



FREE
EXPRESSION
MATTERS



UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

PEN International, PEN Canada and the International Human Rights Program at the University of Toronto Faculty of Law (IHRP)

Contribution to the 22nd session of the Working Group of the Universal Periodic Review

Submission on Honduras

15 September 2014

1. PEN International, PEN Canada and IHRP welcome the opportunity provided by the Office of the High Commissioner on Human Rights to comment on infringements of the right to freedom of expression, particularly impunity for attacks on journalists, in Honduras since the last Universal Periodic Review (UPR) in November 2010. This submission is based on our 2014 joint report entitled *Honduras: Journalism in the Shadow of Impunity*¹, and a follow-up field mission by PEN International from 27 July to 2 August 2014.
2. This period under review has been one of deterioration. An alarming climate of violence, impunity and fear prevails. Numerous initiatives to combat impunity have resulted in scant concrete results, and the current and previous administrations have displayed a lack of political will to investigate violations of freedom of expression and to protect journalists. Many of the areas of concern highlighted at the last UPR persist or have worsened, while a large number of the advances praised at that time have been seriously undermined.
3. This submission examines the following key freedom of expression issues:
 - a. **Escalating violence against journalists and the rise of impunity**
 - b. **Laws and practices affecting the right to freedom of expression including Access to Information, Surveillance, Criminal Defamation and Cultural Rights.**

¹ Kaitlin Owens, *Honduras: Journalism in the Shadow of Impunity* (January 2014), International Human Rights Programme at the University of Toronto, Faculty of Law (IHRP), PEN Canada and PEN International [PEN-IHRP report], online at: http://issuu.com/peninternational/docs/pen_int_honduras/1?e=6674381/6438779 (accessed 5 September 2014).

Context

1. Honduras is plagued by violence and high crime rates. Organised crime and drug trafficking have infiltrated the Honduran state at every level, including politicians, the army, and the police.²
2. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concluded in March 2013 that the 2009 coup in Honduras undermined the country's already weak institutions, resulting in a significant loss of confidence on the part of the general public.³ Despite some positive steps since the last UPR, there has been little tangible improvement in institutional capacity and credibility in terms of safeguarding human rights, with regression in some key areas relating to freedom of expression and information. 2014 has seen the weakening of key ministries that benefit citizens such as human rights and culture.
3. Since the coup, power has become less concentrated in state institutions and Congress and more in the President and the security forces, particularly under the current president, Juan Orlando Hernández. Spending on security and defence rose by 129 per cent and 42 per cent respectively between 2008 and 2014.⁴ Increased militarisation can be seen at all levels: the police,⁵ state institutions,⁶ and society in general.⁷

² See, for example, the July 2014 arrest of the mayor of the municipality of Yoro, departmental capital, and his family members for drugs trafficking, money laundering, kidnapping and allegedly ordering the murder of 137 people. 'Alcalde de Yoro, Arnaldo Urbina, estará preso en el Tercer Batallón' (29 July 2014), *El Heraldo*, online: <http://www.elheraldo.hn/pais/733652-331/alcalde-de-yoro-arnaldo-urbina-estar%C3%A1-pres-o-en-el-tercer-batal%C3%B3n> (accessed 5 September 2014).

³ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión: Adición Misión a Honduras* (22 March 2013), Human Rights Council, 23rd Sess, A/HRC/23/40/Add 1, para. 89, online: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-40-Add1_sp.pdf (accessed 5 September 2014)

⁴ Edy Tábor, 'Seguridad Pública en Honduras 2013 y 2014' (July 2014), Friedrich Ebert Stiftung América Central [Tábor, 'Seguridad Pública en Honduras'], p. 3

⁵ For example, a November 2011 emergency decree allowing military personnel to carry out public security duties, later extended (see 'En consejo de Ministros extienden decreto de emergencia en Seguridad' (20 March 2012), *El Heraldo*, online:

<http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/Sucesos/story.csp?cid=618539&sid=293&fid=219> - accessed 5 September 2014); the creation of the Armed Intelligence Troops and Special Security Response Groups (*Instituto Armado Tropas de Inteligencia y Grupos de Respuesta Especial de Seguridad – TIGRES*), proposed in mid 2012, created with assistance from the USA and formally established in July 2013, though there is evidence that it was operational before then. The TIGRES are independent of the National Police and are attached to the President's Office via the Ministry of Security during peacetime but to Ministry of Defence in times of war (see PEN-IHRP report, p.50; Inter-American Commission on Human Rights Annual Report 2013 [IACHR report 2013], para. 258, online: <http://www.oas.org/en/iachr/docs/annual/2013/docs-en/AnnualReport-Chap4-Honduras.pdf> - accessed 5 September 2014); and the Military Public Order Police (*Policía Militar de Orden Público*), set up in August 2013 to combat violence and insecurity and tasked with combating organised crime in particular (see 'Proyecto para crear policía militar amenaza la seguridad pública en Honduras' (10 August 2013), *La Tribuna*, online: <http://www.latribuna.hn/2013/08/10/proyecto-para-crear-policia-militar-amenaza-la-seguridad-publica-en-honduras/> - accessed 5 September 2014; IACHR report 2013, para. 26).

⁶ For example, the military police took over the Mario Rivas hospital in San Pedro Sula in June 2013 (see 'Unos 90 militares resguardan el hospital Mario Rivas de San Pedro Sula' (12 June 2014), *La Prensa*, online:

4. This increased militarisation has not proven effective in terms of improving security – levels of violence and impunity have not decreased,⁸ the country's homicide rate remains the highest in the world,⁹ while the number of homicides prosecuted remains stable at around 10 per cent.¹⁰ Indeed, militarisation has brought about a deterioration in the human rights situation, including restrictions on freedom of expression.

Limited progress

5. PEN International welcomes the progress made by Honduras on certain recommendations from the last UPR, but notes that serious outstanding concerns remain. Honduras has:
 - a. Received a visit by the UN Special Rapporteur on the situation of human rights defenders (HRDs)¹¹ in February 2012.
 - b. Approved the Human Rights Public Policy and National Action Plan^{12 13} (effective implementation subject to political will and budget allocation).
 - c. Taken concrete steps to pass a law to protect journalists (pending approval by Congress)
 - d. Made efforts to improve co-ordination between the different institutions responsible for protecting journalists, including the National Commissioner for Human Rights (CONADEH¹⁴), the Sub-Secretariat of Human Rights and Justice (SS of HR), and the Ministry of Security (though concerns remain, particularly regarding the relationship between the last two)
 - e. Secured a handful of convictions in cases of murders of journalists (though these killings continue at a terrifying rate, with 91 per cent unsolved)

<http://www.laprensa.hn/honduras/sanpedrosula/728458-96/unos-90-militares-resguardan-el-hospital-mario-rivas-de-san-pedro-sula> (accessed 5 September 2014)

⁷ See, for example, *Guardianos de la patria* (Guardians of the country), a programme created by President Juan Orlando Hernández which involves the armed forces running “moral, civic and religious” activities for deprived children on weekends, such as the provision of health check-ups and medical supplies. Civil society has protested this as a violation of children’s rights and an attempt to recruit minors (see ‘Guardianes de la Patria no es la solución para disminuir la violencia de la niñez hondureña’ (19 May 2014), online:

http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=3137:guardianes-de-la-patria-no-es-la-solucion-para-disminuir-la-violencia-de-la-ninez-hondurena&catid=42:seg-y-jus&Itemid=159 – accessed 5 September 2014). UNICEF has also expressed concern (see ‘Llamado urgente a la acción frente a la violencia contra los niños y las niñas en Honduras y la construcción de una cultura de paz y diálogo’ (14 May 2014), UNICEF Oficina Regional para América Latina y el Caribe, online:

http://www.unicef.org/lac/media_27125.htm – accessed 5 September 2014)

⁸ Tábora, ‘Seguridad Pública en Honduras’, *supra* note 4, p. 4

⁹ 90.4 murders per 100,000 people in 2012, according to the United Nations Office on Drugs and Crime (2014), *Global Study on Homicide 2013: Trends, Contexts, Data* (March 2014), p. 24, online at:

http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf (accessed 9 September 2014)

¹⁰ Tábora, ‘Seguridad Pública en Honduras’, *supra* note 4, p. 8

¹¹ Recommendation of the United Kingdom.

¹² *Política Pública de Derechos Humanos y el Plan Nacional de Acción*

¹³ Under voluntary commitments and pledges.

¹⁴ *Comisionado Nacional de los Derechos Humanos*

Deterioration

- **Escalating violence against journalists**

6. Despite Honduras' pledge to protect journalists in 2010,¹⁵ attacks have risen sharply, including both murders and non-fatal, violent attacks. In 2013, C-Libre recorded 191 acts of aggression against the right to freedom of expression and information, half targeting journalists and media outlets.¹⁶ This is a 40 per cent increase from 2012 (136 attacks), and a 66 per cent rise from 2011 (115 attacks).¹⁷
7. Since the last UPR in November 2010, at least 26 journalists have been killed. Since 2003 at least 44 have been murdered, most working for TV and/ or radio. Over 80 per cent of killings up to the end of 2013 occurred during the administration of Porfirio Lobo Sosa (2010-2013).¹⁸ However, at least six more journalists have been killed since President Hernández took office in January 2014.¹⁹

- **Rising impunity**

8. Despite Honduras' acceptance of multiple recommendations to combat impunity in 2010,²⁰ convictions have only been obtained in four of 44 murders of journalists between 2003 and August 2014, leaving 40 unresolved – an impunity rate of 91 per cent.²¹ Even in the four

¹⁵ In 2010, Honduras accepted recommendations to increase measures to protect journalists and human rights defenders from violent attacks, harassment and intimidation (Argentina, Austria, Canada, Czech Republic, France, Germany, Slovakia, Switzerland and Uruguay), and to give established mechanisms the necessary resources and means to protect them (Switzerland). The state also pledged to implement a policy aimed at preventing violence and intimidation of the media (Switzerland) and to take measures to end threats against and harassment of journalists and human rights defenders (Ireland).

¹⁶ Comité por La Libre Expresión (C-Libre), *Despacho Urgente: Ni perseguidos, ni vigilados ¡Hagan Justicia!* Informe 2013 (May 2014) [C-Libre, *Despacho Urgente*], p. 159-160, online: <http://clibrehonduras.com/main/sites/default/files/Informe%20Libertad%20de%20expresion%20C-Libre%202013.pdf> (accessed 11 September 2014)

¹⁷ C-Libre, *¡Basta! Informe ¿Libertad de Expresión? 2012* (Tegucigalpa: C-Libre, 2013), p. 128.

¹⁸ According to C-Libre, 31 out of 38 journalist murders between 1993 and 2013 (82 per cent) occurred during the presidency of Porfirio Lobo Sosa (2010-2013) (C-Libre, *Despacho Urgente, Supra* note 16 p. 92). According to the National Commissioner for Human Rights (CONADEH), 83 per cent of journalists killed between 2002 and 2013 lost their lives during the Lobo Sosa administration (33 out of 40) (Comisionado Nacional de Derechos Humanos, *Informe anual sobre el estado de los derechos humanos en Honduras, Año 2013* [CONADEH annual report 2013], p. 39, online: http://app.conadeh.hn/Anual2013/informes/CONADEH_2013.pdf (accessed 5 September 2014)

¹⁹ 'HONDURAS: Three more journalists murdered in the space of a month' (10 September 2014), online: <http://www.pen-international.org/newsitems/honduras-three-more-journalists-murdered-in-the-space-of-a-month/> (accessed 11 September 2014)

²⁰ In 2010, Honduras accepted recommendations on combating impunity for the murders of journalists and other human rights violations from Argentina, Austria, Australia, Canada, Costa Rica, Czech Republic, Ecuador, France, Germany, Italy, Netherlands, Peru, Spain, Sweden, Switzerland, Uruguay and the USA.

²¹ According to information provided to PEN and IHRP by the Honduran state at a hearing at the Inter-American Commission on Human Rights (IACHR) on 25 March 2014, of the 27 murders of journalists and social communicators it recorded between 2009 and 2013, 10 had gone to trial, resulting in four convictions (Jorge Alberto Orellana, Héctor Francisco Medina Polanco, Ángel Alfredo Villatoro Rivera and Aníbal Barrow) and three non-guilty verdicts (David Enrique Meza Montesinos, Luis Chévez Hernández and Fausto Elio Valle Hernández). Two of these convictions came in the first quarter of 2014, both involving the murder of high profile journalists (Ángel Alfredo Villatoro Rivera and Aníbal Barrow). PEN is not aware of any further

cases where convictions have been obtained, justice is only partial: in the case of **Aníbal Barrow**, only some of perpetrators have been prosecuted; in none have the intellectual authors²² been prosecuted.

9. The vast majority of non-fatal attacks on journalists also go unpunished. For example, although journalist and HRD **Dina Meza** has been subject to constant surveillance and harassment since 2006 and awarded precautionary measures by the IACHR, the Public Prosecutor's Office (PPO) has failed to make any progress in identifying the culprits.²³ **Julio Ernesto Alvarado**, director and news presenter for the opposition station Globo TV, has been subjected to frequent threats in relation to his work and was the target of a suspected assassination attempt in March 2013, which forced him to suspend his current affairs radio programme 'Medianoche'; these attacks have still not been investigated, let alone prosecuted.
10. The Honduran state's failure to investigate and prosecute the murder of journalists constitutes not only a breach of the victims' right to freedom of expression,²⁴ the right to life²⁵ and the right to judicial protection.²⁶ It also denies the victims' families, loved ones and the general public the right to obtain information, part of the right to freedom of expression, and to learn the truth.

- **Responsibility and motives**

11. This lack of investigation means it is difficult to ascertain the source of violence against journalists, which in turn makes it more difficult for them to protect themselves. In March 2014, the Honduran state claimed that all of the journalists whose murders had been prosecuted to date were killed by "common criminals" or organised crime, and that their murders were unconnected to their opinions, contending that "the involvement of state agents [had] not been proven."²⁷ This official line illustrates the disincentive officials face in effectively prosecuting these crimes to, for example, determine if corrupt state agents are indeed implicated.

convictions since. See: 'Reports of Killings of Journalists and Impunity in Honduras', PEN International, PEN American Center, PEN Canada, University of Toronto Faculty of Law International Human Rights Program & State of Honduras, Inter-American Commission on Human Rights, Washington DC, USA, 25 March 2014 [IACHR hearing], video available online: <http://www.pen-international.org/newsitems/impunity-in-honduras-pen-writers-testify-before-inter-american-commission-on-human-rights/?print=print> (accessed 11 September 2014).

²² i.e. those responsible for ordering the murders.

²³ Interview with Soraya Morales, Special Prosecutor for Human Rights (1 August 2014) [Morales interview]

²⁴ Articles 2 (3) (a) and 19 of the International Covenant on Civil and Political Rights (ICCPR); Articles 1, 2, 13 and 14 of the American Convention on Human Rights (ACHR); and Principle 9 of the Inter-American Declaration on Freedom of Expression.

²⁵ Articles 2 (3) and 6 (1) of the ICCPR; Articles 1 and 4 (1) of the ACHR.

²⁶ Article 25 (1) of the ACHR. See PEN-IHRP report, *supra* note 1, pp. 60-61 for more detail.

²⁷ IACHR hearing, *supra* note 21.

12. In most cases possible links between attacks and the victim's journalism are not properly investigated. Police and officials often publically discard journalism as a motive before investigations are complete, sometimes within hours of a murder taking place.²⁸
13. Relevant factors, such as the topic the journalist was reporting on at the time of the attack or their political persuasion, are routinely not investigated. At least four of the 44 journalists murdered had reported on corruption before their deaths, including **Juan Carlos Argeñal Medina**.²⁹ Argeñal and the two other journalists killed between July and December 2013³⁰ – the election period – were all members of the Liberty and Refoundation (LIBRE³¹) political party³² and either worked or had worked for Radio or TV Globo at the time of their deaths.³³
14. C-Libre found that state agents were responsible for 50 per cent of all attacks on freedom of expression and access to information in 2013 where the perpetrator could be identified, the main culprits being police, armed forces and intelligence, government and the PPO.³⁴ Non-state perpetrators identified did not include members of organised crime or gangs,³⁵ despite the Honduran State's tendency to blame violence against journalists on these groups.
15. According to CONADEH, during the Lobo administration (2010-2013) there were "constant threats against the media by government authorities, led by the president."^{36 37} This practice continues under the Hernández administration.³⁸

²⁸ For example, within 24 hours of the body of TV news journalist Herlyn Iván Espinal Martínez being found in late July 2014, Security Minister Arturo Corrales publically dismissed that the murder was linked to the victim's profession, stating that it was either a crime of passion or linked to an inheritance dispute (see 'Honduras: Investigan dos móviles en crimen de periodista Herlyn Espinal' (22 July 2014), *La Prensa*, online: (<http://www.laprensa.hn/honduras/apertura/731387-97/honduras-investigan-dos-m%C3%B3viles-en-crimen-de-periodista-herlyn-espinal> – accessed 11 September 2014). His involvement in politics, however, does not appear to have been investigated as a possible motive. Espinal was also involved in politics and was a member of the governing Partido Nacional de Honduras (PNH) at municipal level (see 'Honduras: Investigan dos móviles en crimen de periodista Herlyn Espinal' (21 July 2014), *La Prensa*, online: <http://www.laprensa.hn/sucesos/policiales/731027-96/honduras-angustiosa-b%C3%BAsqueda-del-periodista-herlyn-espinal> – accessed 11 September 2011).

²⁹ Juan Carlos Argeñal Medina was murdered in December 2013 after reporting on corruption in a local hospital and in local government in Danlí, Paraíso Department. See <http://www.penninternational.org/newsitems/call-to-action-honduras-must-bring-killers-of-journalist-juan-carlos-argenal-medina-to-justice/>. Three other journalists killed after reporting on corruption are David Enrique Meza Montesinos (killed March 2010); Luis Arturo Mondragón Morazán (killed June 2010); and Héctor Francisco Medina Polanco (killed May 2011).

³⁰ Aníbal Barrow (abducted 24 June 2013, body found 9 July 2013) and Manuel Murillo Varela (abducted 23 October 2013, body found the next day)

³¹ *Libertad y Refundación*

³² C-Libre, *Despacho Urgente*, *supra* note 16, p. 108

³³ Radio Globo and and Globo TV was also the target of eight per cent of all attacks on journalists and media in 2013. C-Libre, *Despacho Urgente*, *supra* note 16, p. 164

³⁴ *Ibid*, p. 171.

³⁵ Of the non-state actors, 48 per cent were unknown, while the other 52 per cent identified include multinational, mining and logging companies, the PNH party, paramilitaries, hackers, security guards, hit men, and religious leaders. *Ibid*, p. 171-2

³⁶ CONADEH annual report 2013, *supra* note 18, p. 210, para. 18. I.

³⁷ For example, in December 2012 President Lobo accused the newspapers *El Heraldo* and *La Prensa* of conspiring against his government at the risk of bringing about another coup. CONADEH, *Informe anual del Comisionado nacional de los derechos humanos sobre el estado general de los derechos humanos en Honduras*

Sources of impunity

Failure to investigate and prosecute

16. Only an estimated 20 per cent of crime is reported in Honduras, and of that less than four per cent gets investigated. Hence less than one per cent of crimes are ever subject to a police investigation,³⁹ despite the authorities' obligation to do so under national⁴⁰ and international law. In April 2013, then Public Prosecutor Luis Alberto Rubí told Congress that 80 per cent of all homicides in Honduras go unpunished because "investigative organs don't have the capacity to respond."⁴¹ Figures for 2008 to 2014 suggest that the actual figure is around 90 per cent.⁴²
17. The PPO does not have a proper investigative police force and has to rely on the national police.⁴³ The office also lacks specialised protocols for the investigation and prosecution of journalist murders, despite promises to create them.
18. There are also structural constraints. Although there is a Special Prosecutor for HRDs responsible for investigating human rights violations involving journalists, she can only do so where there is clear evidence that the perpetrator is a state agent or a civilian colluding with a state official, and lacks jurisdiction to investigate murders. Murders of journalists and HRDs, like all homicides, are investigated by the Special Prosecutor for Crimes against Life (FEDCV), which lacks a human rights focus.
19. Violence against lawyers, including murders, also renders the state less willing and able to prosecute perpetrators of violence against journalists.

y el desempeño de sus funciones (Tegulcigalpa: CONADEH, 2012), online:

http://app.conadeh.hn/Anual2012/informes/conadeh_2012.pdf (accessed 11 September 2014), p. 96.

³⁸ When journalist José Ramón Maldonado asked President Hernández if he intended to grant a marble mine and quarries concession in a national park at a public event on 10 July 2014, the president intimidated him by repeatedly demanding that he reveal his sources and ordering his bodyguards and cameraman to record his name and ID number. 'Presidente hondureño intimida a periodista y lo obliga a revelar su fuente informativa' (15 July 2014), online: <http://conexihon.info/site/noticia/libertad-de-expresi%C3%B3n/presidente-hondure%C3%B1o-intimida-periodista-y-lo-obliga-revelar-su-fuente> (accessed 11 September 2014)

³⁹ PEN-IHRP report, *supra* note 1, p. 28

⁴⁰ Constitution of the Republic of Honduras, Art. 326; Criminal Procedure Code (*Código Procesal Penal*), Arts. 8, 272, 273; Law of the Public Prosecutor's Office (*Ley del Ministerio Público*), Art. 1.

⁴¹ 'Fiscal general: 80% de los homicidios quedan impunes' (11 April 2013), *El Heraldo*, online: <http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/Pais/story.csp?cid=575663&sid=299&fid=214> (accessed 11 September 2014)

⁴² Tábora, 'Seguridad Pública en Honduras', *supra* note 4, p. 8

⁴³ Although it appears this will change with the creation of the Technical Agency for Criminal Investigation (*Agencia Técnica de Investigación Criminal* – ATIC), approved by Congress in January 2014 to investigate "serious and high social impact crimes" including the murder of journalists. ATIC will be an investigative body separate from the National Police or the Dirección Nacional de Investigación Criminal (DNIC) and will be part of the Public Prosecutor's Office (*Ministerio Público*) rather than the Ministry of Security. The agency's regulatory law was passed in May 2014 and it will be operational from end of 2014. See: 'Agencia técnica del Ministerio Público ya tiene su reglamento' (26 May 2014), *La Prensa*, online: <http://www.laprensa.hn/honduras/713195-97/agencia-t%C3%A9cnica-del-ministerio-p%C3%ABlico-ya-tiene-su-reglamento> (accessed 11 September 2014); 'A finales del año empezará a funcionar nueva Agencia Técnica de Investigación Criminal' (25 May 2014), *Proceso*, online: <http://www.proceso.hn/2014/05/25/Nacionales/A.finales.del/86942.html> (accessed 11 September 2014)

20. The situation is exacerbated by a lack of publically available information about ongoing investigations, due to a narrow interpretation of domestic law.⁴⁴ This violates victims' right to be informed of the results of ongoing investigations under national law⁴⁵ as well as the government's international obligation to provide effective remedy for victims, which includes the right of relatives to know the fate of loved ones.⁴⁶

Corruption within the security forces

21. Corruption is a serious problem within the Honduran police and armed forces, which have been infiltrated by organised crime.⁴⁷ Such corruption and collusion increase the likelihood of state involvement in violence against journalists and compromises the police's willingness or ability to investigate these crimes.
22. The "police purge" begun in early 2012⁴⁸ has been deemed a failure, including by the body responsible for overseeing it,⁴⁹ severely criticised for its slowness, bottom-up application and lack of serious penalties. As of December 2013, the Inter-American Commission on Human Rights (IACHR) had received "no information on concrete results of implementing [the police purge]".⁵⁰

Weak and corrupt judiciary and PPO

23. Despite the state's pledges to safeguard the independence of the judiciary in 2010,⁵¹ the Honduran judiciary continues to lack autonomy and be subject to outside influence,

⁴⁴ Criminal Procedure Code (*Código Procesal Penal*), Arts. 275 and 278; Law of the National Police of Honduras (*Ley Orgánica de la Policía Nacional de Honduras*), Arts. 24 (12) and 30

⁴⁵ Criminal Procedure Code (*Código Procesal Penal*), Art. 16

⁴⁶ UN Commission on Human Rights, Updated Set of principles for the protection and promotion of human rights through action to combat impunity (8 February 2005), E/CN.4/2005/102/Add.1, online: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement> (accessed 11 September 2014)

⁴⁷ For example, anti-corruption campaigner Alfredo Landaverde, who exposed links between drug traffickers and state actors, was killed in 2011 after reporting alleged police involvement in the 2009 murder of anti-drugs chief Julián Aristedes Gonzales (PEN-IHRP report, *supra* note 1, p. 22). Similarly, the investigation into the October 2011 murder of two university students, one of whom was the son of the chancellor of the National Autonomous University of Honduras (*Universidad Nacional Autónoma de Honduras* - UNAH), not only led to the conviction of four police officers for the killings but also "revealed the level of deep-seated corruption in the police" including police involvement in "murders, extortion, kidnapping, car theft and drug trafficking." (*Ibid*, p. 29).

⁴⁸ 'Congreso aprueba ley para la depuración de la Policía de Honduras' (31 January 2012), *La Prensa*, online: <http://www.laprensa.hn/honduras/tegucigalpa/328971-98/congreso-aprueba-ley-para-la-depuraci%C3%B3n-de-la-polic%C3%ADa-de-honduras> (accessed 11 September 2014)

⁴⁹ Public Security Reform Commission (Comisión de Reforma a la Seguridad Pública - CRSP). 'Depuración de la Policía de Honduras es un fracaso, admite CRSP' (3 December 2013), *La Prensa*, online: <http://www.laprensa.hn/honduras/apertura/429437-98/depuracion-de-la-policia-de-honduras-es-un-fracaso-admite-crsp> (accessed 11 September 2014)

⁵⁰ IACHR report 2013, *supra* note 5, p. 437 at para. 255

⁵¹ In 2010, Honduras accepted recommendations to safeguard the independence of the judiciary (Poland, Slovakia); to investigate, prosecute and punish those responsible for the harassment of members of the judiciary and to provide redress (Argentina).

rendering it an ineffective mechanism for ensuring accountability. The appointment of judges is also highly politicised.⁵²

24. The judiciary's impotence was clearly displayed in December 2012, when Congress voted to remove four of the 15 Supreme Court of Justice (CSJ) judges after the court ruled that a police reform bill was unconstitutional. The UN Special Rapporteur on the independence of judges and lawyers said the dismissal was a violation of international norms and "a grave attack against Honduras' democracy".⁵³
 25. The case cited at the last UPR of the removal of three judges and one magistrate following the coup, which Honduras pledged to investigate,⁵⁴ was submitted by the IACHR to the Inter-American Court of Human Rights on 17 March 2014 due to a lack of response on the part of the Honduran state.⁵⁵
 26. Corruption also hampers the institutional capacity of the judiciary and the PPO.⁵⁶
- **Continuing lack of protection for journalists**
27. Honduras is singularly failing to protect its journalists, despite multiple pledges made in 2010.⁵⁷

Failure to implement IACHR precautionary measures

28. Many journalists and HRDs at risk in Honduras have been awarded precautionary measures by the IACHR due to the failure of national protection mechanisms. However, most are not implemented, despite Honduras' commitment in 2010 to do so.⁵⁸ An August 2013 report by

⁵² The Supreme Court of Justice (*Corte Suprema de la Justicia* - CSJ) appoints judges, but the CSJ itself is chosen by the National Congress based on political affiliation. Similarly politicised is the Council of the Judiciary (*Consejo de la Judicatura*), created in 2011 to govern the CSJ, including appointing and removing judges, and operational since 2013 ('Se instala Consejo de la Judicatura' (12 October 2013), *El Heraldo*, online: <http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/Pais/story.csp?cid=583582&sid=299&fid=214> – accessed 11 September 2014). The Chair of the Council is the Supreme Justice of the CSJ, who is appointed by the President, an arrangement that has been criticised by experts at both national and international level ('Presentan proyectos de ley para reformas al sistema de justicia' (26 October 2012), *La Prensa*, online: <http://www.laprensa.hn/csp/mediapool/sites/LaPrensa/Honduras/Tegucigalpa/story.csp?cid=330373&sid=275&fid=98> – accessed 11 September 2014; UN Special Rapporteur on the independence of judges and lawyers, cited in IACHR report 2013, *supra* note 5, p. 446 at para. 284).

⁵³ 'Dismissal of Honduran Supreme Court judges an attack on democracy – UN expert' (29 January 2013), online: <http://www.un.org/apps/news/story.asp?NewsID=44024#.VBFUvmwJg8> (accessed 11 September 2014)

⁵⁴ In 2010, Honduras accepted a recommendation to investigate the recent dismissal of three judges and one magistrate so that, if appropriate, they are reinstated, and adopt measures for the immovability of members of the judiciary (Mexico)

⁵⁵ 'Corte IDH conoce caso de jueces despedidos en Honduras' (4 March 2014), online: <http://conexihon.info/site/noticia/derechos-humanos/derechos-humanos/corte-idh-conoce-caso-de-jueces-despedidos-en-honduras> (accessed 11 September 2014)

⁵⁶ In June 2013, three months after the Public Prosecutor was suspended and replaced by a temporary commission, he and his deputy resigned after Congress' recommended their impeachment for alleged financial misconduct. This alleged malfeasance has yet to be investigated and prosecuted.

⁵⁷ *Supra* note 20.

⁵⁸ In 2010, Honduras accepted recommendations to effectively implement precautionary measures requested by the IACHR and other international human rights bodies from Brazil, Canada and Ireland.

Centre for the Investigation and Promotion of Human Rights (CIPRODEH⁵⁹) found that the state consistently failed to implement IACHR precautionary measures, mainly due to lack of political will. Other factors include weakness and lack of coordination by the various implementing institutions, and lack of legislation defining implementation.⁶⁰

29. This state of affairs is unsurprising given that the Honduran state lacks even a central register of beneficiaries of IACHR precautionary measures. According to the SP for HR, its office began creating such a database in April 2014 to keep track of these measures and cross-reference them with the PPO and the Ministry of Security.⁶¹

New law to protect journalists

30. A draft Law to protect Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners⁶², proposed by the SS for HR, is currently before Congress. It is hoped that it will be operational by the end of 2014.⁶³
31. The bill allows for the creation of a protection mechanism and a National Protection Council made up of government and civil society representatives⁶⁴ that will implement various protection measures tailored to the needs of the beneficiaries. The SS for HR will be responsible for receiving requests and conducting risk assessments⁶⁵ in coordination with other human rights bodies. The Ministry of Security will be responsible for implementing the protection measures.⁶⁶
32. The proposed mechanism – recommended at the last UPR – has been praised for its inclusiveness of different categories of HRDs and its involvement of civil society as well as state bodies in its Council.
33. However, the law has been criticised for dividing responsibility for implementation between two ministries, which have a poor record of working together. Both CONADEH and international observers have said that the law would be improved if the SS for HR had responsibility for all aspects of implementation.
34. The exact budget required by both Ministries for implementation remains uncertain, and it is unclear whether these funds will be made available immediately or progressively.⁶⁷ The

⁵⁹ *Centro de Investigación y Promoción de los Derechos Humanos*

⁶⁰ CIPRODEH, *Informe de cumplimiento de las medidas cautelares y provisionales otorgadas por la Comisión y La Corte Interamericana de Derechos Humanos, a raíz del deterioro de la situación de los derechos humanos como efecto del golpe de estado de 2009 en Honduras* (Tegucigalpa: CIPRODEH, 2013) [CIPRODEH report], p. 40

⁶¹ Morales interview, *supra* note 23

⁶² *Ley de Protección para los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia*

⁶³ Interview with Karla Cueva, Undersecretary for Human Rights and Justice (28 July 2014) [Cueva interview]

⁶⁴ Articles 16-17

⁶⁵ Articles 31-35

⁶⁶ Articles 36-39

⁶⁷ According to the Undersecretary for Human Rights and Justice, President Hernández has said that the budget for implementation of the law must be made available immediately (Cueva interview, *supra* note 63). However, CONADEH said that the government has only committed to allocating “progressively” and “within

estimates provided by the SS for HR cover only implementation within the SS and appear low.⁶⁸ By July 2014, the SS for HR had not held any discussions with the Ministry of Security as to the budget the latter would require to implement the protective measures dictated by the former.⁶⁹

35. It is also unclear whether the protection measures will be implemented by standard police or a specialised force with training in human rights and the protection of journalists.

36. Many commentators feel that the protection law and mechanism will do little to improve journalist security without reforming the police and judiciary and purging them of corruption.

Ineffective institutional responses to violence against journalists and impunity

37. In 2010, Honduras accepted numerous recommendations on strengthening and building the capacity of its human rights institutions, but these have been insufficiently implemented.

- **Special Prosecutor for Crimes Against Life (FEDCV)⁷⁰**

38. FEDCV was created in August 2013 to deal with all murders previously assigned to other prosecutors. Murders of journalists fall under the High Social Impact Murder Unit,⁷¹ unless there is any indication of state involvement in their deaths, when it is handled by the Unit for Murders Committed by State Actors (UMCSA⁷²).⁷³

39. Little is known about the work of FEDCV. The current SP for HR, who says her office works with FEDCV and monitors its work, seemed unaware of the existence of the two FEDCV units assigned to work on journalist murders.⁷⁴ It is also unclear whether or not the FEDCV staff working for UMCSA are trained in human rights.⁷⁵

- **Office of the Special Prosecutor for Human Rights (SP for HR)**

the possibilities of the state" (Interview with H. Roberto Herrera Cáceres, National Commissioner for Human Rights (30 July 2014) [Herrera Cáceres interview]).

⁶⁸ The Undersecretary for Human Rights and Justice estimated that around US\$500,000 will be needed in order to implement the law within the Sub-Secretariat of Human Rights, Justice, Governance and Decentralisation (i.e. creation of assessment unit, technical assistance, coordination with other bodies, socialisation, etc.). This is far lower than the amount estimated by her predecessor, who in July 2013 estimated a budget of 80m lempiras (US\$3.8m) for the first year. This latter figure was said to be based on discussions with experts with experience of similar protection mechanisms in other countries, including Colombia.

⁶⁹ Cueva interview, *supra* note 63

⁷⁰ *Fiscalía de Delitos Contra la Vida*

⁷¹ *Unidad de muertes de alto impacto social*

⁷² *Unidad de muertes cometidas por el orden público y funcionarios del Estado*

⁷³ IACHR hearing, *supra* note 21

⁷⁴ Morales interview, *supra* note 23

⁷⁵ According to information provided by the state of Honduras in March 2014, FEDCV's Unit for Murders Committed by State Actors is staffed by a prosecutor, investigators and administrative staff who used to work on homicides at the Office of the Special Prosecutor for Human Rights (IACHR hearing, *supra* note 21). However, the current Special Prosecutor for Human Rights said that to her knowledge only one member of staff had been transferred to FEDCV (Morales interview, *supra* note 23).

40. The SP for HR successfully brought about the conviction and sentencing on 12 August 2014 of army colonel José Arnulfo Jiménez and his soldiers to five years in prison for closing Canal 36 TV station during the coup.⁷⁶ However, out of eight cases of non lethal attacks on journalists and social communicators by state agents handled by the SP for HR between January 2013 and July 2014, this is the only one to have been solved⁷⁷ – despite the ongoing threats facing this group.
41. Honduras is failing to provide sufficient financial and human resources to the SP for HR as agreed in 2010.⁷⁸ The office suffers from a chronic and worsening lack of resources, with the last year seeing a net reduction in prosecutors along with a large increase in case load.⁷⁹ This has particularly affected the special prosecutor responsible for cases involving HRDs, including journalists, who has apparently seen her capacity halved and her workload tripled.⁸⁰ Worryingly, the post holder is new to the office and has no previous experience in human rights, as indeed is the case for the current SP for HR and the majority of other staff. The SP for HR estimates that her office needs at least 10 more prosecutors, with human rights training, but has been told that there is no budget to hire them.⁸¹
42. Despite this situation, the current SP for HR blames lack of progress since 2013 on negligence by former staff. In October 2013, three highly qualified human rights prosecutors – including the two SPs for HRDs – were transferred to other postings and do not appear to have been replaced. Officially this was due to “restructuring” but there is concern that the move may have been political.⁸²
- **Sub Secretariat of Human Rights and Justice (SS for HR)**
43. Honduras created a Ministry for Justice and Human Rights⁸³ in September 2010 and at the UPR pledged to provide it with sufficient financial and human resources.⁸⁴ However, in early

⁷⁶ Morales interview, *supra* note 23; ‘Prisión para coronel que cerró Canal 36’ (12 August 2014), *La Tribuna*, online: <http://www.latribuna.hn/2014/08/12/prision-para-coronel-que-cerro-canal-36/> (accessed 11 September 2014)

⁷⁷ Morales interview, *supra* note 23

⁷⁸ Recommendation by Mexico

⁷⁹ Nominally responsible for 20,000 open cases as of 1 August 2014, the Office of the Special Prosecutor for Human Rights currently has just 13 prosecutors, 11 of whom carry out investigations, and two policemen at its disposal (Morales interview, *supra* note 23). In contrast, in July 2013 the office was responsible for 7,000 cases and with 16 prosecutors was already overstretched (PEN-IHRP report, *supra* note 1, p. 37).

⁸⁰ A year ago there were two prosecutors for human rights defenders with a workload of approximately 200 cases each (PEN-IHRP report, *supra* note 1, p. 37), whereas now there is only one, who also has to deal with other cases – some 600-700 in all (Morales interview, *supra* note 23).

⁸¹ Morales interview, *supra* note 23

⁸² The prosecutors in question had reportedly begun to present significant cases against the state which were potentially embarrassing, particularly a month before the presidential elections. At the time of their transfer they were undertaking a week-long strike demanding prosecution and accountability for corruption by the former Public Prosecutor as well as a salary rise. Their appeal against the transfer was rejected.

⁸³ *Secretaría de Justicia y Derechos Humanos*

⁸⁴ Recommendation by Mexico

2014 the Ministry was downgraded to a sub-Secretariat of the Ministry of the Interior,⁸⁵ as part of a financial efficiency restructuring.

44. The SS for HR says that it has retained its focus on human rights, structure, trained staff and its budget⁸⁶ and argues that it is having a greater impact. However, some staff are now assigned to Governance and Decentralisation matters,⁸⁷ and given that there is now no Minister for Human Rights sitting in Cabinet with the President, it is likely that the SS for HR has less autonomy and influence.
45. The SS for HR is responsible for implementing the Human Rights Public Policy and National Action Plan and the passing of the protection law for journalists. It claims to have improved communications, division of labour and coordination with CONADEH, which were previously extremely problematic and an impediment to protecting journalists, and has also established coordination with the Special Prosecutor for Human Rights and the PPO.⁸⁸

- **CONADEH**

46. In 2010 Honduras committed to strengthening CONADEH,⁸⁹ ensuring its independence⁹⁰ and adequate funding.⁹¹ The election of a new Commissioner in March 2014 has apparently restored some of the credibility CONADEH lost after the previous Commissioner publically stated his support for the coup, at least at international level – the UN and EU have declared their support.
47. However, CONADEH is still seen as politicised by many journalists and sections of civil society. There are concerns that the existing selection process is excessively political, as Congress makes the final decision via a majority vote. The new Commissioner was reportedly only the fifth highest-scoring among the seven candidates short-listed by Congress' cross-party committee.⁹²
48. There are also concerns about CONADEH's budget, which is allocated by Congress and has not increased since 2009.⁹³ According to the new Commissioner, the current budget is insufficient for planned activities or sometimes even essential items such as fuel for vehicles.^{94 95}

⁸⁵ Sub-Secretariat of Human Rights, Justice, Governance and Decentralisation (*Sub-Secretaría de Estado en los Despachos de Derechos Humanos, Justicia, Gobernación y Descentralización*)

⁸⁶ The budget for the Ministry of Human Rights and Justice in 2013 was 40.7m lempiras (US\$1.94m) which in 2014 has increased slightly to 41m lempiras (US\$1.94m). Cueva interview, *supra* note 63

⁸⁷ Cueva interview, *ibid.*

⁸⁸ *Ibid.*

⁸⁹ Recommendation by Peru

⁹⁰ Recommendations by Hungary and Indonesia

⁹¹ Recommendation by Hungary

⁹² 'Entre protestas juramentan a Herrera Cáceres, nuevo Comisionado de Derechos Humanos' (25 March 2014), *La Tribuna*, online: <http://www.latribuna.hn/2014/03/25/entre-protestas-juramentan-a-herrera-caceres-nuevo-comisionado-de-derechos-humanos/> (accessed 11 September 2011)

⁹³ Herrera Cáceres interview, *supra* note 67

⁹⁴ 65m lempiras per year or 0.03 per cent of national budget (Herrera Cáceres interview, *ibid.*)

- **Truth and Reconciliation Commission**

49. The Truth and Reconciliation Commission (CVR)⁹⁶ was established in April 2010 to examine the coup including human rights violations. At the UPR, Honduras agreed to ensure independence and support for the CVR.⁹⁷ Yet, as of October 2013, just 32 out of 82 recommendations of the CVR had reportedly been implemented, 14 in the area of human rights, while another 37 were in the process of being implemented.^{98 99}
50. The current position on implementation of the CVR's recommendations is unclear. According to the SS for HR, the unit created to monitor implementation¹⁰⁰ has been disbanded. While the recommendations have reportedly been incorporated into National Human Rights Policy and Action Plan, there is now no specific oversight mechanism.¹⁰¹
51. One of few concrete results of the CVR – aside from approving a controversial amnesty law for political crimes around the coup – was the creation in February 2012 of the Public Security Reform Commission¹⁰² (CRSP). A body of national and international experts, the CRSP was charged with weeding out corruption in the security forces and justice system,¹⁰³ including overseeing the body responsible for administering the “police purge.”
52. In October 2013 the CRSP submitted a raft of proposals to reform the police, PPO and judiciary to President Lobo; however, these reforms are yet to be implemented. The CRSP was disbanded in March 2014, one year short of its minimum three-year mandate,¹⁰⁴ and it is thought unlikely that any of its proposed reforms will be undertaken by the current administration.

⁹⁵ According to the new Commissioner, CONADEH should have an independent budget, according to its own law (*Ley Orgánica del Comisionado Nacional de los Derechos Humanos*, Art. 51) and the Paris Principles (Art. 2). (Herrera Cáceres interview, *ibid*)

⁹⁶ *Comisión de Verdad y Reconciliación*

⁹⁷ Recommendation by Argentina and Indonesia

⁹⁸ ‘Solo 32 recomendaciones de la CVR se han cumplido’ (21 October 2013), *El Heraldpp*, online: <http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/AlFrente/story.csp?cid=566515&sid=300&fid=209> (accessed 11 September 2014)

⁹⁹ Some of the “partially implemented” recommendations relate to social communication and freedom of expression; however these included, for example, considering ongoing investigations into crimes against journalists as partial implementation of the recommendations that such investigations should be completed (PEN-IHRP report, *supra* note 1, p. 46).

¹⁰⁰ *Unidad de Seguimiento a las Recomendaciones del Informe de la Comisión de la Verdad y Reconciliación*

¹⁰¹ Cueva interview, *supra* note 63

¹⁰² *Comisión de Reforma a la Seguridad Pública*

¹⁰³ ‘Presidente instala Comisión de Reforma de Seguridad Pública’ (2 June 2012), *La Tribuna*, online: <http://www.latribuna.hn/2012/06/02/presidente-instala-comision-de-reforma-de-seguridad-publica/> (accessed 11 September 2014)

¹⁰⁴ ‘CRSP cierra sus puertas’ (21 March 2014), *La Tribuna*, online: <http://www.latribuna.hn/2014/03/21/crsp-cierra-sus-puertas/> (accessed 11 September 2014)

Laws and practices affecting the right to freedom of expression

- **Access to information/ Secrecy**

53. Despite the 2006 Transparency and Access to Public Information law¹⁰⁵ and Honduras' 2010 promises to guarantee access to information,¹⁰⁶ there has been a decrease in public transparency and a regression towards a culture of secrecy. Increasingly, official communiqués have replaced media interviews with government officials and the police, who are now only able to speak with permission from their superiors and in some cases from the President.
54. The Violence Observatory¹⁰⁷ at the National Autonomous University of Honduras (UNAH)¹⁰⁸ has been forced to stop producing its monthly analyses of homicide levels because it can no longer confirm its data with the Ministry of Security and police; these bodies have refused to cooperate with the Observatory since late 2013.¹⁰⁹ The loss of these reports constitutes a serious blow to freedom of information and expression in the country, the absence of official statistics making it impossible to verify information about seemingly staggering violence levels.
55. This culture of secrecy has intensified since President Hernández came into office. In May 2014, two *La Prensa* journalists used Twitter to highlight the increasing blocking of access to information by the executive power.¹¹⁰ Journalist **José Ramón Maldonado** suffered reprisals when he tried to ask President Hernández directly for information at a public event.¹¹¹
56. In March 2014 the Law on Official Secrets and Classification of Information, came into effect.¹¹² Critics say that the law effectively abrogates the 2006 access to Information law by stripping the Institute for Public Access to Information (IAIP) of its responsibility for classifying information and reassigning it to individual ministries and state agencies. Access to information is rendered arbitrary and dependent on the whim of individual officials, who can now unilaterally classify information as secret for five years or 10 years in cases where the information is deemed a threat to public security and order. The National Defence and Security Council can classify as secret information that threatens the “constitutional order”

¹⁰⁵ *Ley de Transparencia y Acceso a la Información Pública*

¹⁰⁶ In 2010, Honduras accepted recommendations to guarantee access to information (Canada and Chile) and to implement the law on transparency and access to public information (Peru).

¹⁰⁷ *Observatorio de la Violencia*

¹⁰⁸ *Universidad Nacional Autónoma de Honduras*

¹⁰⁹ 'Secretaría de Seguridad niega información sobre homicidios al Observatorio de la Violencia' (23 June 2014), online: <http://clibrehonduras.com/main/noticias/secretar%C3%ADa-de-seguridad-niega-informaci%C3%B3n-sobre-homicidios-al-observatorio-de-la-violencia> (accessed 11 September 2011)

¹¹⁰ 'Periodistas denuncian bloqueo informativo del Poder Ejecutivo' (5 June 2014), online: <http://conexihon.hn/site/noticia/libertad-de-expresi%C3%B3n/periodistas-denuncian-bloqueo-informativo-del-poder-ejecutivo> (accessed 11 September 2011)

¹¹¹ *Supra* note 38

¹¹² *Ley de Secretos Oficiales y de Clasificación de la Información*

for 15 years, while the President can classify information as “ultra secret” for 25 years in cases of “direct threat to territorial integrity and sovereignty”.¹¹³

57. Although no prosecutions under the law have yet been reported, journalists and researchers report that it has become harder to obtain information via the IAIP’s Transparency Portal. For example, a request for information on progress into journalist murder cases was recently denied, whereas in the past such information had previously been provided.

- **Surveillance and digital security**

58. The PEN-IHRP report found that a number of journalists said that their phone calls and emails appeared to have been monitored by the authorities. In some cases the existence of intercepts has been confirmed by officials, experts or mobile phone employees. Such surveillance, combined with the physical surveillance and threats to which journalists are often subjected, is a form of psychological repression, which causes self-censorship. Many journalists believe that communications surveillance has increased in recent years and that the Honduran state possesses advanced surveillance equipment.¹¹⁴

59. In December 2011, Congress adopted the Special Law on Interception of Private Communications,^{115 116} which asserts as its purpose the regulation of interception of communications and guarantees “the privacy of communications and the right to privacy, as well as other fundamental rights.”¹¹⁷ However, the law has been strongly criticised by Honduran civil society as contravening the right to privacy.¹¹⁸

60. The law allows for interception of both internet-based and telephone communications, pursuant to a judge-issued warrant and where a criminal investigation is ongoing. It contains provisions that appear aimed at ensuring that surveillance is conducted in a manner that is both necessary and proportionate. However, the law lacks some important accountability guarantees. There is no requirement that individuals are notified when they have been subjected to interception, precluding effective redress for illegitimate surveillance. There are also concerns that judges may sanction surveillance practices under the guise of spurious

¹¹³ ‘Secrecy law deals major blow to public’s right to be informed’ (16 January 2014), online: <http://en.rsf.org/honduras-secrecy-law-deals-major-blow-to-16-01-2014,45736.html> (accessed 11 January 2014)

¹¹⁴ One writer said that a friend who worked for former President Zelaya used to dismantle his mobile phone during social occasions because he feared that their conversations would be recorded. Zeleya’s own telephone calls and those of some of his officials were recorded and posted on the internet in 2007 (see ‘Indagan espionaje telefónico contra el president hondureño’ (17 October 2007), *El Universal*, online: <http://www.eluniversal.com.mx/notas/455751.html> - accessed 11 January 2014)

¹¹⁵ *Ley Especial sobre Intervenciones de las Comunicaciones Privadas*

¹¹⁶ Analysis of the law provided by Privacy International

¹¹⁷ Art. 1

¹¹⁸ See for example: Jari Dixon, ‘Análisis sobre la Ley Especial de Intervención de las Comunicaciones Privadas’ (5 December 2011), online: <http://conexihon.info/site/opiniones/palabra-libre/an%C3%A1lisis-sobre-la-ley-especial-de-intervenci%C3%B3n-de-las-comunicaciones> (accessed 11 September 2011); ‘Estado Hondureño ante la CIDH por restricción de libertades fundamentales con aprobación de últimas leyes’ (27 March 2012), online: http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=1936:estado-hondureno-ante-la-cidh-por-restriccion-de-libertades-fundamentales-con-aprobacion-de-ultimas-leyes-&Itemid=159 (accessed 11 September 2014)

criminal charges brought against journalists and HRDs in order to justify the use of intercepts.

61. A further worrying element of the law is the fact that judges are required to decide on the admissibility of requests for intercepts within four hours,¹¹⁹ whereas the previously established norm is three days.¹²⁰ Moreover, the duration of an intercept has increased to three months (previously 15 days¹²¹), extendable for up to 12 months.¹²²
62. The law establishes a Communications Interception Unit (UIC)¹²³ and telecommunications providers are obliged to technically alter their communications systems to enable state interception of communications.¹²⁴ The integrity, security and privacy of communications systems are thereby undermined and could enable arbitrary surveillance by the state which would not need the assistance of telecommunications companies to intercept communications.
63. The law also mandates an extensive data retention regime which compels telephone companies to retain all user data for five years.¹²⁵ This includes telephone numbers contacted, the duration and hour of a call, and in the case of mobiles, the location from which calls or SMS messages are made or sent.¹²⁶ The UN High Commissioner on Human Rights has noted that, “[m]andatory third-party data retention ... appears neither necessary nor proportionate.”¹²⁷

Criminal defamation

64. Slander, insult and defamation¹²⁸ are punishable by up to five years in prison.¹²⁹ Of the 37 criminal defamation cases before the courts in 2012, 20 were dismissed, one resulted in a non-guilty verdict, none resulted in a conviction, and the rest were ongoing.¹³⁰ However, the threat of imprisonment remains, including for journalists against whom such criminal defamation suits are sometimes brought with the aim of silencing them.

¹¹⁹ Art. 16

¹²⁰ Criminal Procedure Code (*Código Procesal Penal*), Art. 223

¹²¹ Criminal Procedure Code (*Código Procesal Penal*), Art. 128

¹²² Art. 32

¹²³ *Unidad de Intervención de Comunicaciones*, Art. 33

¹²⁴ Art. 38

¹²⁵ Art. 39

¹²⁶ Indeed, users of internet cafés in Honduras are reportedly obliged to provide their full name, ID number and address.

¹²⁷ Office of the High Commissioner for Human Rights (OHCHR), ‘The right to privacy in the digital age’ (30 June 2014), Human Rights Council, 27th session, A/HRC/27/37, online:

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf

(accessed 11 September 2014)

¹²⁸ *Calumnia, injuria y difamación*

¹²⁹ Penal Code (*Código Penal*), Arts. 155-169. Article 345 on ‘contempt’ (*desacato*) was declared unconstitutional in 2005 (‘Honduran high court strikes down *desacato* provision’ (26 May 2005), online: <http://cpj.org/2005/05/honduran-high-court-strikes-down-desacato-provisio.php> - accessed 11 September 2014).

¹³⁰ Source: Ingresos y resoluciones por número de expediente y según tipo, Querellas por injurias, calumnias y difamaciones, Año 2012 (prepared 11 June 2014), Poder Judicial Tribunales de Sentencia a Nivel Nacional, Base de Datos del Centro Electrónico de Documentación e Información Judicial.

65. In December 2013 **Julio Ernesto Alvarado** (see above) was sentenced on appeal to a 16-month prison sentence and ban on practising journalism for covering allegations of corruption by a local university dean in 2006. Despite the prison term being lifted on payment of a fine by Alvarado in April 2014, the dean is reportedly seeking to re-instate the work ban.^{131 132}

66. In December 2013, the IACHR and its Special Rapporteur for freedom of expression welcomed a bill to partially decriminalise defamation.¹³³ However, according to the SS for HR no progress has been made on this project, which is not seen as a priority.¹³⁴

- **Sedition**

67. Journalists are also increasingly facing the threat of sedition charges¹³⁵ by the authorities. **Albertina Manueles Pérez** of Radio Progreso and several community radio journalists were accused of sedition in June 2014 after reporting on a community's refusal to recognise a mayor they believe was elected fraudulently.¹³⁶ Sedition is also used to criminalise those who take part in or observe peaceful demonstrations.¹³⁷

Cultural stagnation

68. Honduras is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Protection and Promotion of the Diversity of Cultural Expression.¹³⁸ Following the last UPR it also committed to signing the Optional Protocol to the ICESCR,¹³⁹ although it has yet to do so.

¹³¹ 'Honduras: Inter-American Commission on Human Rights urged to protect journalist Julio Ernesto Alvarado' (4 June 2014), online: <http://www.pen-international.org/newsitems/honduras-inter-american-commission-on-human-rights-urged-to-protect-journalist-julio-ernesto-alvarado/> (accessed 11 September 2014)

¹³² In late August 2014, a court admitted a criminal defamation case brought against David Romero Ellner, the head of Radio Globo, by a lawyer married to the deputy prosecutor-general. Conviction would reportedly mean up to 15 years in prison for the journalist and the closure of Radio and TV Globo. 'Leading opposition broadcaster facing criminal libel charges' (27 August 2014), online: <http://en.rsf.org/honduras-leading-opposition-broadcaster-27-08-2014,46853.html> (accessed 11 September 2014)

¹³³ IACHR report 2013, *supra* note 5, p. 451 at para. 305

¹³⁴ Cueva interview, *supra* note 63

¹³⁵ Penal Code, Art. 337, Arts. 336-342.

¹³⁶ 'Comunicadora social es acusada por sedición en Honduras' (18 June 2014), online: <http://clibrehonduras.com/main/noticias/comunicadora-social-es-acusada-por-sedici%C3%B3n-en-honduras> (accessed 11 September 2014)

¹³⁷ Other common charges brought against peaceful demonstrators include 'illegal demonstration' (*manifestación ilícita*) (Penal Code, Art. 331) and 'assault' (*asalto*) (Arts. 343 and 344).

¹³⁸ General Comment No. 21 on the Right of everyone to take part in cultural life (art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights) specifies that state parties have an immediate obligation to guarantee that the right to take part in cultural life is exercised without discrimination, to recognise cultural practices and to refrain from interfering in their enjoyment and development (General Comment No. 21 on the Right of everyone to take part in cultural life (art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights) (21 December 2009), Committee on Economic, Social and Cultural Rights, 43rd session, E/C.12/GC/21 [General Comment No. 21], p.11 at para. 44). The minimum core obligation is "to create and promote an environment within which a person individually, or in association with others, or within a community or group, can participate in the culture of their choice" (*ibid*, p. 14-15 at para. 55).

¹³⁹ Recommendation by Ecuador and Spain

69. Writers in Honduras have deplored the lack of cultural policy and lack of investment in the cultural sector, particularly since the coup, with the Ministry of Culture, Arts and Sports described as a “an empty shell”.¹⁴⁰
70. The Ministry is chronically underfunded and has reportedly suffered further cuts after being downgraded to two Directorates depending on the President’s office as a part of a wider government restructuring in January 2014.^{141 142} Approximately 70-80 per cent of its budget goes on salaries, leaving little for promotional activities such as publishing writers. The institution has also been criticised for largely limiting its support to traditional or popular culture.¹⁴³ State-sponsored cultural spaces are suffering from serious underfunding and even closure.¹⁴⁴
71. The Directorate is criticised for lacking any long-term policy to promote training, production and research within culture and the arts. According to the new Director, the Directorate is working on a “cultural law”¹⁴⁵ in consultation with civil society. She was unable to provide a copy of the bill, but said that its aim is “to prevent violence and protect and disseminate culture”, and it includes plans to “make culture and arts a tourist attraction and a source of income and economic growth rather than an expense, as it has usually been seen.” She hopes the law will be passed by Congress this year and implemented in 2015.¹⁴⁶
72. These criticisms along with the Director’s assertions raise some concerns in relation to Honduras’ obligations in terms of cultural rights. An exclusive focus on traditional or popular culture would run counter to the understanding of culture as a “living process, historical, dynamic and evolving”.¹⁴⁷ The lack of a long-term policy to promote and develop culture and

¹⁴⁰ According to one writer, “Culture is the Cinderella of the Honduran national budget. No government in recent years has been interested in the world of culture or has had a cultural policy. Any improvements have been more the result of individual ministers rather than a government policy.” Another commented that: “The situation of culture has reached rock bottom. There is no immediate future for the cultural sector at the moment – just a state of indifference.”

¹⁴¹ ‘Honduras: Desaparecen cinco ministerios’ (31 January 2014), *El Heraldo*, online:

<http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/AlFrente/story.csp?cid=566625&sid=300&fid=209> (accessed 11 September 2014)

¹⁴² As of early August 2014, the new Director of Culture and Arts was unable to provide details of the directorate’s current budget (Interview with Fidelia Molina, Director of Arts and Culture (1 August 2014) [Molina interview]). However it is thought likely that it has been cut by 25 per cent. A recent study shows that spending on education, research, culture and recreational activities in Honduras since the coup has increased only 11.62 per cent (2008 – 2014), a considerable decrease in real terms. (Tábora, ‘Seguridad Pública en Honduras’, *supra* note 4, p. 3.

¹⁴³ General Comment No. 21, *supra* note 138, p. 17 at para. 70.

¹⁴⁴ The National Art Gallery shut down in May 2013 (‘Cierra sus puertas la Galería Nacional de Arte’ (15 May 2013), *El Heraldo*, online:

<http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/Pais/story.csp?cid=581263&sid=299&fid=214> - accessed 11 September 2014). The Casa Morazán cultural centre and museum reportedly faced closure around the same time (‘SCAD: “Casa de Morazán debe estar abierta”’ (14 May 2013), *El Heraldo*, online:

<http://www.elheraldo.hn/csp/mediapool/sites/ElHeraldo/Metro/story.csp?cid=587340&sid=298&fid=213> -

accessed 11 September 2014), both due to lack of funds. The National Library has no budget to buy new books or even basic cleaning materials, and no inventory to prevent books and documents from being stolen.

¹⁴⁵ *Ley de Cultura*

¹⁴⁶ Molina interview, *supra* note 142

¹⁴⁷ General Comment No. 21, *supra* note 138, p. 3 at para. 11

the arts would run counter to Honduras' obligation to "go beyond the material aspects of culture [...] and adopt policies, programmes and proactive measures that also promote effective access by all to intangible cultural goods." Moreover, in relation to making culture a source of income, the UN has established that "cultural activities, goods and services... must not be treated as having solely a commercial value. [...] State parties should adopt measures to protect and promote the diversity of cultural expressions."¹⁴⁸

73. Some writers and artists who opposed the coup say they have found it more difficult to get state-sponsored employment in their field as a result. Some staff at the Directorate say they are passed over for promotion for denouncing corruption or for their perceived opposition to the ruling party. If true, such practices violate Honduras' non-discrimination obligations under the ICESCR.^{149 150}

Recommendations

74. The Honduran government should:

- a. Recognise the importance of independent journalism and condemn all attacks against journalists at the highest levels of the state
- b. Develop specialised protocols within the PPO for the prompt investigation of crimes against journalists, prioritising any links with their profession, and ensure adequate resources for implementation
- c. Ensure that all prosecutors and police responsible for investigating crimes against journalists are trained in human rights
- d. Publish a report on the activities of the FEDCV, with details of progress in investigations into the murder of journalists
- e. Keep victims and their families informed of the results of ongoing official investigations into attacks on journalists.
- f. Take into account civil society concerns regarding the new journalist protection law and ensure that it is passed with sufficient financial, human and technical resources for meaningful implementation by all bodies involved; ensure that the mechanism has at its disposal police officers of good character who are trained in human rights protection work

¹⁴⁸ *Ibid*, pp.10-11 at para. 43

¹⁴⁹ "No one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods and services." (*Ibid*, p. 6 at para. 22).

¹⁵⁰ "State parties are under an obligation to facilitate the right of everyone to take part in cultural life by taking a wide range of positive measures, including financial measures, that would contribute to the realisation of this right", including "[...] (d) Granting assistance, financial or other, to artists, public and private organisations, including science academies, cultural associations, trade unions and other individuals and institutions engaged in scientific and creative activities." (*Ibid*, p. 13 at para. 52)

- g. Take effective steps to improve the implementation of IACHR precautionary measures for journalists including by creating a judicial oversight mechanism
- h. Substantially increase financial, human and technical resources to the institutions responsible for promoting and protecting the rights of journalists, including CONADEH, the SS for HR, the SP for HR and the protection division of the Ministry of Security, so they can carry out their work effectively; ensure that they are in regular communication and co-ordinate their work; and implement an accountability mechanism to monitor progress and compliance with their mandates.
- i. Reform the procedure for electing the CONADEH Commissioner so that the final decision is taken by independent experts
- j. Allow the media and researchers, including the Violence Observatory, access to official sources and statistics, and ensure public access to clear accounts of public expenditure by sector
- k. Review the Law on Official Secrets and Classification of Information to ensure that it cannot be used to unlawfully restrict the right to freedom of expression, which includes the right to receive information
- l. Repeal the Special Law on Interception of Private Communications and ensure that that all current surveillance practices are reviewed to ensure that they meet international standards on the right to privacy and freedom of expression
- m. Decriminalise defamation and make it a civil offence
- n. Ensure no journalist, writer or other individual is discriminated against or harassed, including by the bringing of spurious charges, on account of their opinions
- o. Develop and implement a properly funded and non-discriminatory national policy to encourage training, production and research in culture and the arts in full consultation with all sectors of civil society
- p. Sign and ratify the Optional Protocol to the ICESCR
- q. Establish transparent procedures for the appointment, sanctioning, and removal of judges and judicial employees
- r. Accelerate the process of vetting police so that corruption at all levels is rooted out in a timely manner while respecting the rights of those involved
- s. Prohibit the deployment of military forces for law enforcement and domestic security purposes
- t. Facilitate as a matter of urgency the opening of a UN OHCHR office in Honduras with a full mandate