed, the Office of the Special Rapporteur has indicated that online platforms should make a formal, high-level commitment to respect human rights, including freedom of expression and privacy, and support this commitment with concrete internal measures and systems designed to prevent activities that may have a negative impact on

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<sup>230</sup> OSCE. William Horsley. [Safety of Journalists Guidebook](#). 2d Edition. 2014.

<sup>231</sup> United Nations. [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#). 2012.

<sup>232</sup> See: UN Women and UN Global Compact Office. [Women's Empowerment Principles](#). See also: Committee on Economic, Social and Cultural Rights. [General comment No. 23 on the right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23. April 27, 2016. Para. 48.

<sup>233</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. June 18, 2018. Para. 73.

human rights.<sup>234</sup> In the same vein, the United Nations Special Rapporteur on freedom of opinion and expression indicated that “companies committed to the implementation of human rights standards in all their activities—and not just when it suits their interests—will find themselves on firmer ground when it comes to bringing States into compliance with the same standards.”

141. To this end, online intermediaries or platforms should adopt transparent, accessible, and effective complaint mechanisms for cases of online violence against women that take account of the needs of women journalists. The lack of transparency and clarity in the accountability mechanisms of intermediary companies is one of the main problems reported by women journalists who are victims of this type of violence. “Overall, companies seem unwilling to report how much content is being flagged and removed and under what self-designed criteria. Although some attempts have been made, the transparency of decision-making and in the application of standards to guarantee the prompt reporting of gender-based violence on platforms is limited.”<sup>235</sup> Therefore, it is essential that intermediaries provide clear information on the type of content that could be removed from the platform under their terms of service or community guidelines, as well as how such removal might take place, whether reporting or complaint mechanisms exist, and whether there is any way to appeal the decision made. Companies should also provide information on how to adopt technical digital security solutions. The terms of service, community rules, and information on their application should be clear, understandable, easily available, and in user-friendly formats, in the local languages.

142. It has also been reported that policies and terms of service on harassment, threats, and other abuses are often applied in a discriminatory and decontextualized manner, to the detriment of the right to freedom of expression of women victims and other users belonging to historically vulnerable groups. Beyond the conventional approaches to ensuring equality, when companies develop their policies, they should “actively seek and take into account the concerns of communities historically at risk of censorship and discrimination.”<sup>236</sup> In addition, companies should explain their decisions to complainants and demonstrate that the decision is consistent with their international obligations in this area, including the principles against arbitrary censorship.

143. In this regard, this Office of the Special Rapporteur has stated that the voluntary measures taken by intermediaries to improve the functioning of their platforms or services and to protect the rights of their users must be consistent “with international human rights norms and principles”<sup>237</sup> and must not arbitrarily prevent or obstruct a person’s ability to express himself or herself on the Internet.<sup>238</sup> In this regard, the United Nations Special Rapporteur on freedom of opinion and expression explained that “amidst growing debate about whether companies exercise a combination of intermediary and editorial functions, human rights law expresses a promise to users that they can rely on fundamental norms to protect their expression over and above what national law might curtail.”<sup>239</sup> He affirmed that, “Companies should incorporate directly into their terms of service and ‘community standards’ relevant principles of human rights law that ensure

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<sup>234</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of expression and the internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 41; IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Standards for a free, open, and inclusive Internet). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 98. See also: IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, paras. 110-114.

<sup>235</sup> United Nations. Human Rights Council. [Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective](#). A/HRC/38/47. June 18, 2018. Para. 76.

<sup>236</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](#). A/HRC/38/35. April 6, 2018.

<sup>237</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](#). A/HRC/17/27. 16 May 2011. Para. 48. See also: Amnesty International. [#ToxicTwitter](#). Chapter 4 – The reporting process. No date.

<sup>238</sup> IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression on the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 110.

<sup>239</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](#). A/HRC/38/35. 6 April 2018.

content-related actions will be guided by the same standards of legality, necessity and legitimacy that bind State regulation of expression.”<sup>240</sup>

144. At the same time, platforms should contribute to digital security and the prevention of online violence against women journalists, through information outreach campaigns and the collection and dissemination of data and statistics on the online abuse of women journalists.

## **B. Equality in and through the media**

145. As noted in this report, discrimination and violence against women journalists in the media results in the underrepresentation of women on the media agenda and affects the way women are represented through these media when they do appear in the news and other content.

146. The States also have specific obligations in this regard.<sup>241</sup> In particular, States should ensure that employment laws and practices are adequate to protect journalists from abuse or retaliation, and from poor working conditions that may expose them to greater risks of discrimination and violence. Accordingly, States should review laws, regulations, practices, and public policies that appear neutral on their face, but which, in their practical application, may have a discriminatory impact on the exercise of the right to work by women journalists.

147. For example, it is essential that regulatory frameworks and public policies guarantee women's employment rights during pregnancy. This means guaranteeing at least 14 weeks of paid maternity leave; protections against dismissal and other forms of employment abuse during pregnancy; the enactment of laws addressing breastfeeding; and the adoption of paternity and parental leave.<sup>242</sup> Proper account should also be taken of “the position of women workers, particularly where their work and pay has traditionally been undervalued,”<sup>243</sup> as is the case with many women journalists and media workers.

148. These actions must also ensure that women receive the same pay as their male colleagues doing the same work or holding the same position. The Commission has further underscored that the States have the obligation to “take the necessary measures—legislative, policy, and programmatic—to reduce the gender pay gap for work of equal value.”<sup>244</sup> Along the same lines, the ESCR Committee has underscored that the States should “adopt legislation as well as other measures to promote *equal remuneration for work of equal value*” in both the public and private sectors.<sup>245</sup> As the ESCR Committee makes clear, meeting this specific obligation “should not detract from the requirement to take immediate steps towards the *broader* obligation of achieving equal remuneration for men and women for work of equal value.”<sup>246</sup>

149. States should also guarantee the right of women journalists and media workers to equal opportunities for promotion in their employment “with no considerations other than the factors of service

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<sup>240</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](#). A/HRC/38/35. 6 April 2018.

<sup>241</sup> IACHR. [The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights](#). OEA Ser.L/V/II.143. Doc. 59. November 3, 2011. Para. 58, *citing* IACHR. [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L./V.II.110 doc. 52. March 9, 2001. Para. 169.

<sup>242</sup> IACHR. The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA Ser.L/V/II.143 Doc.59. November 3, 2011, para. 58, *citing* IACHR. [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L./V.II.110 doc. 52. March 9, 2001. Para. 169. In the same regard, Article 11 of the CEDAW requires the States to take appropriate measures to prohibit dismissal on the grounds of pregnancy or of maternity leave; introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances, and to provide special protection to women during pregnancy in types of work proved to be harmful to them.

<sup>243</sup> Committee on Economic, Social and Cultural Rights. [General comment No. 23 on the right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23. April 27, 2016. Para. 10.

<sup>244</sup> IACHR. The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA Ser.L/V/II.143 Doc.59. November 3, 2011, para. 58, *citing* IACHR. [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L./V.II.110 doc. 52. March 9, 2001. Para. 169.

<sup>245</sup> Committee on Economic, Social and Cultural Rights. [General comment No. 23 on the right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23. April 27, 2016. Para. 15 (emphasis added).

<sup>246</sup> Committee on Economic, Social and Cultural Rights. [General comment No. 23 on the right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23. April 27, 2016. Para. 16.

time and ability.”<sup>247</sup> Special attention should also be paid to addressing gender-based occupational segregation<sup>248</sup> which, as noted previously, has had a significant impact on women journalists and media workers.

150. At the same time, it is essential to analyze the direct and indirect obstacles—based on gender—that prevent the recruitment and promotion of women journalists within the media. In order to address these obstacles, initiatives to reconcile work and family responsibilities, such as affordable day-care services for children and dependent adults, as well as flexible working arrangements, should be encouraged.<sup>249</sup> The States must also “must undertake measures to address traditional gender roles and other structural obstacles that perpetuate gender inequality.”<sup>250</sup>

151. All these measures should take into account intersectional forms of discrimination against certain groups of women journalists. In particular, employment protections should be offered for the benefit of indigenous and Afro-descendant women, among other groups facing situations of exclusion or vulnerability.<sup>251</sup>

152. The Office of the Special Rapporteur considers that collective bargaining can be a particularly effective mechanism for promoting gender equality within media companies. Accordingly, the International Labor Organization has emphasized that collective bargaining can help reduce the gender pay gap and promote the availability of childcare and the adoption of working arrangements compatible with maternity and the fulfillment of parental responsibilities (maternity and/or paternity leave, reduction of working hours, etc.). Collective bargaining provisions can also establish mechanisms and strategies to prevent gender-based violence in the workplace, including various forms of sexual violence, and procedures to facilitate the reporting of such acts and ensure that they receive an appropriate and timely response. To this end, it is essential that journalists’ and media workers’ unions promote the adequate representation of women in union leadership positions and in collective bargaining teams. In order to achieve this goal, “trade unions should collect sex-disaggregated data on the composition of their teams over time, in addition to setting targets.”<sup>252</sup>

153. However, a greater presence of women in newsrooms and management positions will not be enough to transform the way women are represented in the media. Comprehensive strategies with a transformative vision are needed to encourage the media to adopt a gender perspective in their work<sup>253</sup> and to bring about changes in the customs, attitudes, and stereotypes of the general population. In this regard, it is important to remember that States must adopt actions and policies in order to prevent violations of women’s human rights and duly address their causes and social consequences in order to achieve structural changes in gender relations.

154. While implementing these measures, States should recognize that media can play a positive role in raising awareness about the prevalence of gender-based stereotypes, prejudices, and biased attitudes towards women and their impact on their right to live a life free of violence and discrimination. The media

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<sup>247</sup> Article 11 of the CEDAW establishes that the States should ensure: “b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.”

<sup>248</sup> Committee on Economic, Social and Cultural Rights. [General comment No. 23 on the right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23. April 27, 2016. Para. 47 a).

<sup>249</sup> Committee on Economic, Social and Cultural Rights. [General comment No. 23 on the right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23. April 27, 2016. Paras. 32 & 47 a). In this regard, Article 11(2)(c) of the CEDAW provides that the States must “encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.”

<sup>250</sup> Committee on Economic, Social and Cultural Rights. [General comment No. 23 on the right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23. April 27, 2016. Para. 47 a).

<sup>251</sup> IACHR. *The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*. OEA Ser.L/V/II.143 Doc.59. November 3, 2011, para. 58, citing IACHR. [Third Report on the Situation of Human Rights in Paraguay](#). OEA/Ser./L./V.II.110 doc. 52. March 9, 2001. Para. 169.

<sup>252</sup> ILO. [Women at Work. Trends 2016](#). 1<sup>st</sup> Ed. 2016. P. 49.

<sup>253</sup> UNESCO. [World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report](#). 2018. P. 98.

can also contribute significantly to the eradication of these sociocultural patterns that discriminate against women.<sup>254</sup>

155. Chapter J of the 1995 Beijing Platform for Action identified the media as one of the “critical areas of concern” for achieving gender equality and women’s empowerment. In outlining strategies to address this situation, the Platform emphasized the importance of ensuring the effective participation of women within the media. In particular, the Platform underscored that “Until women participate equally in both the technical and decision-making areas of communications and the mass media, including the arts, they will continue to be misrepresented and awareness of the reality of women’s lives will continue to be lacking.”<sup>255</sup>

156. In recent years, various media outlets, media associations, journalists’ and media workers’ unions, journalists and civil society organizations, academia, and international bodies have sought to take initiatives to address women’s inequality in and through the media. Within this framework, the 20<sup>th</sup> anniversary of the adoption of the Beijing Platform for Action led to the creation of the Global Alliance on Media and Gender (GAMAG).<sup>256</sup>

157. Among other objectives, GAMAG seeks to promote gender equality in media systems, structures, and content and to monitor and promote the implementation of the strategic objectives defined in Chapter J of the Beijing Declaration and Platform for Action: “Increase the participation and access of women to expression and decision-making in and through the media and new technologies of communication;” and “promote a balanced and non-stereotyped portrayal of women in the media.”<sup>257</sup>

158. UN Women took a significant step in this direction by promoting the Media Compact “Step It Up for Gender Equality.” Through this initiative, UN Women set out to “invite leading international, regional and national media outlets to become part of the Step it Up Media Compact by pledging to become gender champions through their reporting, editorial decisions and corporate practices.”<sup>258</sup>

159. While they will be free to define the strategies through which they will meet these goals, the media partners signing the Compact must, as a minimum, make a commitment to “champion women’s rights and gender equality issues through editorial articles, features and news coverage; ensure production of high-quality stories with a focus on gender equality and women’s rights, with a minimum of two per month; ensure inclusion of women as sources in stories produced, aiming for gender parity, including across diverse subjects such as business, technology, science and engineering; adopt a gender-sensitive Code of Conduct on Reporting; in orientation and training of staff members, ensure guidelines for gender-sensitive reporting; through gender-responsive decision-making, enable equality in the newsrooms by ensuring women journalists are given similar opportunities as their male colleagues and can cover diverse subjects from politics to business, science, sports and technology, while encouraging male journalists to also cover diverse issues, including women’s rights and gender equality stories, and ensure women journalists are provided mentors and guidance for career advancement.”<sup>259</sup> In return, UN Women pledges to recognize their status as partners in the Compact, encourage the dissemination and amplification of the content they produce, facilitate meetings and interviews with experts working in the institution in order to collaborate in the development of research on issues related to women’s rights and gender equality, and promote collaboration between journalists and media from different regions of the world committed to the issue, among other benefits.

160. Some of the core components of this Compact have already been addressed by the inter-American human rights system. In this regard, Article 8 of the Convention of Belém do Pará requires States to

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<sup>254</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. May 6, 2014. [Joint Declaration on Universality and the Right to Freedom of Expression](#).

<sup>255</sup> United Nations. [Beijing Platform for Action](#). 1995. Para. 33.

<sup>256</sup> Global Alliance On Media and Gender. No date. Available at: <http://gamag.net/news/>

<sup>257</sup> United Nations. [Beijing Platform for Action](#). 1995. Paras. 234 *et seq.*

<sup>258</sup> UN Women. No date. [Step it Up for Gender Equality Media Compact](#). The complete list of media organizations that have signed the compact is available at: <http://www.unwomen.org/en/get-involved/step-it-up/media-compact/partners>

<sup>259</sup> UN Women. No date. [Step it Up for Gender Equality Media Compact](#).

“encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women.”<sup>260</sup> In light of this provision, States should play an active role in encouraging signatories to the Compact to uphold their commitment to introduce guidelines for writing articles with a gender perspective.<sup>261</sup> In this regard, the *Declaration of Pachuca* “Strengthening efforts to prevent violence against women,” adopted by the Follow-up Mechanism to the Belém do Pará Convention,<sup>262</sup> the States undertake to: i) foster the elimination of gender stereotypes and sexist and discriminatory images and messages in communications media, including both content and advertising, in private and public media; ii) foster the self-regulation of media—including ICTs; iii) promote gender training from a multi-cultural perspective in the curricula at all levels of journalism, advertising, and communication; iv) facilitate sufficient resources for the implementation of programs, campaigns and other actions designed to prevent violence against women and girls in the media, as well as evaluation of the impact of these measures; and v) strive for public media to provide the example in terms of content that promotes equality.

161. The commitment of the media signatories to the Compact to the adoption of “a gender-sensitive Code of Conduct on Reporting”<sup>263</sup> is also consistent with Principle 6 of the Declaration of Principles on Freedom of Expression, in light of which “journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”<sup>264</sup> Based on this provision, this Office considers that the voluntary adoption of professional codes of conduct aimed at guaranteeing full respect for the rights of women journalists and media workers in the workplace and at incorporating a gender perspective in journalistic activity can make a significant contribution to eradicating gender-based violence and discrimination against women.<sup>265</sup>

162. In the region, some traditional<sup>266</sup> and non-traditional<sup>267</sup> media outlets have taken initiatives to incorporate the gender perspective into both their organizational structure and their journalistic agenda. Projects have also been developed to critically analyze how women are represented in the news and raise awareness of its impact on the perpetuation of gender stereotypes.<sup>268</sup>

### III. CONCLUSIONS AND RECOMMENDATIONS

163. The information gathered by the Office of the Special Rapporteur through its various mechanisms for the protection and promotion of human rights corroborates that in the Americas, in addition to being subject to the wide range of human rights violations affecting journalists in general, women journalists face specific and additional risks in the exercise of their profession on account of their gender and other intersectional factors of discrimination.

164. In recent years, the Office of the Special Rapporteur, together with the international community, has made efforts to draw attention to the forms of gender-based violence faced by women journalists in the practice of their profession, as well as to the disproportionate impact that certain forms of discrimination

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<sup>260</sup> Convention of Belém do Pará, Article 8(g).

<sup>261</sup> UN Women. No date. [Step it Up for Gender Equality Media Compact](#).

<sup>262</sup> MESECVI. [Declaration of Pachuca](#) “Strengthening efforts to prevent violence against women.” May 16, 2014.

<sup>263</sup> UN Women. No date. [Step it Up for Gender Equality Media Compact](#).

<sup>264</sup> IACHR. [Declaration of Principles on Freedom of Expression](#). 2000.

<sup>265</sup> IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Hate speech and incitement to violence against lesbian, gay, bisexual, trans, and intersex persons in the Americas). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 46.

<sup>266</sup> For example, in 2010, the U.S. news agency Bloomberg News began a comprehensive transformation process aimed at increasing the number of women cited as news sources or protagonists and incorporating women’s perspectives into its news coverage. According to the organization’s directors, this transformation, along with other changes in working conditions, resulted in an increased presence of women at all levels of the organization’s structure, including management positions. WAN-IFRA. [WINing Strategies: Creating Stronger Media Organizations by Increasing Gender Diversity](#) (2016). P. 40.

<sup>267</sup> See, e.g., the digital publication [La Silla Vacía](#), in Colombia. WAN-IFRA. [WINing Strategies: Creating Stronger Media Organizations by Increasing Gender Diversity](#) (2016). P. 40. (El link está mal, lo sacaron porque hay un informe actualizado de esta fecha: 2018-05-28)

<sup>268</sup> These efforts include the initiative *Mujeres reescriben mujeres* [“Women rewrite women”], through which the Colombian newspaper *El Tiempo* invited women journalists to rewrite 18 headlines described as “chauvinistic” that had appeared in different publications in Colombia and other countries. *El tiempo*. March 20, 2018. [Mujeres reescriben Mujeres, el reto de retitular noticias machistas](#).

have on their work. In particular, the Office of the Special Rapporteur has drawn attention to the increase in acts of violence against women journalists, including murder, sexual violence, and online violence. Many of these obstacles and practices are also manifestations of the discrimination that women in the region experience based on other factors, such as race, ethnicity, religion or belief, age, class, sexual orientation, and gender identity. These risks are part of the widespread phenomenon of the exclusion of women from public life. It is a multidimensional phenomenon that includes various forms and practices of discrimination that affect women throughout their lives.

165. As explained in this report, women journalists have the right to practice journalism free from discrimination and gender-based violence. Legal and policy measures to achieve this goal should form part of the broader framework of strategies aimed at guaranteeing the right to freedom of expression and involve not only the action of States, but also the cooperation of the media, online platforms, civil society, and all other stakeholders.

#### **A. Recommendations to the States**

166. Adopt positive measures with the aim of combating all discriminatory practices and creating the necessary conditions to guarantee equality between men and women in the exercise of freedom of expression. In particular, strengthen and implement legal, public policy, and other measures that promote and protect women's leadership in society and their participation in the public discourse under equal conditions, including in the practice of journalism and media management.

167. Integrate a gender perspective into all initiatives aimed at creating and maintaining a safe and favorable environment for free and independent journalism. In particular, ensure that State policies and programs aimed at preventing, protecting, and seeking justice in cases of crimes against journalists adequately address the additional or specific risks faced by women journalists on the basis of gender.

168. With regard to prevention:

- a. Publicly acknowledge the important role of women journalists in democracy as an essential element of prevention strategies, and condemn the gender-based violence and discrimination they face and its impact on the exercise of the right to freedom of expression.
- b. Ensure that there is an adequate legal framework in place for the effective punishment of gender-based violence against women journalists in the course of their work and that it enables the authorities to act effectively in response to complaints.
- c. Take measures to raise society's awareness of gender-based violence against women journalists as attacks on freedom of expression, and disseminate clear information about the legal services and mechanisms available to protect victims of such acts, and ensure transparent and easy access to them. These efforts should include programs aimed at journalists, in partnership with women's networks, civil society organizations, the media, and international agencies.
- d. Implement educational measures to promote media and digital literacy from a gender perspective.
- e. Adequately educate public officials, including security forces, about the right of women journalists to carry out their work free of gender-based violence and the impact that the violation of this right by State officials can have on the exercise of their right to freedom of expression.
- f. Improve documentation and gather qualitative and quantitative information on the causes, consequences, and frequency of gender-based violence experienced by women journalists, including through the provision of adequate support and resources to those working to protect women journalists, such as government agencies, national human rights institutions, and civil society, including national and international non-governmental organizations; so that, in line with Indicator 16.10.1. of Goal 16.10 of the Sustainable Development Goals, States disaggregate sex-disaggregated data on the number of verified cases of homicide, abduction, enforced disappearance, arbitrary detention and torture of journalists.
- g. Promote a favorable working environment so that women journalists can practice journalism without fear of being victims of violence because of their work. In particular, States must ensure, through the law, that a specific policy is established in every workplace for the prevention and handling of cases of workplace and sexual harassment.

169. With regard to protection:

- h. Include a gender perspective with an intersectional approach in programs and actions designed to protect journalists, ensuring that the entire process and its stages—from the receipt and orientation of the request for protection, to risk assessment, to the adoption of special protection measures—are geared to the particular needs and specific risks of women journalists. To this end, States should issue and widely disseminate special protocols.
- i. Guarantee the widest dissemination and access to the necessary information so that women journalists are aware of the protection measures provided for by law in the event of real and imminent risk, as well as the ways to request them.
- j. Ensure adequate and effective analysis of the risk faced by women journalists as a result of various forms of gender-based violence, including sexual harassment and online violence, and design and adopt protective measures that take proper account of the gender-specific risks faced by women journalists, ensuring their effective physical and psychological protection, while extending protective measures to their family members, including children. Ensure the participation of beneficiaries in this process.
- k. Guarantee that government personnel responsible for the protection of journalists are properly trained in gender and women's rights. In those countries that have specialized mechanisms for the protection of journalists and human rights defenders, in addition to the training of all personnel, guarantee the existence of focal points or public servants with advanced knowledge on gender issues and ensure that they participate in the analysis of these types of cases.

170. With regard to justice:

- l. Conduct diligent, impartial, and effective investigations aimed at determining the truth and pursuing, arresting, prosecuting, and eventually punishing all perpetrators of gender-based violence against women journalists in the course of their work.
- m. Exhaust all logical lines of investigation that allow for the identification, prosecution, and punishment of the perpetrators, pursuing all theories linked to the journalist's professional activity and potential discriminatory connotations based on gender. In determining the lines of investigation and all other aspects of an investigation into acts of violence against women journalists, the authorities should not be influenced by gender stereotypes.
- n. Ensure that the criminal investigation of offenses committed against women journalists is carried out by officials properly trained in the investigation of such cases and in the provision of assistance to victims of gender-based discrimination and violence.
- o. Adopt specific protocols outlining the legal principles and obligations of persons responsible for investigating crimes against freedom of expression in which women journalists are victims, in keeping with international human rights standards and best practices and in consultation with civil society.
- p. Ensure that women journalists who are victims of violence have adequate access to comprehensive support services, including shelters, psychosocial services, counseling, medical care, and legal and social services.
- q. Ensure that women journalists who are victims of sexual or other forms of violence are cared for by trained, properly equipped personnel who have expert knowledge of gender issues, and ensure that those victims are consulted at all stages of the process.
- r. Ensure that justice system personnel are adequately trained in the area of freedom of expression, gender and women's rights.
- s. Monitor the measures and decisions adopted by the agencies of the justice system. Civil servants who fail to comply with regulations and protocols on violence against women journalists should be subject to appropriate disciplinary actions.
- t. Conduct studies on compliance with the international obligations described herein in judgments, rulings, or decisions, as well as to identify opinions that contain gender stereotypes or prejudices that subordinate women in cases of violence against women.

171. In terms of reparation:

- a. Guarantee that women journalists who are victims of gender-based violence have the right to obtain comprehensive reparation for the harm caused, taking account of their specific needs and priorities and with a transformational approach, in keeping with the principles recognized by international human rights law.
- b. Guarantee reparation free of all forms of re-victimization, supported by the appropriate coordination between State institutions to provide the services required by the victims.

172. Promote the full participation of women journalists in the design and implementation of prevention, protection, and justice strategies through the creation and promotion of formal mechanisms for consultation and dialogue. In particular, it is important to make sure that women journalists who belong to traditionally marginalized groups, such as indigenous and Afro-descendant women, have opportunities for participation.

173. Review laws, regulations, practices, and public policies that appear neutral on their face, but which, in their practical application, may have a discriminatory impact on the exercise of the right to work by women journalists, including regulatory frameworks and public policies that guarantee women's employment rights during pregnancy, and the guarantee of equal pay.

174. Implement comprehensive strategies with a transformative vision are needed to encourage the media to adopt a gender perspective in their work and bring about changes in the customs, attitudes, and stereotypes of the general population.

175. Provide information on the situation of women journalists and data disaggregated by sex to the reports on freedom of expression and the security of journalists submitted to the Office of the Special Rapporteur for Freedom of Expression of the IACHR and other institutions such as the UNESCO and the Human Rights Council, as well as to the human rights monitoring processes of the inter-American system and the universal system, such as the Universal Periodic Review and the Human Rights Committee.

## **B. Recommendations to other actors**

176. To the media:

- a. Express public support for the vital role of women journalists and the importance of their work, and condemn acts of violence and discrimination against them.
- b. Take measures to ensure the safety of women journalists from gender-based risks, including the development of self-protection guides and specialized safety training and coaching for women journalists.
- c. Establish internal policies with specific provisions on violence and sexual harassment, including internal procedures and independent reporting and accountability mechanisms. These policies should be developed with the active participation of the women who work in each of the companies, and be accompanied by systematic training for all media personnel on the content and scope of their provisions.
- d. Adopt and implement community standards and policies on moderation and participation on their websites, including for comments on blogs or articles, to ensure that women journalists are not victims of gender-based violence when interacting with their audiences through these platforms.
- e. Play a positive role in raising public awareness about the prevalence of gender stereotypes, prejudices, and biased attitudes towards women in society and their impact on their right to live a life free of violence and discrimination.
- f. Consider the voluntary adoption of professional codes of conduct aimed at guaranteeing full respect for the rights of women and at incorporating a gender perspective in journalistic activity, ensuring:
  - The defense of women's rights and gender equality through editorials, reports, and news coverage;
  - The production of high quality reports that pay special attention to gender equality and women's rights;
  - The inclusion of women as sources of the articles they produce, trying to achieve gender parity and addressing diverse topics such as business, technology, science, and engineering;
  - The introduction of guidelines for gender-sensitive reporting in staff orientation and training activities;
- g. Promote equality in newsrooms by ensuring that women journalists receive equal pay for equal work and have the same opportunities as their male colleagues to cover a variety of topics.

177. To the universities and schools of journalism:

- a. Design and implement academic programs in journalism with a gender perspective.
- b. Include in the curricula issues relating to the safety of journalists, including the safety of women workers in the media.
- c. Promote academic research on freedom of expression and journalism with a gender focus and/or focus on women journalists.

178. To Unions, colleges and associations of journalists:

- a. Ensure that mechanisms for the protection of the rights of journalists include measures to address the specificities of women media workers.

179. To online platforms:

- a. Adopt transparent, accessible, and effective complaint mechanisms for cases of online violence against women that take account of the needs of women journalists.
- b. Provide clear information on the type of content that could be removed from the platform under their terms of service or community guidelines, as well as how such removal might take place, whether reporting or complaint mechanisms exist, and whether there is any way to appeal the decision made. Companies should also provide information on how to adopt technical digital security solutions. The terms of service, community rules, and information on their application should be clear, understandable, easily available, and in user-friendly formats, in the local languages.
- c. When companies develop their policies, they should “actively seek and take into account the concerns of communities historically at risk of censorship and discrimination.” In addition, companies should explain their decisions to complainants and demonstrate that the decision is consistent with their international obligations in this area, including the principles against arbitrary censorship.
- d. Incorporate directly into their terms of service and ‘community standards’ relevant principles of human rights law that ensure content-related actions will be guided by the same standards of legality, necessity and legitimacy that bind State regulation of expression.
- e. Contribute to digital security and the prevention of online violence against women journalists, through information outreach campaigns and the collection and dissemination of data and statistics on the online abuse of women journalists.

180. To civil society:

- a. Ensure that initiatives aimed at promoting and protecting human rights take into account the relevance of women's right to freedom of expression for the realization of human rights in general.
- b. Ensure that initiatives aimed at protecting and promoting the right to freedom of expression incorporate a gender perspective.

## JOINT DECLARATION ON MEDIA INDEPENDENCE AND DIVERSITY IN THE DIGITAL AGE

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 and 3 March 2017;

Recognising the essential role that an independent and diverse media, which disseminates a wide range of information and ideas, can play in supporting the functioning of democratic societies, an informed citizenry, the rule of law, participation in public affairs and accountability of public institutions;

Noting that an independent and diverse media can, especially but not only during elections, provide voters with the information they need to make informed choices and promote a level playing field for parties and candidates;

Stressing, in particular, the special role of the media in providing quality, accurate and professionally reported news and current affairs information;

Aware of a range of current threats to media freedom, which include safety, legal, political, technological and economic threats;

Concerned about contemporary legal threats to freedom of expression and the media, including broadening and often ambiguous notions of national security, laws which unduly limit expression online, blocking of websites, the unprecedented number of journalists jailed for their work and the delegation of content regulation to online platforms;

Alarmed at the resurgence of political threats to media independence, such as the abuse of State resources, including advertising, efforts by political figures to capture media outlets and media regulators, withdrawal of accreditation from journalists, harsh attacks which aim to stigmatise and discredit the media, and bans on those who report critically on government, government officials and other powerful social actors;

Concerned about attempts to restrict the independence of public media by governments, politicians and/or officials, thus limiting opportunities for individuals to access to credible and trustworthy news sources which provide a variety of viewpoints;

Deploring ongoing threats to the safety of journalists and others disseminating information in the public interest, including high levels of assassinations, and the persistent impunity for such attacks, both of which undermine media independence and freedom of expression;

Denouncing the special challenges faced by female journalists, including gender-specific attacks, online harassment, inequality within the media and general discrimination against women in society which creates barriers to working as a journalist;

Highlighting that digital technologies, although primarily facilitating freedom of expression and access to information, have also led to new threats such as intrusive forms of State surveillance, de-indexing of content for privacy reasons, challenges such as locating and visibility of information and news disseminated by the media, and the digital divide both within and between countries;

Reiterating our grave concern, noted in the 2011 and 2015 Joint Declarations, that shutdowns and other similar interferences with the Internet are generally unacceptable under international law, in particular in the context of political debate and elections;

Taking note of the importance of public trust in and the credibility of the media, the challenges of maintaining media professionalism in an environment where new forms of media are constantly evolving, and the positive role media self-regulatory and/or co-regulatory bodies can play in this respect;

Alarmed by new threats to the role of free media in democratic societies, including statements by leading politicians that are specifically designed to attack and undermine media independence and the rise of populism;

Emphasizing the important role that investigative journalism can play through exposing corruption and other crimes, including at the international level;

Being aware of economic pressures on the media, including the loss of audience share, especially to social media platforms, and smaller advertising revenues, and the fact that this limits the resources available for investigative reporting, and noting that there is a need to find innovative ways to counter this;

Acknowledging that a lack of transparency of media ownership can promote monopolies and undue concentration of media ownership, and that mergers between media outlets and telecommunications and other types of companies may limit the opportunities for promoting media diversity;

Emphasising the importance of trans-national cooperation between media outlets, including so as to provide quality coverage of issues of international public interest, such as widespread corruption and other practices that undermine democracy worldwide;

Adopt, in Accra, on 2 May 2018, the following Joint Declaration on Media Independence and Diversity in the Digital Age:

## **1. General Principles:**

a. States are under a positive obligation to create a general enabling environment for seeking, receiving and imparting information and ideas (freedom of expression), including through the following measures:

- i. ensuring that legislation on the right to access information held by public authorities is in place and being implemented;
- ii. promoting universal access to the Internet;
- iii. providing appropriate protection for privacy and personal data, including through enabling the anonymous use of digital technologies;
- iv. ensuring that legislation providing protection to whistleblowers is in place and being implemented; and
- v. ensuring that defamation laws are exclusively civil rather than criminal in nature and do not provide for excessive damages awards.

b. States also have a positive obligations to protect media freedom, including through the following measures:

- i. enabling a safe working environment for journalists;
- ii. guaranteeing respect for media independence and, in particular, editorial independence;
- iii. using a range of tools to promote media diversity, including at the local level and, among other things, through ensuring community media have space to operate on all distribution platforms and adequate resources;
- iv. refraining from engaging in indirect forms of censorship, such as the abuse of controls over newsprint, radio frequencies or infrastructure used to disseminate media content;
- v. ensuring the independence of bodies which exercise regulatory powers over the media;
- vi. safeguarding the role of independent and sustainable public service media, in particular so as to ensure the provision of high-quality information;
- vii. guaranteeing the right to protect confidential sources of information, including through protection of source-identifying material such as notes and professional archives in different ways, including through the encryption of communications;
- viii. respecting freedom of movement, including for both local and foreign journalists; and
- ix. creating appropriate safeguards against search and seizure of journalistic material.

c. In fulfilling the previous paragraph, any protection for 'journalists' rights, including to protect confidential sources, should be based on functional criteria, such as disseminating information and ideas in the public interest, rather than a formal definition of a journalist.

d. States should be particularly scrupulous about promoting and protecting media freedom and independence during elections, including by respecting the right of the media to report freely during election periods and to criticise government policy and political figures subject only to the conditions set out in paragraph 2(a)).

## **2. Threats to Media Safety**

a. States are under a positive obligation to provide protection to journalists and others who are at risk of being attacked for exercising their right to freedom of expression, to launch effective investigations when such attacks do occur, so that those responsible may be held accountable, and to offer effective remedies to victims.

## **3. Legal Threats:**

a. Restrictions on what may be disseminated through the media should be imposed only in accordance with the test for such restrictions under international law, namely that they be provided for by law, serve one of the legitimate interests recognised under international law, and be necessary and proportionate to protect that interest.

b. States should refrain from adopting unnecessary and/or disproportionate laws criminalising or imposing harsher penalties on online expression than its offline equivalent.

c. Restrictions which are designed specifically for digital communications should be limited in scope to activities which are either new or fundamentally different in their digital forms (such as spamming), and should always respect the standards set out in sub-paragraphs (a) and (b).

d. States should ensure that any regulation of online platforms is in accordance with international standards, including in relation to due process, transparency and the rights to an appeal and remedy. Any liability imposed on intermediaries should be in accordance with international standards and any legal obligation on online platforms to regulate content should also be in accordance with international standards.

e. Administrative rules – for example relating to freedom of movement into States, tax and other financial systems, the designation of ‘protected areas’, and registration and licensing – should establish particularly stringent criteria for their application to journalists and media outlets in order to protect against official abuse and the use of such rules as a pretext to harass the media, and officials should never abuse them in this way.

f. Restrictions on freedom of expression which rely on notions such as "national security", the "fight against terrorism", "extremism" or "incitement to hatred" should be defined clearly and narrowly and be subject to judicial oversight, so as to limit the discretion of officials when applying those rules and to respect the standards set out in sub-paragraph (a), while inherently vague notions, such as "information security" and "cultural security", should not be used as a basis for restricting freedom of expression.

g. Where State media exist, they should be transformed by law into public service media.

## **4. Political Threats:**

a. Politicians and public officials should refrain from taking actions which undermine the independence of the media, such as interfering politically in the operations of or taking commercial control over regulatory bodies or commercial, community or public service media, or putting pressure on online platforms to engage in content regulation.

b. It is legitimate for politicians and public officials to criticise, correct or object to specific media reporting but when doing so they should always be careful to ensure that their comments are accurate, avoid stigmatising and discrediting the media, and do not threaten journalists and/or undermine respect for the independence of the media.

c. Respect for the standards outlined above is particularly important during election periods, periods of armed conflict and times of political strife, such as large scale protests.

## **5. Technological Threats**

a. States should not conduct surveillance, including of a digital nature, against media outlets or journalists unless this is provided by law and is necessary and proportionate to protect a legitimate State interest.

b. States should put in place effective practical and enforceable measures to avoid identifying confidential journalistic sources indirectly using digital means and should avoid taking actions that result in media outlets or journalists being used as an indirect means to pursue criminal investigations.

c. The removal or de-indexing of online content pursuant to the so-called "right to be forgotten" raises important freedom of expression concerns and States should, if their legal systems provide for this, ensure

that these measures are provided for by law in clear, specific terms, are applicable only where the petitioner demonstrates substantive harm to his or her privacy which overrides any freedom of expression interest involved, are subject to appropriate due process guarantees and are otherwise conducted in a manner which, both procedurally and substantively, fully respects the right to freedom of expression.

d. States have positive obligations to take appropriate steps to protect digital communications systems against cyber-attacks and to bolster digital safety and security for those who are at risk of such attacks for exercising their right to freedom of expression.

e. States, online platforms and other interested stakeholders should consider working collaboratively to support an independent, diverse and economically viable media including as a means of responding to the presence of information bubbles/silos.

## **6. Economic Threats**

a. States should put in place effective systems to ensure transparency, fairness and non-discrimination in access by the media to State resources, including public advertising.

b. States should put in place appropriate measures to create an economic environment which supports a diverse media landscape, including legacy media and media serving local and rural communities, and which do not undermine the independence of the media, such as independent or uniform subsidy systems, tax relief.

c. States should ensure that all aspects of media markets, including advertising, content production and distribution, operate in a fair and competitive manner which is protected against anti-competitive practices on the part of those holding strong or dominant market positions.

d. States should put in place strict requirements of transparency of media ownership, along with effective rules and systems to prevent monopolies or undue concentration of media or cross-media ownership. This should include requiring the approval of independent regulatory bodies before mergers or acquisitions which pose a threat to free competition or diversity can take place and may include limits on the extent of concentration of media or cross-media ownership.

## **7. Media and Online Platforms**

a. Media outlets and online platforms, as (often) powerful corporate actors, should take seriously their responsibility to respect human rights.

b. Media outlets and online platforms should enhance their professionalism and social responsibility, including potentially by adopting codes of conduct and fact-checking systems, and putting in place self-regulatory systems or participating in any existing systems, to enforce them.

c. Online platforms should, beyond the minimum legal requirements, operate as transparently as possible, in particular by giving users the tools they need to identify the creators of content and understand its prioritisation (or lack thereof) on their platforms.

d. Online platforms should support, in a non-discriminatory and technologically neutral way, the work of the media without unduly influencing that work and while respecting media independence, whether by helping to distribute content, sharing revenue or in other ways.

David Kaye  
UN Special Rapporteur on Freedom of Opinion and Expression

Harlem Desir  
OSCE Representative on Freedom of the Media

Edison Lanza  
OAS Special Rapporteur on Freedom of Expression

Lawrence Mute  
ACHPR Special Rapporteur on Freedom of Expression and Access to Information