



Access Now and ACI PARTICIPA

Joint Submission to the United Nations Human Rights Council, on the Universal Periodic Review 2020 Third Cycle for Honduras

About Access Now and ACI PARTICIPA

1. Access Now (www.accessnow.org) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 14 countries around the world, including engagement with stakeholders and policymakers in Latin America, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights. We engage with an action focused global community, which convenes annually at the RightsCon Summit Series, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. ACI Participa is a nongovernmental human rights organization. Since 2003, ACI PARTICIPA, promotes respect, protection and investigation of human rights violations in Honduras. ACI Participa has a Unit for the Protection of Human Rights Defenders at risk and from there, carries out criminal investigation actions, documentation of cases of human rights violations and provide accompanies the implementation of protocols for self-care and institutional care. ACI Participa has contributed to strengthening the rule of law and access to justice by being an observer of precautionary measures granted by the IACHR and has set up an observatory on the Jurisprudence of the Court. Every year, ACI Participa, prepares an Annual report about the Situation of Human Rights Defenders in Honduras.

Introduction

3. The Universal Periodic Review (UPR) is an important United Nations (U.N.) process aimed at addressing human rights issues all across the globe. Access Now and ACI Participa welcome this opportunity to contribute to Honduras' third review cycle. This submission examines the following human rights priorities, particularly as they relate to the digital age:
 - Freedom of expression
 - Access to information, and
 - The right to privacy.
4. Honduras was last reviewed in May 2015. During its second UPR, Honduras received a 152 recommendations in the area of human rights, of which 140 recommendations were accepted and 12 noted.

International and domestic human rights obligations

5. Honduras has signed onto and ratified various international human rights treaties including: the International Covenant on Political and Civil Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹
6. Chapter 3 of the Constitution of Honduras provides for judicially enforceable fundamental rights. Of these, Article 72 of the Constitution of Honduras establishes a fundamental right to freedom of speech and expression and the right to information and right to know. Article 60 establishes the right to equality, and Article 65 provides for the right to life and Article 69 establishes the right to liberty. Article 76 establishes the right to privacy.

The state of digital rights in Honduras

7. In February 2018 the ruling party in Honduras introduced a controversial bill aimed at combating hatred and discrimination online, the “Law Regulating Hate and Discrimination Acts in Social Networks and Internet” (the bill). Despite its good intentions, the bill contains dangerous provisions that are at odds with basic standards of freedom of expression and due process. The bill is particularly concerning for provisions that could allow the government to silence dissent online.²
8. The bill forces companies running websites or applications that process user-generated content to censor information by order from a user or in some cases from a special committee. There are no court orders or right to defense required.
9. The bill also proposes harsh penalties for internet intermediaries that fail to comply with these excessive obligations. Penalties include fines, suspension and the blocking of websites and platforms. Blocking is an extreme and disproportionate measure that would punish thousands of law-abiding Honduran citizens for the misconduct of a few, while preventing journalists and bloggers from gathering and disseminating news. The blocking of entire websites and services is a censorship measure equivalent to the censorship of a newspaper or a TV station.
10. Finally, the bill provides for the creation of a cybersecurity committee, made up of government representatives, which would be responsible for the development of a cybersecurity strategy covering, among other issues, hate speech, fake news, and cybercrime in general. The mandate of the committee is confusing and excessively broad, and it does not allow for the kind of participatory process that is needed to shape public policy of this importance.
11. On May 10, the new Criminal Code of Honduras was published which included worrying articles regarding insult and slander conducted online. If the defined conduct is carried out using the internet, the penalty is increased. This is clearly disproportionate and can discourage public

¹ [Status of Ratification Interactive Dashboard Honduras](#) OHCHR

² [Honduras: new bill threatens to curb online speech](#), Access Now, 2018

debate on the Internet by establishing differentiated penalties based only on the means by which an offense is committed.³ Fortunately, after some objections of the press and civil society, the Congress decided to delete the articles regarding insult and slander conducted online and offline. These behaviors will be resolved in the civil jurisdiction.⁴

12. The Law on the protection of personal data is still pending following delays in voting by the Honduran Congress. The definition of personal data is not clear and includes confusing examples such as “the right to honor.” If these confusions are not properly addressed in the regulations, it could lead to cases of abuse of personal data legislation regarding the content and scope of rights. This may affect the right to free expression and access to information of users in general.⁵
13. The bill also institutes the so-called “right to be forgotten,” which also carries risks. In many implementations this right goes from being a request for de-indexing – which in itself presents serious questions – to outright content removal. This extension in the conceptualization and application of the right to be forgotten, runs the risk of violating the right to information of third parties and the public interest of citizens.
14. Moreover, the bill includes many broad and baseless exceptions, including for defense and security of the State, and to databases created and regulated by specific laws. It also makes exceptions to the principle of consent; to the rights of access, rectification, cancellation and opposition; and to the use of video surveillance. The most serious thing is that it includes exceptions to the application of principles and rights. With all those exceptions, the law would cease to be general and would become a law of specific application.
15. Honduras had its first Internet Governance Forum at the national level, unfortunately without the participation of organized civil society, which has been denouncing human rights violations before international organizations for several years.

The Right to Privacy

16. Honduras purchased telecommunications interception equipment worth at least £300,000 from the United Kingdom shortly prior to elections in 2018. Used by law enforcement agencies, this sophisticated spy technology can be used to intercept, monitor and track emails, mobile phones, and online messaging services such as WhatsApp.⁶
17. Reports indicate that the United States has sold investigative equipment to Honduras’s police at the cost of \$782,000, which includes a powerful digital forensic analysis system known as UFED used to extract and analyse data from digital devices developed by Israeli company Cellebrite, as

³ [Un minuto de reflexión sobre la libertad de expresión en Honduras](#), Conexihon, 2019

⁴ [Congreso elimina los artículos que violentaban libertad de expresión](#), La prensa, 2019

⁵ [Honduras necesita un debate urgente sobre datos personales y libertad de expresión](#), Access Now, 2019

⁶ [UK sold spyware to Honduras just before crackdown on election protesters](#), The Guardian, 2018

well as another \$150,000 on three more systems sold by Cellebrite.⁷

Recommendations

Honduras should improve its human rights record and treatment of digital rights in several areas. We accordingly recommend that the Honduran government:

18. Reject the “Law Regulating Hate and Discrimination Acts in Social Networks and Internet” and open future initiatives to public participation;
19. The Congress of Honduras should re-evaluate the data protection bill in order to correct its flaws. Specifically, Honduras should re-evaluate the mandate of the cybersecurity committee to clarify the role of committee and ensure that it allows a participatory process, including input from civil society and other relevant stakeholders, to shape the public policy;
20. Open future national Internet Governance Forums to other stakeholders, such as civil society;
21. Cease imports of invasive surveillance technology and abolish all security service practices related to the control of communications and the internet.
22. 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. Access Now and ACI Participa are grateful to make this submission.
23. For additional information, please contact Access Now General Counsel Peter Micek (peter@accessnow.org).
24. For additional information, please contact ACI Participa Managing Director Hedme Castro (direccion@aciparticipa.org).

⁷ [Here's the Surveillance the US Exports to Central America as Aid - And it's Surviving Trump's Cuts](#), Privacy International, 2019