



## **Joint submission to the United Nations Human Rights Council, on the Universal Periodic Review 33<sup>rd</sup> Session for Costa Rica**

### **About**

Access Now ([www.accessnow.org](http://www.accessnow.org)) is an international organization that works to defend and extend digital rights of users globally. Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the protection of fundamental rights and the internet's continued openness. Access Now engages through an action-focused global community, global convenings such as RightsCon ([www.rightscon.org](http://www.rightscon.org)), and the 24/7 Digital Security Helpline providing rapid-response assistance to users at risk.

Derechos Digitales is an independent non-profit organization based in Chile, established in 2005, working across Latin America to defend and promote the exercise of human rights in the digital environment, in particular related to freedom of expression, privacy and access to knowledge and information.

IPANDETEC is a Panama-based organization that promotes the use and regulation of information and communication technologies (ICT) and the defense of human rights in the digital environment in Central America through analysis, advocacy, research, and legislative monitoring.

Fundación Acceso is a regional human rights organization that has been working for over 25 years in Costa Rica, Guatemala, El Salvador, Honduras, and Nicaragua, with a mission to mitigate the ever-increasing violation of rights related to the physical, technological, and psycho-social security of vulnerable and at-risk Central American populations. Fundación Acceso recently launched the Central American Digital Security Observatory, which monitors laws related to digital surveillance and registers and analyzes digital security incidents related to human rights activists and human rights organizations in Central America.

Sulá Batsú is a cooperative in Costa Rica encouraging and strengthening local development through work with organizations, social enterprises, community networks, and social movements at the national, regional, and global levels. Sulá Batsú initiatives utilize different approaches, including digital technologies, art and culture, collective construction and knowledge management, and social solidarity economy.

### **Domestic and international human rights obligations**

1. Costa Rica has signed and ratified the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”).
2. Article 24 of the Costa Rican Constitution protects the private documents and communications, of any type, of the inhabitants. It also states that the stolen correspondence or information obtained through illegal means will not produce legal effects.<sup>1</sup>
3. Article 29 of the Costa Rican Constitution protects against censorship, protecting the people’s right to communicate their thoughts and publish them without prior censorship. However, it holds such people responsible for the abuses, as defined by the law, committed in exercise of this right.<sup>2</sup>
4. Article 30 of the Costa Rican Constitution guarantees free access to the administrative departments for obtaining information in the public interest.
5. The Article 42 of the General Telecommunications Law No. 8642<sup>3</sup> the privacy of communications and protection of personal information. There is a complementary administrative regulation N° 35205-MINAET that guarantees the secrecy of communications, the right to privacy, and the protection of personal data of subscribers and users.<sup>4</sup> In 2012, the telecommunication authority (SUTEL) promoted compliance with the provisions of the General Telecommunication Law by issuing the Regulations on Protection to the End User of Telecommunications Services, which considers the issue of fraud against users, specifically in the field of mobile phone theft and reactivation.
6. In compliance with Law No. 8934, Law on Protection of Childhood and Adolescence regarding harmful content on the Internet and Other Electronic Means, the Council of SUTEL adopted the agreement 024-019-2012 that details the information and filters that the internet providers must implement for the protection of children.
7. Personal Data Protection Act No. 8968 protects the personal data of individuals. Among other protections, this law requires that consent of the subject is obtained before processing or using their data.<sup>5</sup>
8. Costa Rica is a member of the Freedom Online Coalition, a group of governments who have “committed to work together to support Internet freedom and protect fundamental human rights — free expression, association, assembly, and privacy online — worldwide.”<sup>6</sup>

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<sup>1</sup> [https://www.constituteproject.org/constitution/Costa\\_Rica\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Costa_Rica_2011.pdf?lang=en)

<sup>2</sup> [https://www.constituteproject.org/constitution/Costa\\_Rica\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Costa_Rica_2011.pdf?lang=en)

<sup>3</sup> [https://sutel.go.cr/sites/default/files/normativas/ley\\_general\\_de\\_telecomunicaciones.pdf](https://sutel.go.cr/sites/default/files/normativas/ley_general_de_telecomunicaciones.pdf)

<sup>4</sup> [http://www.gaceta.go.cr/pub/2009/05/18/COMP\\_18\\_05\\_2009.html](http://www.gaceta.go.cr/pub/2009/05/18/COMP_18_05_2009.html)

<sup>5</sup> [https://uk.practicallaw.thomsonreuters.com/w-013-](https://uk.practicallaw.thomsonreuters.com/w-013-8807?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhpc=1)

[8807?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhpc=1](https://uk.practicallaw.thomsonreuters.com/w-013-8807?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhpc=1)

<sup>6</sup> <https://freedomonlinecoalition.com/about-us/about/>

9. In 2010, the Supreme Court of Costa Rica declared access to the internet a fundamental right and found the State obligated to promote and guarantee universal access to new technologies for Costa Rican citizens. The court found that access to new technologies was necessary to facilitate the enjoyment of other fundamental rights such as democratic participation, freedom of expression, education, and more.<sup>7</sup>

### Developments of digital rights in Costa Rica

10. Costa Rica is ranked very highly in the Reporters Without Borders Press Freedom Index, ranking 6th in 2016 and 2017, and falling slightly to 10th in 2018.<sup>8</sup>
11. In July 2017, the Costa Rican Supreme Court ruled that national telecommunications authority SUTEL must establish a minimum internet connection speed to be followed by all service providers. The court found that allowing each operator to determine its own minimum speed to which users are reduced after meeting their plan's monthly data limit, and not indicating any end to this policy, was a violation of the fundamental right to internet access established in 2010.<sup>9</sup> This ruling was especially important for those living in rural communities who depend on mobile data service for internet access.
12. In 2012, Section XIII Title VII of Penal Code 9048 was reformed to include cybercrime provisions, including the prohibition of the interception of communications, the violation of the right to privacy, and unauthorized access and use of personal data, cyber scam, informatic damages, use of malicious software, informatic sabotage, identity theft, and informatic espionage.<sup>10</sup> The bill also drew attention for threatening the right to freedom of expression, including several clauses broadly outlawing impersonation online, whistleblowing and journalistic activities, and the spreading of "false news."<sup>11</sup> It is unclear whether the law passed in this concerning form or was amended in line with international human rights law and standards.
13. In 2015, in coordination with the Organization of American States (OAS), the Vice Ministry of Telecommunications initiated a process to develop a National Cybersecurity Strategy,<sup>12</sup> which was then published in 2017 and is now under the management of the Digital Governance

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<sup>7</sup> <https://www.nacion.com/el-pais/servicios/acceso-a-internet-es-un-derecho-fundamental/J7TYWCB4WFABRDAK4SGN3CLFZM/story/>

<sup>8</sup> <https://rsf.org/en/costa-rica>

<sup>9</sup> <https://news.co.cr/costa-ricas-high-court-orders-changes-internet-speed-restrictions/63366/>

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[http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=73583&nValor3=90354&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=73583&nValor3=90354&strTipM=TC)

<sup>11</sup> <http://www.coha.org/costa-ricas-cybercrime-law-censorship-or-a-reasonable-law/>

<sup>12</sup> [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-063/15](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-063/15)

Directorate of the Ministry of Science, Technology, and Telecommunications (MICITT).<sup>13</sup> The ministry has since appointed a Cybersecurity Advisory Committee to assist in the strategy's implementation made up of representatives from government, the private sector, and civil society, including Sulá Batsú.

14. The Freedom of Expression and Press Freedom Bill, originally introduced in 2002, would provide stronger legal foundation for the freedom of information, but has been repeatedly postponed.<sup>14</sup> However, some local journalists report that a new law would only complicate access to public information in Costa Rica. Rodolfo Gonzalez, director of Teletica Channel 7's news magazine "7 Dias," argues that Costa Rica's current legislation provides reporters with all the legal tools they need to access public information.<sup>15</sup>
15. In April of 2015, President Luis Guillermo Solís fired the minister and vice minister of Science, Technology, and Telecommunications after the ministry introduced a draft of a media bill that allowed regulators to close broadcast outlets if they repeatedly aired "lies" or violated "moral standards."<sup>16</sup> Since such a bill would have been a huge threat to media freedom, this decision to remove the minister marked a victory for freedom of expression.

### Violations of access to information & freedom of expression

16. In August 2014, the Legislative Assembly's Social Affairs Committee approved a bill that prohibits managers and editors of media outlets from obstructing the investigative work of their journalists. This was intended to enhance press freedom, prohibiting pressure to adhere to specific views or dishonest editing. It was criticized, however, by press freedom advocates, who said that it subverts the overall independence of the press through interfering with the management process and ordinary decision of the industry. The bill was not passed by the year's end.<sup>17</sup>
17. In the leadup to Costa Rica's 2014 general election, major news publications were taken offline by direct denial of service (DDoS) attacks that appeared to be politically motivated. Both *Semanario Universidad*, the University of Costa Rica's weekly news publication, and *El País* were impacted, as well as various blogs of Facebook profiles publishing content in support of political candidates.<sup>18</sup>

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<sup>13</sup> [http://latinamericanewsagency.com/society/costa-rica-has-national-cybersecurity-strategy\\_n5215](http://latinamericanewsagency.com/society/costa-rica-has-national-cybersecurity-strategy_n5215)

<sup>14</sup> <https://freedomhouse.org/report/freedom-press/2015/costa-rica>

<sup>15</sup> <http://www.ticotimes.net/2016/05/03/costa-rica-ranks-high-press-freedom>

<sup>16</sup> <https://freedomhouse.org/report/freedom-world/2016/costa-rica>

<sup>17</sup> <https://freedomhouse.org/report/freedom-press/2015/costa-rica>

<sup>18</sup> <https://news.co.cr/hackers-attack-university-of-costa-rica-publication/33056/>

## Violations of the right to privacy

18. In a March 2013 update to the Personal Data Protection Act,<sup>19</sup> a new article required that companies create a “super-user” that is allowed access to all information on a database, designed to be used by the Costa Rica’s Citizens Data Protection Agency (PRODHAB) under special circumstances. This requirement, along with other provisions in the regulation, faced a lot of backlash, and was eventually struck down in 2016 with Executive Decree JP-40008.<sup>20</sup>
19. In January of 2014, the San José-based newspaper *Diario Extra* accused the Judicial Investigation Agency and the office of the public prosecutor of recording the public and private calls of one of its reporters during much of 2013.<sup>21</sup> The agencies then admitted to the surveillance as part of an investigation into a potential whistleblower within the government. The Supreme Court instructed that the records be destroyed, and this practice never repeated.

## Recommendations

20. Fully and consistently implement Personal Data Protection Act No. 8968, holding both public and private entities accountable to it.
21. Ensure effective remedies for human rights violations, including those relating to the Internet, in accordance with its international obligations.
22. Promote the freedoms of information, expression, and opinion, and the rights to security and privacy, internationally in line with the Freedom Online Coalition’s Joint Statements and working group findings, as well as with international human rights law and norms.
23. Refrain from threatening anonymity, or the freedom of the press, through laws or practices that over-broadly assert a requirement for legal identity or restrict online publication.
24. Utilize a broadly inclusive, multistakeholder model of consultation and policy development in the development of legislation impacting human rights, including, but not limited to, regulation of social media and other online content; collection, management, and transfer of personal data both domestically and internationally; and connectivity, Net Neutrality, and telecommunications regulations impacting the ability of individuals to access the internet,

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[http://www.redipd.org/legislacion/common/legislacion/costa\\_rica/Decreto\\_37554JP20102012ReglamentoCostaRica.pdf](http://www.redipd.org/legislacion/common/legislacion/costa_rica/Decreto_37554JP20102012ReglamentoCostaRica.pdf)

<sup>20</sup> <https://www.bna.com/costa-rica-makes-n73014449302/>

<sup>21</sup> <https://freedomhouse.org/report/freedom-press/2015/costa-rica>



particularly when those individuals are part of marginalized, underserved, or at-risk communities.

The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. The undersigned are grateful to make this submission.

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