



Report

Policy Dialogue

“The State of Freedom of Expression and Journalism in the Americas” Virtual Seminar

Friday, February 26, 2021

I. Background

In the framework of the follow-up and implementation of the Eighth Summit of the Americas (Lima, April 2018), and in preparation for the Ninth Summit, the Summits Secretariat, working in conjunction with the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS, convened a virtual forum to address the central link between freedom of thought and freedom of expression, considering their fundamental role in the consolidation and development of the democratic system, as well as in protecting and ensuring other human rights.

Freedom of expression has been present in the debates of the Heads of State and Government on various occasions in the Summits of the Americas process. At the Second Summit, the leaders of the Hemisphere recognized the fundamental role of the right to freedom of thought and expression and expressed their satisfaction with the creation of the Office of the Special Rapporteur. In the Declaration of Santiago, adopted in April 1998, the Heads of State and Government encouraged the creation of the position of Rapporteur for Freedom of Expression as a permanent, independent office that acts within the framework of the IACHR and with its support.

In turn, the “Lima Commitment: Democratic Governance against Corruption,” adopted at the Eighth Summit of the Americas, recognized “*protecting the work of journalists and persons who investigate corruption cases in a manner consistent with international obligations and commitments on human rights, including freedom of expression*” as one of the core pillars of democratic governance in the fight against corruption.

The Inter-American Democratic Charter, adopted in 2001 in the context of the Third Summit of the Americas and the primary instrument recognizing representative democracy as the only legitimate political system of government in the region, mentions (in Article 4) freedom of expression and of the press as essential components of the exercise of democracy.

This report draws on the discussions held during the Policy Dialogue in order to present a series of guidelines designed to help highlight concerns in this area based on current information, and to inspire new reflections to nurture the agenda ahead of the Ninth Summit of the Americas, scheduled to be held in 2022.

Main topics

Through testimonies from representatives of regional investigative journalists, a collective exchange was held that summarized progress, described the main obstacles and challenges currently

facing the right to freedom of expression, and outlined opportunities for action. It is worth recalling that for this purpose three questions were formulated for the discussion:

1. What challenges is journalism currently facing, how long before it becomes extinct, how close is it to being seized and what horizons does the press have?
2. What censorship mechanisms persist without being resolved; what mechanisms have become more sophisticated?
3. Lately much attention has been paid to the issue of content moderation on the internet. What does it mean for journalism and what should be the role of the states? Is it possible to think of international regulation on content moderation? What implications does it present for democratic debate in the region?

II. Main recommendations to the Summits process

- 1. Despite the significant development in the area of inter-American legal standards on freedom of expression in recent decades, challenges to the work of journalists in the region persist.**

The situations presented by expert journalists drew attention to a persistent context of stigmatization of the press by the authorities and the persistence of different forms of threats and persecution.

According to journalists' testimonies, there is evidence of a normalization of prior censorship and of public identification of individual journalists by high-level authorities, which repeatedly lead to their exile. It was repeatedly mentioned how challenges to freedom of expression are accompanied by attacks on the press and of persecution and intimidation of journalists or media outlets as a consequence of adopting a critical editorial line or questioning official information.

Challenges to freedom of expression are generally accompanied by attacks against the press, persecution and robbery, customs blockades of newspapers, exile, confiscation of offices, criminalization of journalism, legal action for libel or slander, and even arbitrary imprisonment by the authorities.

The IACHR report "Corruption and human rights"¹ recognized that the charges of defamation,¹ libel, slander, and contempt have been the most widely used in the region to prosecute journalists and whistleblowers who investigate acts of corruption. The IACHR emphasizes that the use of criminal law generates self-censorship and a muzzling effect on the dissemination of ideas and information of public interest.

1. "*Corruption and COVID-19*," Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS) /Ser.L/V/II. Doc. 23, 6 December 2019.

In the discussion, reference was made to the broad use of the vague concept of national security relied upon in many cases to limit the flow of information and justify persecution of journalists and media outlets.

Likewise, an often-repeated prevalent theme in the region was the constant fear associated with the practice of journalism.

2. Amid emergency measures to control the COVID-19 pandemic, there have been restrictions on the exercise of the right to freedom of expression and access to information

Testimonies mentioned restrictions on the free flow of information about the management of the pandemic or the holding of virtual press conferences to avoid awkward questions, preventing open public debate on relevant data regarding public health responses, information regarding management or irregularities in the use of resources that are critical to society.

Cases presented described tendencies to restrict journalists asking questions about the pandemic, and in some cases even resorting to *cyber-policing* measures, with consequences for citizens' access to information about health as a public good.

In that regard, it is important to mention the joint statement issued in 2020 by the monitors for freedom of expression and freedom of the media for the United Nations, the Inter-American Commission on Human Rights, and the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe entitled: “COVID-19: Governments must promote and protect access to and free flow of information during the pandemic – International experts.”²

3. New forms of collaborative journalism as a form of resistance

Despite the constant assaults to which regional media organizations are subjected, which leads to self-censorship as a protection mechanism, regional journalists remain committed to generating information and using regional journalism as a space to mobilize resistance to authoritarianism.

Journalists mentioned that, despite uncertainty about the future of journalism, the press resists and survives and that collaborative journalism was much in evidence. Journalists agreed that the practitioners of their profession were resilient, even in adversity.

4. With regard to the adverse effects of corruption, special attention was drawn to the different levels of impact on freedom of expression in the Americas and on the enjoyment and exercise of economic, social, cultural, and environmental rights (ESCER) in the region

2. “COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts.” Press Release R58/20, Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS). Available at: <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=1170&IID=1>

As mentioned by the IACHR in its above-mentioned report “*Corruption and Human Rights*,” corruption has negative effects on the exercise of freedom of expression, as those involved in illicit schemes rely on secrecy to keep their unlawful activities from public scrutiny. It is therefore a right that is uncomfortable for those who oversee or are involved in corruption and generally undermined by them.³

Going to its key role in democratic societies, freedom of expression is linked to political rights, freedom of the press, freedom of conscience and the enjoyment and exercise of economic, social, cultural, and environmental rights.

Corruption has especially negative effects on people living in poverty because their vulnerability or historical discrimination means that their suffering as a result of the phenomenon is aggravated.

5. Challenges posed to the exercise of freedom of expression by digital technologies

In the discussions, the need was noted to give attention to new technologies and digital spaces in promoting freedom of expression; this, in relation to the dilemmas presented by content moderation and its compatibility with democratic standards and human rights.

As the Office of the Special Rapporteur for Freedom of Expression (RELE) has noted in its reports, access to and use of the Internet is hindered by ambiguously worded legal provisions, limited connectivity, the blocking and censorship of critical media outlets, and online surveillance.

Therefore, in order to promote a multisectoral dialogue on the challenges posed by digital technologies for the quality of public debate, since September 2021, the Office of the Special Rapporteur has been promoting its “Initiative of the Americas Dialogue on Freedom of Expression on the Internet”, since September 2021, the RELE has been promoting the initiative “*Dialogue of the Americas on Freedom of Expression on the Internet*,” including convening a working group comprising representatives of States, civil society, regulators, and technology platforms.⁴

6. The dilemma of compatibility of business models and media concentration with democratic standards and human rights

Mention was made of the crisis of business sustainability, the costs of investigative journalism, and dependence on official advertising, the consequences of which are twofold: job insecurity and the lack of specialization in response to the speed that the media must have.

3. “*Corruption and COVID-19*,” Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS) /Ser.L/V/II. Doc. 23, 6 December 2019.

4. “*Dialogue of the Americas on Freedom of Expression on the Internet*”, Press Release R244/21, Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS). Available at: <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=1211&IID=1>.

References were made to media concentration, which undermines plurality and diversity in public debate. In addition to the above, the business model requires users to pay for access to information and technology, and the media to charge for content, which hampers the free flow of information.

7. The Ninth Summit of the Americas should be an opportunity to ratify the intersection of freedom of expression with the values of democracy and human rights

The purpose of the discussion was to reiterate the call to key figures in the democratic debate to emphasize the importance of the role of the press and the media in that debate, and the role of leaders in generating an environment conducive to the exercise of freedom of expression.

In light of the obstacles and challenges outlined above, it is necessary to reiterate the duty of States to create the legal and formal conditions for media organizations to exercise of freedom of expression freely and safely, as well as to ensure that actual conditions are conducive to that end.

The Policy Dialogue was convened by the Summits Secretariat, in its capacity as Technical Secretariat of the Summits of the Americas Process, and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS).

The discussion was moderated by Pedro José Vaca Villarreal, Special Rapporteur for Freedom of Expression of the IACHR/OAS. The panelists were: Agustina Del Campo, Director of the Center for Studies on Freedom of Expression and Access to Information (CELE) of Universidad de Palermo, Argentina; Mónica Baró, a Cuban freelance journalist; Carlos Fernando Chamorro, an independent investigative journalist from Nicaragua, and Luz Mely Reyes, an independent Venezuelan journalist.

The opening was attended by: Jon Piechowski, Deputy Assistant Secretary of State for Public Diplomacy from the United States; Ambassador Mr. James Lambert, OAS Secretary for Hemispheric Affairs; and María Celina Conte, Director, Summits Secretariat.

Key documents

- *“Lima Commitment: Democratic Governance against Corruption,”* Eighth Summit of the Americas. CA-VIII/doc.1/18rev.1 April 13 and 14, 2018. Available at http://www.summit-americas.org/LIMA_COMMITMENT/LimaCommitment_en.pdf.
- *“Corruption and COVID-19,”* Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS) /Ser.L/V/II. Doc.236, 6 December 2019. Available at <https://www.oas.org/en/iachr/reports/pdfs/CorruptionHR.pdf>
- *Joint Statement of the international rapporteurs.* Available at <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=1170&IID=1>.

- *“COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts.” Press Release R58/20.* Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS). Available at <https://www.oas.org/n/iachr/expression/showarticle.asp?artID=1170&IID=1>