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# **DERECHOS HUMANOS Y LITIGIO ESTRATÉGICO MEXICANO**

## **RIGHT TO PRIVACY FOR PUBLIC OFFICIALS IN MEXICO:**

**Freedom of Expression and the Duty to Protect  
Journalists and Freedom of the Press**

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**DERECHOS  
HUMANOS  
Y LITIGIO  
ESTRATÉGICO  
MEXICANO**

# **RIGHT TO PRIVACY FOR PUBLIC OFFICIALS IN MEXICO:**

## **Freedom of Expression and the Duty to Protect Journalists and Freedom of the Press**

Memorandum regarding the situation in Mexico

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### **WITH SPECIAL ACKNOWLEDGEMENT TO:**

Regina Reséndiz Vargas, Pablo Alejandro Herrera Hernández and Antonio de Jesús Espinoza Díaz.

### **DESIGN:**

María Sepúlveda Páramo

<http://dlmex.org/>

[contacto@dlmex.org](mailto:contacto@dlmex.org)



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# DERECHOS HUMANOS Y LITIGIO ESTRATÉGICO MEXICANO

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**INDEX**

Abstract ..... 5

Key Words ..... 5

I. Introduction ..... 6

II. United Nations ..... 6

    A. Freedom of expression ..... 6

    B. Duty to Protect Journalists and the Press ..... 7

III. Inter-American System ..... 10

    A. Freedom of expression ..... 10

    B. Duty to Protect Journalists and the Press..... 24

IV. Conclusion ..... 29

Exhibit A ..... 30



## **RIGHT TO PRIVACY FOR PUBLIC OFFICIALS IN MEXICO:**

### **Freedom of Expression and the Duty to Protect Journalists and Freedom of the Press**

#### **ABSTRACT**

The spread of coronavirus around the world has compelled governments and civil society stakeholders to reformulate their policies directed at populations experiencing emergency situations. These new approaches must hold paramount the protection of human rights, in this case, particularly freedom of expression and the duty to protect journalists and freedom of the press, as opposed to the right to privacy of public officials. The fact that corruption amounts to a human rights violation must be considered by authorities as they shape these interventions. This executive report, which focuses on the situation in Mexico, presents the journalist and free press protection regime, the international standards applicable to freedom of expression and information of the Inter-American system and the United Nations system. Based on these sources -of international and regional law- the report analyzes the impact of impunity, corruption, censorship and limitations to freedom of expression by state agents. The duties and obligations of the Mexican State and the special protection of freedom of expression regarding public officials. As well as the impact of freedom of expression and information on a democracy, and the role played by journalists and the press in the exercise of this right.

#### **Key Words**

Freedom of expression; privacy; public officials; protection; standards; Journalists; Press.



## **I. INTRODUCTION**

This memorandum discusses the sources of international and regional law that underlie the fundamental human right to freedom of expression and the limits on the right to privacy for public officials. As a member state of the United Nations (“UN”) and the Organization of American States (“OAS”), the Mexican government is obligated to abide by the laws and principles underlying the freedom of expression and the duty to protect journalists and freedom of the press.

The UN is an intergovernmental organization with 193 member states, representing almost all of the world’s sovereign states. Mexico has been a member of the UN since its founding in 1945. The UN Charter, which became effective on October 24th, 1945, stipulates that the organization’s objectives include maintaining international peace and security, protecting human rights, delivering humanitarian aid, promoting sustainable development, and upholding international law.

The Inter-American System seeks to protect the human rights of those within the Western Hemisphere. This system was created by the OAS, an international organization comprised of 35 member states from North, Central, and South America, and the Caribbean. The Inter-American System consists of two main institutions: (1) the Inter-American Commission on Human Rights (the “Inter-American Commission” or “IACHR”) and (2) the Inter-American Court of Human Rights (the “Inter-American Court”).

## **II. UNITED NATIONS**

### **A. Freedom of Expression**

Freedom of expression is recognized throughout the world as a fundamental tenet of human rights. The UN’s Universal Declaration of Human Rights (“UDHR”) is clear: “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.”<sup>1</sup> As a party

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<sup>1</sup> United Nations, Universal Declaration of Human Rights, Article 19 (emphasis added).



to the International Covenant on Civil and Political Rights (the “ICCPR”), the Mexican government is bound to uphold the Declaration of Human Rights protection for freedom of opinion and expression. Article 19 of the ICCPR mandates:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others;
  - b) For the protection of national security or of public order (order public), or of public health or morals.<sup>2</sup>

Under the ICCPR, Mexico must do more than simply recognize freedom of expression and opinion. Article 2 of the ICCPR requires the Mexican government to take affirmative steps to implement these protections at the national level. The Mexican government is therefore required to ensure that existing legislation and constitutional provisions comply with international standards, and that individuals whose rights have been violated have adequate remedies through the courts to address alleged violations.

The principles embodied in the UDHR and the ICCPR protect “all forms of expression and the means for their dissemination,” which include print sources like newspapers, as well as electronic or internet modes of expression in all their forms.<sup>3</sup>

## **B. Duty to Protect Journalists and the Press**

Upholding the right to freedom of expression naturally requires the existence of a free press. Indeed, “one of the cornerstones of any democratic society” is the existence of

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<sup>2</sup> United Nations, International Covenant on Civil and Political Rights, Article 19.

<sup>3</sup> United Nations Human Rights Committee, International Covenant on Civil and Political Rights, General Comment No. 34, ¶ 12 (Sept. 12, 2011).



a free press that is unburdened from censorship and other obstacles.<sup>4</sup> Freedom of the press is important because the press provides for the ability to effectively communicate about public and political issues.<sup>5</sup> The Mexican government should “make special efforts to promote media [through] independent and diversified communication,”<sup>6</sup> and should make special effort to “[r]emove any restrictions or regulations that might place the media under political influence or **compromise the vital role of the media as public watchdog.**”<sup>7</sup> The only way to ensure a properly functioning free press “is to provide the media with an independent space to publish freely, without fear of retribution or attack.”<sup>8</sup> Freedom of expression includes not only the right to express and report on information, but also the public’s right to seek and receive information. “The right to receive information advances several principles that underlie and animate human rights.”<sup>9</sup>

Providing the public with information about politics and government is a key function of a free press. “Free communication of information and ideas about public and political issues among citizens, candidates and elected representatives is essential.”<sup>10</sup> The rights of individuals to participate in public affairs and to vote, which are protected by Article 25 of the UDHR, cannot be fully realized without full protection of freedom of expression and, more specifically, a free press. The recognition of freedom to participate in public affairs “implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.”<sup>11</sup> An important corollary to the

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<sup>4</sup> United Nations Human Rights Committee, International Covenant on Civil and Political Rights, General Comment No. 34, ¶ 13 (Sept. 12, 2011).

<sup>5</sup> United Nations Human Rights Committee, International Covenant on Civil and Political Rights, General Comment No. 34, ¶ 20 (Sept. 12, 2011).

<sup>6</sup> United Nations Human Rights Committee, International Covenant on Civil and Political Rights, General Comment No. 34, ¶ 14 (Sept. 12, 2011).

<sup>7</sup> United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ¶ 81(b) (Jul. 2, 2014) (emphasis added).

<sup>8</sup> United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ¶ 42 (Jul. 2, 2014).

<sup>9</sup> United Nations, Promotion and protection of the right to freedom of opinion and expression, ¶ 5 (Sept. 8, 2015).

<sup>10</sup> *Id.*

<sup>11</sup> United Nations Human Rights Committee, International Covenant on Civil and Political Rights, General Comment No. 25, ¶ 25 (Dec. 7, 1996).





press's freedom to comment on matters of public importance is "that public figures should accept a greater degree of scrutiny by society."<sup>12</sup>

The UN has recognized that it is especially important for States to protect free and open journalism about politics, political figures, and elections.<sup>13</sup> "The effective functioning of a vibrant democratic political system rests on the realization by the State of its responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated."<sup>14</sup> The media plays a "critical public service role" in politics and elections which can create "opportunities for bribery, manipulation or exploitation by powerful political or social groups."<sup>15</sup> The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that "[v]iolations of the right to freedom of expression during electoral processes often take the form of State interference in media content."<sup>16</sup> The improper interference with freedom of the press by State actors must be prevented. For example, whistle-blowers must be protected against coercion or harassment of themselves or their families, including by being protected from threats of retaliation, job loss, prosecution, or other hardship.<sup>17</sup>

Similarly, the UN Rapporteur for Freedom of Expression has stated that an attack on a journalist is also "an attack on the principles of transparency and accountability, as well as on the right to hold opinions and participate in public debates, which are

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<sup>12</sup> United Nations Human Special Rapporteur on Freedom of Opinion and Expression et al., Joint Declaration on Universality and the Right to Freedom of Expression (May 6, 2014).

<sup>13</sup> United Nations Human Special Rapporteur on Freedom of Opinion and Expression et al., Joint Declaration on Freedom of Expression and Elections in the Digital Age (Apr. 30, 2020):

States have a special obligation to take rapid and effective measures to prevent, protect, investigate, prosecute and punish attacks, threats, intimidation and harassment, offline and online, against journalists and other media workers, including against their property and families, during election periods, particularly where State actors are or may be involved. This obligation is especially pronounced in relation to female journalists and individuals belonging to marginalized groups.

<sup>14</sup> United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ¶ 41 (Jul. 2, 2014).

<sup>15</sup> United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ¶ 66 (Jul. 2, 2014).

<sup>16</sup> United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ¶ 39 (Jul. 2, 2014).

<sup>17</sup> United Nations, Promotion and protection of the right to freedom of opinion and expression, ¶ 41 (Sept. 8, 2015).



essential in a democracy”.<sup>18</sup>

The promotion of the safety of journalists and the fight against impunity should not be limited to adopting measures after the fact. On the contrary, States shall adopt prevention mechanisms and measures needed to address some of the root causes of violence against journalists and impunity.<sup>19</sup> The Mexican State shall verify the fulfillment of the ratified protection measures from article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection Of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, as part of its obligation not only to adopt measures, but to ensure its objectives and results.

### **III. INTER-AMERICAN SYSTEM**

#### **A. Freedom of Expression**

Similar to the UN’s UDHR, the Inter-American Commission and the Inter-American Court recognize that freedom of expression is a fundamental human right and the cornerstone of the very existence of a democratic society.<sup>20</sup> The American Convention on Human Rights (the “American Convention”), was signed November 22, 1969 and was ratified by Mexico on March 2, 1981. The American Convention is modeled after the UN’s UDHR and states that the intention of adopting the American Convention was to consolidate a system of personal liberty and social justice based on the essential rights of man.

Both the Inter-American Commission and the Inter-American Court have defined the broad scope of the Convention and the Declaration as an indication of the importance

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<sup>18</sup> UN. Special Rapporteur on the promotion and protection of freedom of expression. UN Doc A/HRC/20/17 (June 4, 2012). para. 54.

<sup>19</sup> United Nations Plan of Action on the Safety of Journalists

<sup>20</sup> I/A Court H.R. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 70.



attached to freedom of expression in the Hemisphere. In the words of the IACHR, this “constitutes an indication of the importance assigned by the drafters of the [American] Convention to the need to express and receive any type of information, thoughts, opinions, and ideas.”<sup>21</sup>

Article 13 of the American Convention provides: **“Everyone** has the right to freedom of thought and expression. This right includes freedom to **seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.**”<sup>22</sup> Inter-American Court jurisprudence has clarified that this article protects not only the right to express and impart ideas and opinions, but also to seek and receive information.<sup>23</sup> The American Convention further provides: “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.”<sup>24</sup>

The Inter-American Court has underscored that Article 13 of the American Convention is a fundamental tool for avoiding abuse of authority by government officials, fostering accountability and transparency, permitting public debate, and facilitating actions by citizens to question, investigate, and examine whether public functions are being properly discharged.<sup>25</sup> The Inter-American Court’s case law regards access to public information as a fundamental mechanism for people to be able to exercise democratic oversight through public opinion.<sup>26</sup> The Inter-American Commission has pointed out

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<sup>21</sup> IACHR, Report No. 11/96, Case No. 11.230, Francisco Martorell, Chile, May 3, 1996, para. 56.

<sup>22</sup> Organization of American States, American Convention on Human Rights, Article 13(1) (emphasis added).

<sup>23</sup> I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77.

<sup>24</sup> Organization of American States, American Convention on Human Rights, Article 13(3) (emphasis added)

<sup>25</sup> I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 86 and 87.

<sup>26</sup> I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 87.



that access to information plays a key role in access to justice, especially for persons who have traditionally been victims of discrimination, such as women.<sup>27</sup> Along those same lines, access to information plays an essential part in the investigation and punishment of acts of corruption by disseminating knowledge of whistleblowing mechanisms and facilitating the gathering of proof to support complaints.<sup>28</sup>

In furtherance of the foregoing principles, in October 2000, the Inter-American Commission, in support of the Office of the Special Rapporteur for Freedom of Expression, adopted the Declaration of Principles on Freedom of Expression (the “American Declaration”) which reaffirms that all nations in the Americas are bound by Article 13 of the American Convention. A copy of the American Declaration is attached hereto as Exhibit A. The American Declaration incorporates international standards into the Inter-American system to strengthen the protection of freedom of expression. Acknowledging that consolidation and development of democracy depends upon the existence of freedom of expression, the American Declaration lists thirteen principles that must be respected for freedom of expression to be exercised in practice. In addition to stating that freedom of expression is an inalienable right, notably, individuals must be given access to information held by the government, prior censorship must be prohibited by law, journalists must be allowed to keep their sources confidential, and attacks against journalists must be duly investigated by the State.

The right to freedom of expression has two dimensions: an individual and a collective one. The individual dimension empowers each person to express his, her or their thoughts, ideas, opinions, information or messages; the collective dimension empowers society to seek and receive such thoughts, ideas, opinions, information and messages.<sup>29</sup>

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<sup>27</sup> IACHR, Access to Information, Violence against Women, and Administration of Justice in the Americas, OAS/Ser.L/V/II.154, Doc. 19, March 27, 2015, para. 110.

<sup>28</sup> IACHR, Corruption and Human Rights in the Americas: Inter-American Standards, December 6, 2019, para. 219.

<sup>29</sup> I/A Court H.R., Advisory Opinion OC-5/85. Compulsory Membership in an Association of Journalists (arts. 13 and 29 American Convention on Human Rights). November 13, 1985, Series A No. 5, para. 30; IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF.2/09, December 30, 2009, para. 13; I/A Court H.R., Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001, Series C No. 74, para. 146; I/A Court H.R., Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001, Series C No. 73, para. 64; IACHR, Report No. 130/99, Case No. 11,740, Victor Manuel Oropeza, Mexico, November 19, 1999, para. 51; IACHR, Report No. 11/96, Case No. 11,230, Francisco Martorell, Chile, May 3, 1996, para. 53.

The main basis for the legal protection of freedom of expression within the Inter-American system is multiple: on the one hand, it is based on human dignity and the autonomy of the individual. On the other hand, it is based on the instrumental nature of freedom of expression for the exercise of multiple rights, and on the different functions it fulfills in democratic systems. Indeed, the key importance of freedom of expression is a consequence of its three functions within democratic systems: 1) to allow the expression and projection of the human being; 2) to make possible the functioning of democracy; and 3) to be a means or instrument for the exercise of other human rights.<sup>30</sup>

Freedom of expression has a structural relationship with democracy,<sup>31</sup> described by inter-American bodies as “close”, “indissoluble”, “essential” and “fundamental”, which explains both the importance of this right and the different interpretative scopes that have been given to it in jurisprudence.

For the IACHR, the relationship between the right to freedom of expression and democracy is so close that “the very objective of Article 13 of the American Convention on Human Rights is to strengthen the functioning of pluralistic and deliberative democratic systems through the protection and promotion of the free flow of information, ideas and expressions of all kinds.”<sup>32</sup>

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<sup>30</sup> I/A Court H.R., Advisory Opinion OC-5/85. Compulsory Membership in an Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). November 13, 1985, Series A, No. A, p. 5.

<sup>31</sup> I/A Court H.R., Advisory Opinion OC-5/85. Compulsory Membership in an Association of Journalists (arts. 13 and 29 American Convention on Human Rights). November 13, 1985, Series A No. 5, para. 70; IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF.2/09, December 30, 2009, para. 7; I/A Court H.R., *Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006, Series C No. 151, para. 85; I/A Court H.R., *Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004, Series C No. 107;

<sup>32</sup> I/A Court H.R., Advisory Opinion OC-5/85. Compulsory Membership in an Association of Journalists (arts. 13 and 29 American Convention on Human Rights). November 13, 1985, Series A No. 5, para. 70; I/A Court H.R., *Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006, Series C No. 151, para. 85; I/A Court H.R., *Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004, Series C No. 107, para. 116; I/A Court H.R., *Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004, Series C No. 111, para. 86.



## **1. Mechanism for the implementation of international standards in the domestic legal system.**

In the framework of the Inter-American System, Article 2 of the American Convention on Human Rights establishes the obligation of the States to adapt their legal system in accordance with the provisions of the Convention. Likewise, Article 33 states that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are competent to hear matters related to the fulfillment of the international commitments undertaken by the States Parties. In this sense, the IACHR and the Court are the authorized interpreters of the Convention “and, consequently, the doctrine and jurisprudence derived from their decisions define the scope and content of the provisions which, according to the aforementioned Article 2, must be incorporated into the domestic law of the States Parties to the American Convention”.

As mentioned by the Office of the Special Rapporteur for Freedom of Expression, the States of the region have mainly used two ways to implement international human rights standards. The first is through constitutional clauses that explicitly refer to international human rights norms. The second way of implementation has been through national judicial decisions.

## **2. Types of specially protected speech**

Certain forms of speech receive a heightened or reinforced level of protection under international human rights law. This special protection of freedom of expression derives from the importance of this kind of expression for democracy or human rights, and has as its main practical consequence that any limitations imposed by the state are subject to more stringent conditions and a stricter level of judicial scrutiny.<sup>33</sup>

### **A) Political speech and speech on matters of public interest**

A democratic and pluralistic system requires that public officials and their management

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<sup>33</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 32.



be exposed to a high level of control by a vigorous and informed public opinion, intolerant of corruption. This is the only way to achieve the level of citizen participation and state transparency that defines a democratic order. This is why the IACHR has defined freedom of expression as “the right of the individual and the entire community to engage in active, vigorous and challenging debates on all aspects related to the normal and harmonious functioning of society”.<sup>34</sup>

As a consequence, expressions, information and opinions relating to matters of public interest, including everything concerning the State, its institutions and its officials, have a special level of protection under the American Convention; therefore, the authorities must show greater tolerance towards these expressions.

The Inter-American Court has specified that the fact that these forms of expression receive special protection under the American Convention does not mean that they are immune to any type of limitation. According to the Convention itself, the right to participate in politics, freedom of expression and the right of assembly are not absolute rights and may be subject to restrictions. This Court has established in its jurisprudence that a right may be restricted as long as the interference is not abusive or arbitrary; therefore, it must be provided for by law, pursue a legitimate aim and comply with the requirements of suitability, necessity and proportionality.<sup>35</sup>

## **B) Speeches on public officials in the performance of their duties and on candidates for public office.**

An essential part of the control of public administration is citizen scrutiny of the official conduct of those who carry out such administration or are candidates to carry it out, for which reason the expressions, information, opinions and messages related to

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<sup>34</sup> IACHR, Annual Report 1994. Chapter V (Report on the compatibility between desacato laws and the American Convention on Human Rights). Title III, OEA/Ser. L/V/II.88. doc. 9 revs., February 17, 1995; IACHR, pleadings before the I/A Court H.R. in the case of Ricardo Canese v. Paraguay. Transcribed in: I/A Court H.R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004, Series C No. 111, para. 72-c); IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 34.

<sup>35</sup> I/A Court H.R., López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, paras. 152-164.

these topics should be subject to fewer restrictions or limitations by the authorities.<sup>36</sup> The public interest nature of the activities that state officials carry out justifies this greater exposure to criticism, and the different level of judicial protection that their honor, image and reputation receive in light of the democratic function of freedom of expression; this difference in treatment is also justified by the possibilities of defense that they have, taking into account their convening power, their social influence and their access to the media, and because they have voluntarily exposed themselves to such scrutiny by citizens when they have acceded to public office.<sup>37</sup>

As an integral part of the expressions that make up this group, denunciation about human rights violations committed by public officials are especially protected under freedom of expression. The Inter-American jurisprudence has identified this individual right as an integral part of the scope protected by Article 13 of the Convention, and has explained that the obstruction or silencing of this type of denunciation violates freedom of expression in its individual and collective dimensions, and has emphasized that the democratic function of the press encompasses the right to freely inform and criticize the government, including denunciations of human rights violations carried out by agents of the State.<sup>38</sup>

### **C) Speeches that express essential elements of personal identity or dignity.**

The expressions made in the own language of members of ethnic groups, expressions that manifest one's sexual orientation or gender identity, and expressions of religious faith.<sup>39</sup>

<sup>36</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, paras. 39-40

<sup>37</sup> I/A Court H.R., Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008, Series C No. 177, paras. 86 and 88; I/A Court H.R., Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005, Series C No. 135, para. 83 IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 40.

<sup>38</sup> IACHR, Report No. 20/99. Case 11.317, Rodolfo Robles Espinoza e Hijos, Peru, February 23, 1999; IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 42.

<sup>39</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 56.



## D) Non-protected speech

There are certain forms of expression that do not receive the protection of this right because of a manifest prohibition in current international law. Such as child porn, incitement to genocide, incitement to violence, and war propaganda.

If a given expression does not fall within the precise canons provided by international law for each of these categories of speech, as set out below, that expression is, in principle, to be considered protected by the right to freedom of expression and its possible limitation will be limited to compliance with the conditions of Article 13.2 of the American Convention on Human Rights.

### 3. Limitations to the right of freedom of expression and the prohibition of censorship

Like any other human right, freedom of expression is not an absolute right, and may be subject to limitations under strict conditions. Article 13 of the American Convention establishes these conditions in its paragraphs 2, 3 and 5. In application of this conventional provision, the Inter-American jurisprudence -in line with European jurisprudence and the decisions of other international human rights bodies- has developed a scheme for reviewing limitations to freedom of expression, called the “tripartite test”.<sup>40</sup>

Three conditions must be met for a limitation on the right to freedom of expression to be valid: first, the limitation must have been established by law -in the formal and material sense- that defines it precisely and clearly;<sup>41</sup> second, the limitation must be

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<sup>40</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, paras. 61-65.

<sup>41</sup> I/A Court H.R., The Expression “Laws” in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986, Series A No. 6. I/A Court H.R., Compulsory Membership in an Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985.



aimed at achieving one of the compelling objectives established in the norm;<sup>42</sup> and third, the limitation must be necessary in a democratic society for the achievement of the compelling ends sought, strictly proportionate to those ends, and suitable for the achievement of those ends.

The jurisprudence has also defined that by virtue of the presumption of coverage of any expression by Article 13 of the Convention, it is up to the State authority that imposes the limitation to demonstrate that all the conditions required by the test have been met.<sup>43</sup>

## **A) Other requirements and prohibitions that limitations on freedom of expression must comply with under the American Convention on Human Rights**

### **i. Prohibition on direct prior censorship**

Article 13.2 of the American Convention expressly prohibits direct prior censorship. The only exception to this prohibition of prior censorship is enshrined in numeral 4 of the same article 13, according to which: “4. Public spectacles may be subject by law to prior censorship for the exclusive purpose of regulating access to them for the moral protection of children and adolescents, without prejudice to the provisions of paragraph 2”.

### **ii. Prohibition of indirect censorship**

Article 13.3 of the American Convention establishes the right of expression may not be restricted by indirect ways or means, such as the abuse of official or private controls of newsprint, radio frequencies, or equipment and apparatus used in the dissemination

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<sup>42</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, paras. 80-82. I/A Court H.R., Case of Kimmel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008, Series C No. 177, para. 83; I/A Court H.R., Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005, Series C No. 135, para. 85;

<sup>43</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 68.



of information, or by any other means designed to impede the communication and circulation of ideas and opinions. Consequently, by express mandate of the Convention, limitations on freedom of expression may not be established or generated through indirect means such as those listed in this norm, whether by state authorities or for other reasons.

**iii. Limitations cannot be discriminatory, nor produce discriminatory effects.**

Limitations on freedom of expression “must not perpetuate prejudice nor foster intolerance”.<sup>44</sup>

**iv. Limitations must be of an exceptional nature**

**v. Stricter control standards for certain limitations based on the type of speech they apply to**

**4. Freedom of expression in conflict with the rights to honor, reputation, image, and privacy.**

The exercise of freedom of expression, like that of any other human right, must be carried out with respect for the rights of others. In this sense, Article 13(2) of the American Convention provides that one of the legitimate objectives for which freedom of expression may be limited by establishing subsequent liability is the protection of the rights or reputation of others.

Article 11 of the American Convention on Human Rights protects the right to honor, reputation and privacy. It is necessary to bear in mind that in certain cases, as has been seen, freedom of expression has an accentuated level of protection that operates as a mandatory factor in the corresponding judicial pondering. In other words, just as freedom of expression must be exercised with respect for the rights to honor, reputation, image and privacy of others, the protection of these rights must be

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<sup>44</sup> IACHR, Annual Report 1994. Chapter V (Report on the compatibility between contempt laws and the American Convention on Human Rights). Title III, OEA/Ser. L/V/II.88. doc. 9 revs., February 17, 1995



exercised with respect for the freedom of expression of others and without invading or limiting it excessively, especially when it concerns expressions that are specially protected by international law.<sup>45</sup>

When the person alleging an offense to honor or reputation is a public official or a candidate for public office, the rules regarding the special protection, under the American Convention, of this form of speech, and the greater voluntary exposure to public scrutiny and the greater degree of tolerance to criticism that those in this capacity must exhibit, come into play.

The main consequence is that in the pondering exercise between the right to freedom of expression and the right to the honor or reputation of a public official, one must start from the *prima facie* prevalence or, in principle, of freedom of expression, given the democratic interest in the debate on public affairs, which increases its weighted value.<sup>46</sup>

However, when it is indeed proven that there has been an injury to another's right to honor, reputation or privacy as a consequence of the abusive exercise of freedom of expression, the inter-American jurisprudence has also established the conditions that must be respected in order to enforce the subsequent responsibilities that may be applicable, as outlined below:

**i. Strict application of the tripartite test.**

**ii. Certain and proven existence of a serious damage to the rights of others, or of an imminent threat of such serious damage.<sup>47</sup>**

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<sup>45</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 104.

<sup>46</sup> I/A Court H.R., Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009, Series C No. 193, para. 123.

<sup>47</sup> IACHR, pleadings before the IACHR Court in the case of Ricardo Canese v. Paraguay. Transcribed in: I/A Court H.R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004, Series C No. 111, para. 72-e.



### **iii. The right of rectification or response as a first less burdensome measure to repair the damage to the rights of others.<sup>48</sup>**

### **iv. Application of the actual malice standard in civil matters.**

There may be cases in which the right of rectification or response is insufficient to repair the damage to the honor, reputation, image or privacy of others; only in these exceptional events, the Inter-American jurisprudence has said that one can resort to more onerous legal liabilities for the person who abused his expression, and the first modality of personal liability to which one must resort must be civil liability.<sup>49</sup>

for the Inter-American Court, in the various cases that have been the subject of its decision, recourse to criminal law to protect the honor or reputation of others, through the types of slander, libel, defamation or contempt, is a disproportionate and unnecessary limitation on freedom of expression.<sup>50</sup>

### **v. Application of the actual malice standard.**

When assessing the possible imposition of subsequent civil liability on a person who abused his freedom of expression and caused damage to the rights of others, the so-called standard of actual malice must be applied, i.e., it must be demonstrated that the person who expressed himself did so with the full intention of causing damage and with knowledge that false information was being disseminated or with an evident disregard for the truth of the facts, as stated on Principle 10 of the Declaration of Principles (on freedom of expression of the IACHR).<sup>51</sup>

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<sup>48</sup> Under the necessity test, the least burdensome liability measure possible for freedom of expression must be selected with a view to stopping the harm. To this end, the first option must be to resort to the right of rectification or reply, which is provided for in Article 14 of the American Convention.

<sup>49</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 108, 109.

<sup>50</sup> *Ibid.*, par. 111.

<sup>51</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/RELE/INF.2/09, December 30, 2009, para. 109.

## **5. Principles on the exercise of freedom of expression on the internet**

### **i. Preservation of the Internet architecture when designing and implementing regulations, limitations, or interventions.**

### **ii. Pluralism and nondiscrimination in digital expression.**

The principle of non-discrimination requires the State to remove the obstacles that certain sectors of the population may face in accessing the Internet or expressing themselves through it. In the digital environment, the obligation of non-discrimination implies, in addition to the aforementioned duties of access and pluralism, the adoption of measures, through all appropriate means, to ensure that all persons -especially those belonging to vulnerable groups or expressing critical views on matters of public interest- can disseminate content and opinions on equal conditions.<sup>52</sup>

### **iii. Principle of net neutrality.**

It establishes that information circulating on the Internet should not be subject to any kind of interference, manipulation or blocking based on its content, whether by the State or by private actors.<sup>53</sup>

Measures must be adopted to prevent the establishment of private controls from generating a violation of freedom of expression. As stated in Article 13(3) of the American Convention, indirect restrictions to this right may also arise from certain acts of private individuals, and the States must assume a role of guarantee against such abuses.<sup>54</sup>

There should be no discrimination, restriction, blocking or interference in the transmission of Internet traffic, unless strictly necessary and proportionate to preserve

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<sup>52</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Freedom of Expression and the Internet. OAS/ Ser.L/V/II. IACHR/RELE/INF.11/13, December 31, 2013, par 11.

<sup>53</sup> Ibid par. 21

<sup>54</sup> Ibid., par. 28.



the integrity and security of the network, to prevent the transmission of unwanted content at the user's express - free and unincentivized - request, and to temporarily and exceptionally manage network congestion. In the latter case, the traffic management measures employed should not discriminate between types of applications or services.<sup>55</sup>

## **6. Freedom of expression and Right to privacy of public officials**

As part of the fulfillment of its functions in matters of public interest, according to the IACHR, the general duties to which the exercise of freedom of expression by public officials is subject to are: i) The duty to make pronouncements in certain circumstances;<sup>56</sup> ii) The duty to verify the veracity of the facts on which their statements are based;<sup>57</sup> iii) to ensure that their statements do not violate human rights;<sup>58</sup> and iv) the duty not to increase the risk situation of journalists or social communicators with their statements.

Principle 11 of the IACHR Declaration of Principles on Freedom of Expression states: "Public officials are subject to increased scrutiny by society. Laws that criminalize offensive speech directed at public officials, generally known as 'Contempt laws', infringe on freedom of expression and the right to information". Principle 10 of the same Declaration states that "Privacy laws should not inhibit or restrict the investigation and dissemination of information of public interest. The protection of reputation should be guaranteed only through civil sanctions, in cases where the offended person is a public official or public person or private individual who has voluntarily become involved in matters of public interest. Furthermore, in these cases, it must be proven that in the dissemination of the news the communicator had the intent to inflict harm or full knowledge that false news was being disseminated or that he or she behaved

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<sup>55</sup> Ibid., par. 30.

<sup>56</sup> I/A Court H.R., Case of Apitz Barbera et al ("Corte Primera de lo Contencioso Administrativo") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008, Series C No. 182, para. 131.

<sup>57</sup> I/A Court H.R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009, Series C No. 194, para. 139;.

<sup>58</sup> I/A Court H.R., Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009, Series C No. 195, para. 151.



with manifest negligence in the search for the truth or falsity of the news”.

On the debate on issues of high public interest, not only the emission of inoffensive or well-received expressions by the public opinion is protected, but also those that shock, irritate or disturb public officials or any sector of the population.<sup>59</sup>

Regarding the Mexican Supreme Court’s criteria,<sup>60</sup> Public officials and those who aspire to be public officials, in a democratic society, have a different threshold of protection, which exposes them to a greater degree to public scrutiny and criticism, which is justified by the public interest nature of the activities they perform, because they have voluntarily exposed themselves to a more demanding scrutiny, and because they have an enormous capacity to controvert information through their power of public convocation.

## **B. Duty to Protect Journalists and the Press**

The Inter-American Court has explained in this regard that violence against journalists, especially when perpetrated by state agents, has an intimidating and silencing effect on other journalists and communicators, and also violates the social dimension of freedom of expression.<sup>61</sup>

In the opinion of the Inter-American Court, the right to freedom of expression grants journalists who work in the media, as well as their directors, the right to investigate and disseminate facts of public interest. Consequently, for the Court, the criminal prosecution of journalists or social communicators for the mere fact of investigating, writing and publishing information of public interest violates the right to freedom of

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<sup>59</sup> I/A Court H.R., Case of Kimel v. Argentina, Judgment of May 2, 2008.

<sup>60</sup> First Chamber of the Supreme Court of Justice of the Nation, Constitutional Proceeding (Amparo en Revisión) 2044/2009. Minister: José Ramón Cossío Díaz; Judicial Weekly of the Federation and its Gazette, Tenth Epoch, Volume 1, Book XXII, July 2013, First Chamber, p. 562, Thesis: 1a. CCXXIII/2013, Record: 2004022; Judicial Weekly of the Federation and its Gazette, Tenth Epoch, Gazette Book XX, May 2013, Volume 1, First Chamber, p. 551, Thesis: 1a. CLVI/2013, Record: 2003633..

<sup>61</sup> I/A Court H.R., Case of Vélez Restrepo and Family Members v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012, Series C No. 248, para. 148.





expression, since it ignores the special level of protection granted by the American Convention to the public debate of matters of interest to society.<sup>62</sup>

Journalistic work and press activities are fundamental elements for the functioning of democracies, since it is journalists and the media that keep society informed about what is happening and its different interpretations, a necessary condition for a strong, informed and vigorous public debate.<sup>63</sup>

The duty to protect freedom of expression and journalists is imbedded in the American Declaration and enforced by the Inter-American Commission and Inter-American Court. The Inter-American Court has stressed that “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”<sup>64</sup> Journalists must be protected against harm and harassment, even when exposing governmental corruption.

The Inter-American Commission has stated that corruption, in all its shapes and sizes, is a matter of the greatest public interest and investigations into that type of inappropriate conduct, which harms society as a whole, ought not to be inhibited by the threat of criminal prosecution. Denouncing acts of corruption and discussions regarding the management and handling of public funds fall within categories of discourse that are especially protected by the right to freedom of expression in Inter-American case law.<sup>65</sup> Likewise, Inter-American jurisprudence has repeatedly held that “information and opinions with regard to government officials, persons exercising public office, or candidates to public office enjoy special protection”.<sup>66</sup>

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<sup>62</sup> I/A Court H.R., Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008, Series C No. 177, para. 57; I/A Court H.R., Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001, Series C No. 74, para. 157; IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II. IACHR/ RELE/INF.2/09, December 30, 2009, para. 38.

<sup>63</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF.2/09, December 30, 2009, para. 165

<sup>64</sup> I/A Court H.R. Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 209.

<sup>65</sup> IACHR, Corruption and Human Rights in the Americas: Inter-American Standards, December 6, 2019, para. 193.

<sup>66</sup> I/A Court H.R., Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265, para. 146.



The UN Plan of Action on the Safety of Journalists and the Issue of Impunity highlights how important it is for States to “take an active role in the prevention of attacks against journalists, and take prompt action in response to attacks by establishing national emergency mechanisms, which different stakeholders can adopt.”<sup>67</sup> In a case involving Venezuela, the Inter-American Court stated “the State must continue to adopt the appropriate and necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the beneficiaries of these provisional measures, especially when they carry out journalistic activities . . .”<sup>68</sup>

States, including Mexico, “have an obligation not only to protect at-risk journalists, but also to guarantee that the protective measures adopted are effective and adequate”.<sup>69</sup> According to the Office of the Special Rapporteur of the IACHR, “it is important for the protection programs to take into account the need to guarantee that media workers are able to continue to perform their journalistic activities, as well as the specific needs of the profession (such as the privacy necessary to meet with sources) when designing the protective measures available, taking into consideration the circumstances of each specific case and in consultation with the potential beneficiary”.<sup>70</sup>

In inter-American jurisprudence and doctrine, the obligation of prevention is broken down into several specific obligations. Among them is the obligation to adopt a public discourse that contributes to prevent violence against journalists. The Inter-American Court has condemned the making of statements by public officials that contribute to increase the vulnerability or risk to which journalists are exposed in a specific context

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<sup>67</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity. Point 5(8).

<sup>68</sup> I/A Court H.R. Provisional Measures, Matter of “Globovisión” Television Station regarding Venezuela. Order of the Inter-American Court of Human Rights. November 21, 2007. Considering 11. (emphasis added).

<sup>69</sup> IACHR, Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevent, Protection and Prosecution of Perpetrators, December 31, 2013, para. 72.

<sup>70</sup> IACHR, Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevent, Protection and Prosecution of Perpetrators, December 31, 2013, para. 81; IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 484-486.



of social tension.<sup>71</sup>

Principle 8 of the Declaration of Principles of the IACHR establishes that “all social communicators have the right to confidentiality of their sources of information, notes, and personal and professional files. There is also a direct relationship between the protection of the confidentiality of sources and the prevention of acts of violence against journalists.

States have an obligation to keep accurate statistical records of incidents of violence, harassment or intimidation against journalists, media workers and, in general, those exercising their freedom of expression.<sup>72</sup>

In its Special Report on Freedom of Expression in Mexico in 2010, the Office of the Special Rapporteur specifically recommended that Mexico “adopt the necessary reforms to facilitate the exercise of federal jurisdiction over crimes against freedom of expression and ensure that all possible violations of the right to freedom of expression are investigated by the civilian authorities.”<sup>73</sup> In June 2012, Mexico adopted this precise measure and amended Article 73 of its Constitution so as to allow federal authorities to take over investigations into crimes committed against journalists.<sup>74</sup>

Although the initiative of the members of the Mexican federation to establish autonomous state mechanisms for the prevention and the protection of at-risk journalists in addition to federal mechanisms was noted, the Office of the Special Rapporteur observed that “it is crucial to ensure the development of legal frameworks that allow for effective coordination with the federal protective mechanism and particularly take into account the cases in which petitioners access both [state and

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<sup>71</sup> I/A Court H.R., Case of Vélez Restrepo and Family Members v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012.

<sup>72</sup> IACHR, Report on Citizen Security and Human Rights. OEA/Ser.L/V/II Doc. 57, 31 December 2009, p. 187.

<sup>73</sup> IACHR. Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression. Chapter II: 2010 Special Report on Freedom of Expression in Mexico.

<sup>74</sup> United Mexican States. Senate of the Republic. June 6, 2012. Bulletin 1111. Validates the permanent constitutional reform in favor of journalists.



federal] mechanisms in order to request protection”. In this regard, it is critical to ensure that journalists are not left unprotected or assigned protective measures by both mechanisms that are not compatible. In any case, “both the state and the federal mechanisms must meet all the requirements set forth in international standards for their operation”.<sup>75</sup>

The protection measures to which a journalist or social communicator at risk is entitled must be effectively implemented, not only formally decreed. The Inter-American Court has explained that it is not sufficient for the State to simply order the adoption of protective measures to comply with its obligation to protect, since this “does not demonstrate that the State has effectively protected the beneficiaries of the order in relation to the facts analyzed.”<sup>76</sup>

In the event of a crime of aggression against a journalist, social communicator or media worker, the State has the obligation to investigate, prosecute and, where appropriate, impose the necessary sanctions.<sup>77</sup>

The failure of the State to investigate, prosecute and punish attacks against journalists therefore constitutes a violation of human rights that compromises its international responsibility. It is clear that impunity for these crimes” encourages the repetition of similar violent acts and can result in the silencing and self-censorship of communicators.<sup>78</sup>

Thus, the lack of investigation and administration of justice in these cases not only disregards the right to judicial protection and the guarantees of due process, but

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<sup>75</sup> IACHR, Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevent, Protection and Prosecution of Perpetrators, December 31, 2013, para. 128.

<sup>76</sup> I/A Court H.R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009, Series C No. 194, para. 143; I/A Court H.R., Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009, Series C No. 195, para. 155.

<sup>77</sup> I/A Court H.R., Case of Vélez Restrepo and Family Members v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012, Series C No. 248, para. 210.

<sup>78</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and procuration of justice. OEA/Ser.L/V/II. IACHR/RELE/INF.12/13, December 31, 2013.



also constitutes a violation of freedom of expression, as it contributes to generate an indirect effect of intimidation and silencing, by sending a message of impunity to those who take the risks of expressing themselves;<sup>79</sup> “the refusal of a State to fully investigate the murder of a journalist is particularly serious because of the impact it has on society.”<sup>80</sup>

International standards in relation to the prevention, protection and investigation of violence against journalists foresee the need for an institutional design that responds to the factors that generate this violence according to the context and its particular consequences in the lives of the people who are victims. This “implies understanding how gender inequalities and sexist practices operate in the phenomenon of violence against journalists and thus favoring the definition of appropriate prevention, protection and justice measures”.<sup>81</sup>

#### **IV. CONCLUSION**

Both global and regional international law provide strong protections for freedom of expression, of which, a robust free press and the protection of journalists are key elements. As a member of the UN and OAS and as a party to the ICCPR and the American Convention, the Mexican government is obligated to uphold these principles and effectuate policies to guarantee their application within Mexico. While Mexico has adopted constitutional and legislative<sup>82</sup> reforms to ensure the protection of journalists, journalistic freedom, and freedom of expression in general, the present administration,

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<sup>79</sup> IACHR, Report No. 130/99, Case No. 11.740, Victor Manuel Oropeza, Mexico, November 19, 1999, para. 47.

<sup>80</sup> IACHR, Report No. 50/99, Case 11.739, Héctor Félix Miranda, Mexico, April 13, 1999, para. 52.

<sup>81</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and procuration of justice. OEA/Ser.L/V/II. IACHR/RELE/INF.12/13, December 31, 2013, para. 250.

<sup>82</sup> Protocol Additional To The Geneva Conventions Of 12 August 1949, And Relating To The Protection Of Victims Of International Armed Conflicts (Protocol I), Of 8 June 1977 art. 79; Law for the protection of Human Rights defenders and journalists; General Law on the Forced Disappearance of Persons, Disappearance Committed by Private Parties and the National System for the Search of Persons; General Law to Prevent, Investigate and Punish Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and state laws regarding journalist protection.



led by President López Obrador, has depicted the press as “adversaries”<sup>83</sup>, and opposing newspapers as “filthy pasquinades”<sup>84</sup>, increasing the hostility and harassment against the free press.

Therefore, under global and regional standards, it is urgent that federal government acknowledges the limits on the right to privacy for public officials and truly ensures and guarantees the protection of journalists and press, allowing adequate remedies in courts to impartially address alleged violations.

## **EXHIBIT A**

### **Thirteen Principles of the American Declaration**

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.

2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.

4. Access to information held by the state is a fundamental right of every

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<sup>83</sup> As expressed in <https://www.animalpolitico.com/2019/11/ataques-prensa-amlo-libertad-expresion/>

<sup>84</sup> As expressed in <https://aristeguinoticias.com/1109/mexico/llama-amlo-pasquin-inmundo-al-diario-reforma/>



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.

5. 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.

6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.

8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.

9. 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.

10. 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.

11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.

12. 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.

13. The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.<sup>85</sup>

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<sup>85</sup> Organization of American States, Declaration of Principles on Freedom of Expression, October 2000.