Social Trends Analysis for Select Countries in Latin America and the Caribbean

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by

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Executive Summary

This report examines the implementation of international and regional human rights standards specific to 1) women's rights and gender equality, including with respect to participation; 2) indigenous and Afro-descendant people's rights; and 3) stakeholder engagement, particularly freedoms of expression, assembly and association, and information and protection from reprisals in five illustrative countries in the Americas – Brazil, Colombia, Haiti, Honduras, and Mexico. The International Human Rights Clinic at the University of Wyoming College of Law has identified significant social trends and challenges to supplement the baseline analysis provided by the "Trend Analysis of Social Safeguards Progress in Latin American and Caribbean Countries" ("Social Trend Analysis") commissioned by the Inter-American Development Bank ("IDB") to support the drafting of its revised Environmental and Social Policy Framework ("ESPF").

The survey of the five illustrative countries demonstrates that government respect for and enforcement of human rights in the region remain static at best and have worsened in a few notable regards. The research indicates that governments generally lack commitment to the protection of women's rights, indigenous rights, and stakeholder engagement.

Women's rights are of particular concern. While Latin America leads the world in its share of parliamentary seats held by women, high rates of femicide and impunity for violence against women plague the region. Brazil, Colombia, Honduras and Mexico have some of the highest rates of femicide in the world, yet national laws established to prevent gender-based violence have floundered.

Despite improvements in national legislation in countries such as Mexico and Brazil in defense of indigenous and Afro-descendant people's rights, international and regional standards are unevenly enforced. Notably, indigenous people in Brazil, Honduras, Mexico, and Colombia who exercise their rights suffer disproportionately from violent reprisals and lack adequate access to protection and remedy.

Stakeholder engagement is generally respected in the formal law of the examined countries. Mexico, for example, has demonstrated a commitment to increasing access to information, but lacks the infrastructure and resources to implement its protective legal framework. Throughout the region, the expression of opinions contrary to the government is frequently met with censure. As President Bolsonaro's government takes hold in Brazil, protests are increasingly subject to government repression and police brutality. Human rights defenders in Colombia and Honduras are targeted for violent reprisals. Throughout Mexico and Haiti, journalists reporting on government misdeeds are murdered with near-complete impunity.

This report posits that neither the existence of positive law protecting human rights nor a government's own estimation of its respect for human rights are reliable indicators of the quality of rights enjoyed by the citizens of any country. The University of Wyoming International Human Rights Clinic urges the IDB to consider the actual implementation of international and regional human rights law and standards within the context of each borrowing country as it revises and improves its safeguard policies.

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INTRODUCTION

In order to inform the Inter-American Development Bank's revision of its safeguard policies, the International Human Rights Clinic at the University of Wyoming has prepared this analysis of adherence to relevant international and regional human rights standards in selected IDB member countries. This study, which is intended to be illustrative, supplements the baseline analysis provided by the "Trend Analysis of Social Safeguards Progress in Latin American and Caribbean Countries" (Social Trends Analysis) commissioned by the IDB to support the drafting of the Environmental and Social Policy Framework (ESPF).[1] It aims to provide operationally relevant insights into social trends and challenges in the region and fill out the picture of the context in which the ESPF will be implemented.

The Social Trend Analysis, carried out in two phases, focused primarily on the presence of formal treaty commitments, laws, regulations or policies in IDB's member countries and provided little information on actual implementation. In a series of charts comparing the existence of relevant legislation in the various countries, the paper includes trend lines from those countries with the least formal legal commitment to those with the most, suggesting that the regional trend is positive because some countries have adopted more formal safeguards than others. The paper concludes "that the countries of Latin America and the Caribbean have made progress in developing [relevant] legislation or regulations."[2] But even this limited examination

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[1] Social Capital Group, *Trend Analysis of Safeguards Progress in Latin American and Caribbean Countries* (March 2019) [*hereinafter* "Social Trend Analysis"] (available as Annex 3 of Inter-American Development Bank, *Technical Document: Alternatives for Addressing Gaps Based on Results of the Benchmarking Study and Survey* (2019) at http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-353650846-20) (accessed on April 16, 2020)

[2] Social Trend Analysis, Phase 1, at 26.

concedes that "[a]doption or ratification of international standards . . . has not been sufficient to ensure optimal standards and conditions for their citizens."[3] The report also cautions that it focuses on "adoption of social policies" without "an in-depth view of how they are implemented or their impact in the countries" and does "not presume to evaluate effectiveness."[4] The authors emphasized "the preliminary nature of the study and its findings," noting "the limited time and resources" available to conduct it.[5]

This study, although also completed with limited time and resources, aims to supplement the Social Trend Analysis by assessing the actual implementation of international and regional human rights standards relevant to the subject matter of IDB safeguard policies and the context in which these policies are implemented.

To keep the scope manageable, the study focuses on the following issues, which are part of the IDB's existing suite of safeguard policies and components of the draft ESPF:

1) Women's rights and gender equality, including with respect to participation;
2) Indigenous and Afro-descendant people's rights; and
3) Stakeholder engagement, particularly freedoms of expression, assembly and association, and information and protection from reprisals

Woven through all of these issues is a concern with access to remedy. Even with this limitation of issues, it was not feasible with the time and resources available to survey all 26 of IDB's borrowing members. In selecting a sample of countries to analyze, several factors were considered, including i) level of IDB involvement; ii) volume, relevance and rigor of information and analysis from UN and regional human rights systems; iii) diversity of development level;

[3] *Id*.
[4] *Id*. at 13.
[5] Social Trend Analysis, Phase 2, at 18.

and iv) diversity of geography. These factors led to the selection of Brazil, Colombia, Haiti, Honduras, and Mexico as the study's subjects.

As will be evident from the analysis, these countries vary in the levels of their formal adoption of laws and regulations to protect human rights, but a common theme is that formal adoption and actual, effective implementation are two very different things. Each of the countries studied faces serious gaps in protection of human rights in some if not all of the areas analyzed.

WOMEN'S RIGHTS

The existence of positive law, or the quantity of positive law, is not always an indicator of the quality of rights enjoyed by the citizens of any country. Laws and treaties equate to rights in theory, but not necessarily in implementation. This reality is evident from our research within Latin America, and specifically in Brazil, Colombia, Haiti, Honduras and Mexico.

No country in the world has achieved gender equality.[6] In recognition of this fact, the United Nations convened the World Conference on Women in Beijing in 1995. The theme of the conference was titled: Action for Equality, Development and Peace. Member states agreed to an ambitious plan to achieve gender equality by the year 2030. The plan became known as the Beijing Declaration and Platform for Action. Recently, the United Nations Development Programme released its 2020 gender inequality index and found the goals of the Beijing Declaration will not be achieved by 2030: "The world is not on track to achieve gender equality by 2030. The Human Development Report's Gender Inequality Index (GII)—a measure of women's empowerment in health, education and economic status—shows that overall progress in gender inequality has been slowing in recent years."[7]

In 2020, fewer women served as heads of state compared to five years ago.[8] Around the globe, there are "only 10 women in such positions among 193 countries (down from 15 in 2014)."[9] The GII predicts that women will not achieve parity in economic opportunity until the

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[6] Pedro Conceição, et al., *Tackling Social Norms, A Game Changer for Gender Inequalities* (UN Human Development Program, 2020) ¶ 1. Available at: http://hdr.undp.org/sites/default/files/hd_perspectives_gsni.pdf (accessed on 4/14/20)
[7] *Id.* at 1.
[8] *Id.*
[9] *Id.*

year 2277.[10] When women are significantly disadvantaged economically, society as a whole is adversely affected. It is a symptom of lack of access to education, leading to lack of quality employment opportunities, resulting in large wage gaps between genders, ultimately perpetuating the cycle of poverty. Denying women reproductive rights, which many regimes in Latin America do, further compounds the effects of poverty.

Of the five countries studied, all have international, regional, and national obligations and laws to protect women from discrimination and bodily harm. Regionally, Latin America and the Caribbean have a GII that ranks below Europe and Eastern Asia, but above South Asia, Arab States, and Sub-Saharan Africa. A firm belief in traditional gender roles remains particularly pronounced in some countries within Latin America, obstructing progress toward equality.

Latin America has the highest share of seats in parliament held by women of any region in the world, at 31 percent. Conversely, women throughout many regions of Latin America and the Caribbean face danger to their physical integrity, as femicide rates are the highest in the world. Of the twenty-five countries in the world with the highest rates of femicide, fourteen of those countries are in Latin America, including Honduras, Colombia, Brazil, and Mexico.[11] Furthermore, women seeking to assert their rights often faced threats of reprisal. Across the board, women seldom find access to remedy when their rights are violated.

To more effectively examine the paradox between relatively high rates of female political representation and high rates of femicide, the underlying laws must be considered. First, all five

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[10] *Id.*
[11] *Femicide and International Women's Rights, An epidemic of violence in Latin America.* Global Americans. Available at: https://theglobalamericans.org/reports/femicide-international-womens-rights/(accessed on 4/8/20)

countries that are the subjects of this study have a constitutionally based quota system ostensibly to ensure female representation in government positions.

As of February 2019, Mexico ranked fourth out of 193 countries for female members of parliament.[12] All political parties are required to run a minimum of 40 percent female candidates, and compliance is strictly enforced. The result has been a success, in that 48 percent of the members of parliament are female.

Honduras has the same requirement of 40 percent female candidates, yet only 21 percent of members of parliament are female and it ranks 94th in the world. When this quota is violated, the political party is charged a fine of 5 percent of the total state funding.

Colombia, Brazil and Haiti each have a 30 percent female candidate requirement. Colombia has achieved 18 percent female representation, ranking 113th in the world. Non-compliance is simply not allowed. On the other hand, Haiti has only 2.5 percent female representation ranking 186th, and there is no legal sanction for non-compliance. Brazil has achieved 15 percent female representation, ranking 133rd. As in Colombia, non-compliance is not allowed, and the political party is forced to correct the error. Yet Brazil trails its neighbors and lags its Latin American counterparts. It is suspected that political parties put women on the ballot but funnel public funding to male candidates. Female candidates are forced into impossible races that are under- supported or they are run as puppet candidates. In some instances, female candidates were not aware their names were on the ballot.[13]

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[12] World Classification, Women in Parliaments. Available at: http://archive.ipu.org/wmn-e/classif.htm (accessed on 4/8/20)

[13] Shasta Darlington, *Was Money to Help Women in Brazil's Politics Funneled to Men?* New York Times. 4/12/19. Available at: https://www.nytimes.com/2019/04/12/world/americas/brazil-women-candidates-money.html (accessed on 4/8/20)

Regarding femicide, all five countries under review have regional obligations and national laws to protect women and punish femicide.[14] While the implementation of quota systems is mixed, femicide laws generally have floundered: "Laws and practices to convict perpetrators of femicide are still extremely weak in Latin America and the patriarchal system of inequality and social exclusion remains high in areas of high concentration of poverty and in conflict zones."[15] For example, in Mexico, just 1.6 percent of femicides resulted in convictions.[16]

On average from 2007 to 2012, femicides were highest in Honduras (considered very high at greater that six per 100,000 women), followed by Colombia, Brazil, Mexico (all consider high at 3-6 per 100,000), with Haiti much further behind and not ranked in the 25 worst. In response to these alarming trends, each country has adopted measures to address the problem. For example, Honduras enacted a 2013 law imposing a penalty of 30 to 40 years imprisonment.[17] Rates of femicide have lessened over the past few years, but 95 percent of the country's femicides are still unpunished.[18]

Colombia enacted a 2015 law, named for a victim of femicide, Rosa Elvira Cely, that established a penalty of 20 to 50 years imprisonment. From January 2018 to February 2019,

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[14] *Global Study on Homicide 2019: Gender-related killing of women and girls.* United Nations Office on Drugs and Crime. Annex: p. 57-59. Available at: https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf (accessed on 4/8/20)
[15] *Femicide and International Women's Rights, An epidemic of violence in Latin America.* Global Americans. Available at: https://theglobalamericans.org/reports/femicide-international-womens-rights/ (accessed on 4/8/20)
[16] *Id.*
[17] *Femicide: Crime and Punishment in Latin America and the Caribbean*, Global Americans. Available at: https://theglobalamericans.org/wp-content/uploads/2017/07/female-homicide-table.png (accessed on 4/8/20)
[18] *Honduras: 30 Femicides in January with 95% Impunity*, Telesurtv.net. 2/4/19. Available at: https://www.telesurenglish.net/news/Honduras-30-Femicides-in-January-with-95-Impunity-Rate-20190204-0015.html (accessed on 4/8/20)

1,080 women were murdered, 12 more than in the year before. Despite the new law, impunity remains high, estimated at up to 80 percent.[19]

Brazil enacted a 2015 law, also named for a victim of femicide, Maria de Penha, that sets a penalty of 12 to 30 years imprisonment. Yet 2017 saw the highest number of femicides in Brazil's history: 4,936.[20]

Mexico adopted a law in 2012 imposing a penalty of 20 to 60 years imprisonment. Yet rates of femicide from 2015 to June 2019 were up, nearly doubling in just three years.[21]

In sum, corrective laws, when properly enforced, can produce some measure of success, as seen with female representation. On the other hand, laws that are underfunded and poorly implemented, such as those addressing femicide, have little or no impact. In many instances, femicides have increased.

WOMEN'S RIGHTS IN BRAZIL

Statement of Positive Law and Treaties

Brazil has ratified all international treaties relevant to women's rights, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Brazil also is a party to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará). At the national level, the Brazilian Constitution proclaims that "[e]veryone is equal before the law, with no distinction whatsoever . . . men and women have equal rights and duties under the terms of this Constitution."[22] In

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[19] Emily Hart, *Women's Day 2019 in Colombia - Flowers and violence*, Colombia Reports. 3/8/19. Available at: https://colombiareports.com/womens-day-2019-in-colombia-flowers-and-violence/ (accessed on 4/8/20)
[20] *These are the numbers of femicides in Latin America*, LatinAmerican Post. 8/24/19. Available at: https://latinamericanpost.com/29792-these-are-the-numbers-of-feminicides-in-latin-america (accessed on 4/8/20)
[21] *Id.*
[22] Constitution of Brazil, Article V. Available at: https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en (accessed on 4/8/20)

response to an alarming trend of gender-motivated violence, Brazil, along with about 15 other countries in Latin America, has introduced laws against femicide in recent years. But other women's rights have been rolled back under the current administration:

> Following the 2016 removal of Brazil's first woman president in what many refer to as a coup, women's rights have come under fire. The new administration … seeks to eliminate a woman's right to choose by criminalizing abortion in all circumstances … restrict sex education and contraceptive access, criminalize LGBTQI people, and limit women's access to basic health care.[23]

Implementation of Women's Rights in Brazil

Women's rights, from safety to participation in society, are under attack in Brazil. The Bolsonaro Administration has fueled hatred against women, affecting women in all strata of society. Women's organizations are being dismantled, while femicide is on the rise.[24] In a February 2019 statement, the IACHR warned that "[femicides] are not an isolated problem and are symptomatic of a pattern of gender violence against women that affects the entire country, the result of sexist values deeply rooted in Brazilian society."[25] The definition of femicide under Brazilian law is "the killing of a woman on account of being a person of the female sex."[26] Femicides are the end-product of culturally engrained, pervasive violence: "Unchecked domestic abuse typically escalates and may lead to death. In 2017, . . . police registered 1,133 [deaths] as

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[23] *Growing "Popular Feminism" in Brazil, Despite Conservative Crackdown*, Global Fund for Women. Available at: https://www.globalfundforwomen.org/sos-corpo/ (accessed on 4/8/20)
[24] Raphael Tsavkko Garcia, *Women Under Siege*, Women's Media Center. 2/24/19. Available at: https://www.womensmediacenter.com/women-under-siege/bolsonaros-new-gun-law-could-put-brazils-women-in-the-line-of-fire (accessed on 4/8/20)
[25] *IACHR Expresses Deep Concern over Alarming Prevalence of Gender-based Killings of Women in Brazil,* Inter-American Commission on Human Rights. 2/4/19. Available at: https://www.oas.org/en/iachr/media_center/PReleases/2019/024.asp (accessed on 4/8/20)
[26] *World Report 2019*: *Brazil*, Human Rights Watch. Available at: https://www.hrw.org/world-report/2019/country-chapters/brazil (accessed on 4/8/20)

femicides . . . The real number is likely higher, as police do not record as femicides killings for which the motives are initially unclear."[27]

Basic safety of women, or lack thereof, is an indicator of system-wide deficiencies. In a society where simply being born female may lead to death, loftier goals of equality and participation seem purely aspirational.

Gender Equality

As noted earlier, the Constitution declares women and men equal, at least on paper: "This notion, however, clashes with the realities of daily life - only women know what it feels like to be paid less for equal work or to fear harassment in the streets."[28]

In its 2007 review, the CEDAW Committee stated that it is "concerned that the rate of maternal mortality remains high, indicating precarious socio-economic conditions, low levels of information and education, family dynamics associated with domestic violence and particularly difficult access to quality health services."[29] In 2011, the CEDAW Committee considered the specific case of an Afro-Brazilian woman who died in childbirth.[30] The Committee referred to its 2007 report in which "it noted the existence of de facto discrimination against women, especially women from the most vulnerable sectors of society such as women of African descent."[31] It concluded "that Ms. da Silva Pimentel Teixeira was discriminated against, not only on the basis of her sex, but also on the basis of her status as a woman of African descent and her socio-

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[27] *Id.*
[28] Paula Tavares, *How Does Brazilian Law See Women?* World Bank. 3/20/17. Available at: http://blogs.worldbank.org/latinamerica/how-does-brazilian-law-see-women (accessed on 4/8/20)
[29] *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Brazil*, UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW/C/BRA/CO/6. 8/10/07. Available at: https://www.refworld.org/docid/46d281010.html (accessed on 4/8/20)
[30] *In re Alyne da Silva Pimentel Teixeira*, Communication No. 17/2008, CEDAW/C/49/D/17/2008 (Sept. 27, 2011).
[31] *Id.* at ¶ 7.7.

economic background."[32]Addressing the claim by the complainant (the deceased woman's mother) that she had been denied access to a remedy by Brazil, the Committee concluded that "the State party failed to comply with its obligation to ensure effective judicial action and protection."[33]

Women's equality in Brazil is diminished across the board. The CEDAW Committee stated in its last review that it is "concerned about the scope of inequality and poverty of rural women, as reflected in their relatively high illiteracy rates, lower school enrollment, poor access to health care, including sexual and reproductive health, and vulnerability to violence."[34] If anything, the Bolsonaro Administration seems focused on reducing protection for human rights, including women's rights. Among a raft of proposed constitutional and legal changes are efforts to "impose a full ban on abortion, violating the sexual and reproductive rights of women and girls[.]"[35] The full ban on abortion would eliminate exceptions, even for rape. Very few countries in the world have taken such drastic measures, but those that have maintain a poor human rights record, including Iraq, Egypt, and Philippines.[36]

Participation

Political participation by women is lower than that of men in Brazil. Seeking to cure this ill, the government passed legislation more than 10 years ago to ensure female representation,

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[32] *Id.*
[33] *Id*. at ¶ 7.8.
[34] *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Brazil*, UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW/C/BRA/CO/6. 8/10/07. Available at: https://www.refworld.org/docid/46d281010.html (accessed on 4/8/20)
[35] *Brazil 2019*, Amnesty International. Available at: https://www.amnesty.org/en/countries/americas/brazil/report-brazil/ (accessed on 4/8/20)
[36] *The World's Abortion Laws,* Center for Reproductive Rights. Available at: https://reproductiverights.org/worldabortionlaws?category[294]=294 (accessed on 4/8/20)

requiring that political parties allocate 30 percent of candidate slots to women. But this law has had little effect, with the proportion of female legislators barely rising.[37]

Women running for office received tax-payer money to fund their campaigns, but now some parties are being investigated for installing puppet candidates: "Parties often ran female candidates — as required — but gave them little or no resources. In some cases, the women were surprised to learn they were on the ballot."[38] Charges have not been filed against any political party for participation in the kick-back scheme. The earmarked taxpayer money ultimately went to financing male candidates. [39] Brazil trails behind its neighbors in terms of female participation. According to the World Bank: "Women now occupy 13.6 percent of Senate seats. These figures are significantly below the Latin America and Caribbean average of 26 percent of female members of parliament."[40]

Threats of Reprisal

Gender-based violence runs rampant in Brazil, and heightened risks exist for minority women, female leaders, and protectors of rights. According to Human Rights Watch, reprisals take the form of: "violence against women, killings of journalists and bloggers because of their work, and violence against rural activists and indigenous people involved in conflicts over land."[41] The domestic realm continues to be dangerous, according to IACHR president and

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[37] Shasta Darlington, *Was Money to Help Women in Brazil's Politics Funneled to Men?* New York Times. 4/12/19. Available at: https://www.nytimes.com/2019/04/12/world/americas/brazil-women-candidates-money.html (accessed on 4/8/20)
[38] *Id.*
[39] *Id.*
[40] Mariana K. Ceratti, *What Does It Mean to Be a Woman in Brazil? The Answer Will Surprise You.* World Bank. 3/8/17. Available at: https://www.worldbank.org/en/news/feature/2017/03/08/ser-mujer-brasil (accessed on 4/8/20)
[41] *World Report: Brazil*, Human Rights Watch. Available at: https://www.hrw.org/americas/brazil (accessed on 4/8/20)

rapporteur for women's rights Margarette May: "In Brazil, women who denounce their husbands for abuse are killed and politicians who denounce corruption end up dead ... Anybody who is a whistle-blower is vulnerable."[42] In early 2019, IACHR raised concerns over the "alarming prevalence of gender-based killings of women in Brazil," noting "that in most cases, the murdered women had previously denounced their aggressors, faced serious acts of domestic violence, or suffered previous attacks or attempted homicides."[43]

Access to Remedy

The Brazilian Constitution guarantees any citizen who is wronged "the right of reply . . . in proportion to the offense, as well as compensation for pecuniary or moral damages or damages to reputation."[44] Extending this philosophy to the area of women's rights, there is now a mandatory sentence for femicide with a maximum sentence of 30 years.[45] Yet, many gender-based crimes go unreported, as women lack basic trust in the authorities.[46] Additionally, access to protection is problematic: "Brazil has 497 police stations and units within police stations that specialize in crimes against women. That's one for every 210,000 women. But most close in the evening and on weekends, when domestic violence is most likely to occur."[47] Human Rights

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[42] Shasta Darlington, *Was Money to Help Women in Brazil's Politics Funneled to Men?* New York Times. 4/12/19. Available at: https://www.nytimes.com/2019/04/12/world/americas/brazil-women-candidates-money.html (accessed on 4/8/20)
[43] *IACHR Expresses Deep Concern over Alarming Prevalence of Gender-based Killings of Women in Brazil,* Inter-American Commission on Human Rights. 2/4/19. Available at: https://www.oas.org/en/iachr/media_center/PReleases/2019/024.asp (accessed on 4/8/20)
[44] Constitution of Brazil, Title II: Fundamental Rights and Guarantees, Chapter I: Individual Rights and Duties, General Guarantee of Equality, Article 5, Section V. Available at: https://www.constituteproject.org/constitution/Brazil_2014.pdf (accessed on 4/8/20)
[45] *Brazil: Four Women Killed Every Day in 2019, Human Rights Body Says,* The Guardian. 2/4/19. Available at: https://www.theguardian.com/world/2019/feb/04/brazil-women-killed-2019-rate-alarming-iachr (accessed on 4/8/20)
[46] César Muñoz, *Trail of Broken Promises to Brazil's Women*, Human Rights Watch. 8/16/18. Available at: https://www.hrw.org/news/2018/08/16/trail-broken-promises-brazils-women (accessed on 4/8/20)
[47] *Id.*

Watch notes: "Even when women do report violence, data . . . shows police don't properly investigate thousands of cases a year."[48]

The federal government, while purporting to execute laws to protect women, is making the situation worse by cutting funding to programs assisting women, thus perpetuating the cycle of violence. [49] Women awaiting justice in a court of law are forced to rely on the state for assistance but find little reprieve: "With a population of more than 200 million, Brazil has only 74 shelters for victims of domestic violence."[50] A promise by the government to build additional safe houses, five years on, yielded but three.[51]

In the case of *Maria da Penha v. Brazil* in 2001, the Inter-American Court of Human Rights held that the Brazilian government had violated its duties under the Convention of Belém do Pará with respect to violence against women. The Court stated Brazil was negligent in the processing of domestic violence cases, that the state had failed in its reforms, and that the police and judiciary were ineffective.[52] The Court also recommend that Brazil take steps to correct the indifference and negligent delay in the prosecution of domestic violence cases at a domestic level, and to prevent such abuses in the future.[53] Since this recommendation 19 years ago, and even before the advent of the Bolsonaro Administration, Brazil has struggled to make improvements. Human Rights Watch reported: "At the end of 2017, more than 1.2 million cases

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[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Maria da Penha Maia Fernandes* (Brazil), Case 12.051, Report No. 54/01. Inter-American Commission on Human Rights. Available at: https://www.cidh.oas.org/annualrep/2008eng/Chap3.g.eng.htm (accessed on 4/8/20)
[53] *Id.*

of domestic violence were pending before the courts . . . with the result that they are never prosecuted."[54]

WOMEN'S RIGHTS IN COLOMBIA

Statement of Positive Law and Treaties

Colombia has ratified all international human rights treaties, including the CEDAW. It also has ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. At a national level, Colombia has adopted policies and enacted regulations to improve the rights of women. A few examples are the "Plan to Assure Women have a Life Free of Violence," approved in 2012; the 2011 Victims and Restitution of Land Law (with important provisions on gender equality); 2008's Law 1257 "Whereby regulations are issued to raise awareness, prevent and punish forms of violence and discrimination against women"; and 2014's Law 1719 by which measures were set in place to guarantee access to justice to victims of sexual violence.[55]

Implementation of Women's Rights in Colombia

Although the Social Trend Analysis found formal commitments and law in Colombia to be well developed, actual protection of women's rights is more aspirational than effective: "Several laws have been enacted to prevent and punish violence against women, like Law 1257 in 2008. Nevertheless, the figures remain alarming."[56] Colombian women face challenges from basic safety to equality and inclusion. Those risks are heightened in Indigenous and Afro-

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[54] *World Report 2019: Brazil*, Human Rights Watch. Available at: https://www.hrw.org/world-report/2019/country-chapters/brazil (accessed on 4/8/20)
[55] *Status of Women's Rights in Colombia*, UN Women. Available at: https://lac.unwomen.org/en/donde-estamos/colombia (accessed on 4/8/20)
[56] *Id.*

descendant communities.[57] Women and groups promoting women's rights face threats of reprisal. Women also face difficulty in accessing justice, as cases are rarely litigated and those responsible are rarely held accountable.

The Inter-American Commission on Human Rights has "[c]onsistently expressed grave concern over the suffering that Colombian women endure because of the heightened violence and discrimination that the armed conflict has caused[.]"[58] The Commission makes clear, however, that the plight of women cannot be blamed solely on political instability, that violence against women is a "permanent fixture" in society.[59] Similarly, the UN Commission on Women recently stated that Colombia has been unsuccessful in implementing international and domestic measures to protect women, including femicide, and equally unsuccessful in "ensuring that the principle of due diligence effectively guides prevention and actions."[60]

The CEDAW Committee has noted that while women's rights throughout Colombia remain fledgling, dangers are heightened in areas of conflict: "The impact of arms on women is substantially higher because they are often used to commit sexual and gender-based violence, in particular femicides. As long as there are other armed actors, as long as arms continue to be circulated, women will continue to experience violence in both urban and rural areas."[61]

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[57] *Id.*
[58] *Truth, Justice, and Reparation,* Organization of American States, Inter-American Commission on Human Rights - Country Report of Colombia. P. 347, ¶ 1. 12/31/13. Available at: http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf (accessed on 4/8/20)
[59] *Id.* at 352.
[60] *Evaluation of the application of the Femicide Risk Assessment Protocol (2014-2017),* UN Commission on Women. Available at: https://colombia.unwomen.org/es/biblioteca/publicaciones/2019/11/evaluacion-aplicacion-protocolo-riesgo-feminicida (accessed on 4/8/20)
[61] *Recommendations on Women, Peace and Security for the Universal Periodic Review (UPR) of Colombia, 2017.* OHCHR, CEDAW. P. 2. Available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COL/INT_CEDAW_ICO_COL_31732_E.pdf (accessed on 4/8/20)

Gender Equality

Gender inequities are the norm in Colombia. Statistics show that significant gaps persist: "Women's participation in the job market is 20 percent lower than men's, despite their having greater levels of higher education, while the salary gap is 18.7 percent. In addition, women dedicate twice the amount of time to unpaid work."[62]

Colombia received hundreds of recommendations in the 2018 Universal Periodic Review process and accepted the majority. Gender equality recommendations constituted 22 percent of those.[63] For example, Colombia accepted a suggestion from Lebanon to "Continue efforts to achieve equality"[64] and one from Uruguay recommended to "Redouble efforts to ensure in practice, progress towards gender equality as enshrined in legislation."[65] The practical benefit of international recognition of the adversity facing Colombian women remains unclear.

Participation

In February 2020, the UN High Commissioner for Human Rights released a country report on Colombia. OHCHR "observed that women and LGBTI persons continued to face challenges to participate in electoral processes. Women represented 37.2 percent of the

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[62] *Situation of human rights in Colombia Report of the United Nations High Commissioner for Human Rights.* United Nations General Assembly, Human Rights Council – 40th Session February 4th, 2019. P. 9, ¶ 61. Available at: https://www.hchr.org.co/documentoseinformes/informes/altocomisionado/A-HRC-40-3-Add-3-ENG.pdf (accessed on 4/8/20)

[63] Colombia - Infographic, OHCHR. Available at: https://lib.ohchr.org/HRBodies/UPR/Documents/Session30/CO/COLOMBIA_Infographic_30th.pdf (accessed on 4/8/20)

[64] *Universal Periodic Review - Colombia 2018*, OHCHR. Matrix of recommendations. Available at: https://www.ohchr.org/EN/HRBodies/UPR/Pages/COIndex.aspx (accessed on 4/8/20)

[65] *Id.*

candidates, and two women were elected as governors (6.2 percent) and 132 as mayors (12 percent), compared to five and 134 respectively in 2015."[66]

Colombia has done little to ensure the real and effective participation of women in society. Traditional gender roles are strictly enforced, and women are discouraged from political leadership, particularly in rural areas. IAHCR has noted that "[a]ll the circumstances that have historically exposed women to discrimination and to inferior treatment, particularly their cultural differences and reproductive capacity, and the civil, political, economic and social consequences of their position of disadvantage, are exploited and manipulated by the actors in the armed conflict in their struggle to control territory and economic resources."[67] Discrimination is systematic throughout Colombia, although less pronounced outside of conflict areas. According to UN Women "Colombia is displaying important signs of economic growth as well as progress in the human development indicators. But there still are gender gaps particularly in the economic and political spheres."[68]

Threats of Reprisal

In Colombia, crimes against women often go unreported "due to weak protection mechanisms" creating a "heightened risk of gender-based violence, particularly domestic violence against women,"[69] according to Amnesty International. Opposition to systematic reform

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[66] *Statement by Michelle Bachelet, United Nations High Commissioner for Human Rights*, OHCHR. 2/27/20. Available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25624&LangID=E (accessed on 4/8/20)
[67] *Truth, Justice, and Reparation,* Organization of American States, Inter-American Commission on Human Rights - Country Report of Colombia. P. 352. 12/31/13. Available at: http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf (accessed on 4/8/20)
[68] UN Women - Colombia. Available at: https://lac.unwomen.org/en/donde-estamos/colombia (accessed on 4/8/20)
[69] Amnesty International, Colombia 2017/2018. Available at: https://www.refworld.org/docid/5a993925a.html (accessed on 4/8/20)

is indicated by "the serious situation of women who work to defend human rights."[70] While women are not always the direct target of gender animus, "[h]uman rights defenders continue to be the main victims of the ongoing armed conflict."[71]

In the 2013 IACHR report *Truth, Justice, and Reparation*, the Commission noted that "[v]arious organizations active in the protection of women's rights in Colombia—particularly in the area of sexual and reproductive rights—described the harassment, stigmatization, persecution and criminalization that defenders of these rights experience."[72]Since that report, the situation has worsened. According to OHCHR, "[t]he killings of female human rights defenders increased by almost 50 percent in 2019 compared to 2018."[73] Perhaps most troubling: "it appeared that denouncing abuses was perceived as a threat by regional and local economic and political interests, as well as by various armed groups, including paramilitaries."[74] The targeted killing of female leaders and rights defenders are acutely felt, as they occur in areas with the least protections for women: "According to OHCHR and to official data, the majority of the killings were committed in municipalities with a high level of gender-based violence."[75]

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[70] *Truth, Justice, and Reparation,* Organization of American States, Inter-American Commission on Human Rights - Country Report of Colombia. P. 370. 12/31/13. Available at: http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf (accessed on 4/8/20)
[71] Amnesty International, Colombia 2017/2018. Available at: https://www.refworld.org/docid/5a993925a.html (accessed on 4/8/20)
[72] *Truth, Justice, and Reparation,* Organization of American States, Inter-American Commission on Human Rights - Country Report of Colombia. P. 370. 12/31/13. Available at: http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf (accessed on 4/8/20)
[73] Marta Hurtado, *Colombia: Human rights activists killings*, OHCHR. 1/14/20. Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25461&LangID=E (accessed on 4/8/20)
[74] Amnesty International, Colombia 2017/2018. Available at: https://www.refworld.org/docid/5a993925a.html (accessed on 4/8/20)
[75] *Situation of human rights in Colombia Report of the United Nations High Commissioner for Human Rights.* United Nations General Assembly, Human Rights Council – 40th Session February 4th, 2019. P. 4, ¶ 23. P.4. Available at: https://www.hchr.org.co/documentoseinformes/informes/altocomisionado/A-HRC-40-3-Add-3-ENG.pdf (accessed on 4/8/20)

Access to Remedy

Efforts by the Colombian government to combat the danger, threats, harassment and acts of violence targeting women are ineffective. Colombian women lack confidence in the police and judiciary to remedy violations. According to IACHR, women encounter "basic obstacles in getting access to justice,"[76] and crimes are carried out with impunity, as "no one is ever made to answer for the vast majority of cases of sexual violence in Colombia."[77] The written word of law lacks efficacy, as enforcement is rare.[78]

In 2015, progressive policies were enacted to decentralize the judiciary in urban areas and to promote efficiency of the courts system. The new policies have alleviated some of the backlog. Women ultimately bear the brunt of the burden. According to the World Bank: "Victims face fear of retribution, time constraints to access services, and a lack of knowledge about their rights. These barriers disproportionately affect women, who are also more likely to require specialized services as survivors of sexual violence."[79]

WOMEN'S RIGHTS IN HAITI

Statement of Positive Law and Treaties

Haiti has ratified all human rights treaties, including CEDAW.[80] Haiti also has adopted the Inter-American Convention on the Granting of Political Rights to Women (1958), the

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[76] *Truth, Justice, and Reparation,* Organization of American States, Inter-American Commission on Human Rights - Country Report of Colombia. P. 347. 12/31/13. Available at: http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf (accessed on 4/8/20)
[77] *Id.* at 356.
[78] *Id.*
[79] Jorge Luis Silva Mendez, *How Colombia is Improving Access to Justice Services*, World Bank Blogs. 10/14/15. Available at: https://blogs.worldbank.org/governance/how-colombia-improving-access-justice-services (accessed on 4/8/20)
[80] International Justice Resource Center - Country Factsheet Series. Available at: https://ijrcenter.org/wp-content/uploads/2018/04/Haiti-Factsheet.pdf (accessed on 4/8/20)

Convention on the Political Rights of Women (1958), and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1997).[81]

At a national level, the Haitian Constitution contains several provisions to ensure gender equality. The Preamble proclaims "the equity of gender" to be one of the bases of governance.[82] The Constitution further recognizes the "principle of the quota of at least thirty percent (30 percent) of women ... at all levels of national life, notably in the public services."[83] The constitutionally established "Protector of Citizens," a form of ombudsperson to protect Haitians from governmental abuse is directed to "pay a special attention to the complaints presented by women, particularly in that relating to the discriminations and the aggressions of which they may be victims notably in their work."[84] Finally, the constitution guarantees "access to superior studies ... in full equality, to all."[85]

Implementation of Women's Rights in Haiti

Due to decades of political, economic, and environmental strife, the government of Haiti has been unable to fulfill its obligations under the Constitution and has "hindered Haiti's ability to meet the basic needs of its people and resolve longstanding human rights problems."[86] The majority of women in Haiti experienced some form of gender-based violence during their

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[81] *Violence Against Women in Elections in Haiti: An IFES Assessment.* International Foundation for Electoral Systems. May 2018. P. 6. Available at: http://aceproject.org/ero-en/misc/violence-against-women-in-elections-in-haiti-an (accessed on 4/8/20)
[82] Preamble, Haitian Constitution. Available at: https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (accessed on 4/8/20)
[83] Article 17-1, Haitian Constitution. Available at: https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (accessed on 4/8/20)
[84] Article 207-2bis, Haitian Constitution. Available at: https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (accessed on 4/8/20)
[85] Article 32-6, Haitian Constitution. Available at: https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (accessed on 4/8/20)
[86] *Haiti*, Human Rights Watch. Available at: https://www.hrw.org/americas/haiti (accessed on 4/8/20)

lifetime, and "sexual harassment is largely tolerated by the state, and the victim is often blamed by society."[87] Despite Constitutional guarantees, "[i]lliteracy and poor education, gender-based violence, and the use of child domestic workers remain major human rights concerns."[88]

The CEDAW Committee reported with alarm in 2009 that "there is no specific legislation criminalizing violence against women … [and] that marital rape and sexual harassment are not classified as criminal offences."[89] Amnesty International reported as of 2017/2018 that although gender-based violence remained prevalent and under-reported, "[t]he government tabled comprehensive reforms of the Criminal Code in Parliament. It contained new provisions to tackle sexual violence, including criminalizing rape in marriage."[90]

Gender Equality

While the Constitution invokes equality, deeply rooted stereotypes have prevented actual implementation of the ideals contained in CEDAW. The CEDAW Committee has expressed concern "at the absence of domestic legislation prohibiting discrimination against women and providing sanctions for such discrimination,"[91] attributing much of the problem to patriarchal

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[87] *Violence Against Women in Elections in Haiti: An IFES Assessment.* International Foundation for Electoral Systems. May 2018. P. 14. Available at: http://aceproject.org/ero-en/misc/violence-against-women-in-elections-in-haiti-an (accessed on 4/8/20)
[88] *Haiti*, Human Rights Watch. Available at: https://www.hrw.org/americas/haiti (accessed on 4/8/20)
[89] *Concluding observations of the Committee on the Elimination of Discrimination against Women - Haiti.* UN Women, Forty-third session, 19 January-6 February 2009. ¶ 24-25. Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsgGIUyogsos8GkK8DnmVpyzSebkCtoFWOIpCsJV3wc8KDMiLfzcKAajCF5F6B%2BpLEacXumj%2BJ7%2FSY%2B96zdF9B0p3dTHRv0kSrIqhMRuZoghu (accessed on 4/8/20)
[90] *Amnesty International Report 2017/18*, Amnesty International. P. 184. Available at: https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF (accessed on 4/8/20)
[91] *Concluding observations of the Committee on the Elimination of Discrimination against Women - Haiti.* UN Women, Forty-third session, 19 January-6 February 2009. ¶ 10. Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsgGIUyogsos8GkK8DnmVpyzSebkCtoFWOIpCsJV3wc8KDMiLfzcKAajCF5F6B%2BpLEacXumj%2BJ7%2FSY%2B96zdF9B0p3dTHRv0kSrIqhMRuZoghu (accessed on 4/8/20)

attitudes regarding traditional gender roles.[92] In other areas of gender equality, the Haitian government openly supports anti-LGBT legislation: "In August, it approved a law making same-sex marriage and public support or advocacy for 'homosexuality' illegal."[93]

Equal access to education is significantly more challenging for women in rural areas, compounding an already high level of illiteracy and high school dropout rate.[94] Women face unemployment due to inferior education, and women who manage to find work are forced to accept menial labor jobs, rarely ascending to a position of power.[95] Unemployment among women in the formal sector is a third higher than that of men, and wages are 2.5 times less than for men.[96] Systematic inequity prolongs the cycle of poverty.

Haiti has no reproductive rights for women. It is one of the few countries in the world to implement a complete ban on abortion, joining the ranks of other human rights abusers such as Egypt and Congo.[97]

Participation

According to the International Foundation for Electoral Systems (IFES), "[a]lthough Haiti has a relatively substantive legal and normative framework for women's political

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[92] *Id.*
[93] *Amnesty International Report 2017/18*, Amnesty International. P. 185. Available at: https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF (accessed on 4/8/20)
[94] *Concluding observations of the Committee on the Elimination of Discrimination against Women - Haiti.* UN Women, Forty-third session, 19 January-6 February 2009. ¶ 30-31. Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsgGIUyogsos8GkK8DnmVpyzSebkCtoFWOIpCsJV3wc8KDMiLfzcKAajCF5F6B%2BpLEacXumj%2BJ7%2FSY%2B96zdF9B0p3dTHRv0kSrIqhMRuZoghu (accessed on 4/8/20)
[95] *Id.* at ¶ 32.
[96] *Violence Against Women in Elections in Haiti: An IFES Assessment* (May 2018) International Foundation for Electoral Systems. P.8. Available at: http://aceproject.org/ero-en/misc/violence-against-women-in-elections-in-haiti-an (accessed on 4/8/20)
[97] *The World's Abortion Laws - Haiti,* The Center for Reproductive Rights. Available at: https://reproductiverights.org/worldabortionlaws?country=HTI (accessed on 4/10/20)

participation and personal security, it has been eclipsed by a near-total lack of implementation."[98] Political instability and lack of resources have contributed to shortfalls of Constitutional promises: "Funding for the Ministry for the Status of Women and Women's rights was cut from 1 percent to 0.3 percent of the state budget in 2016."[99] Voter turnout is low, due to violence and threats at polling stations, where women are easy targets.[100]

IFES reports that "[w]omen who engage in politics face constant and vicious attacks on their moral character and probity of their sexual behavior. Women who pursue or who have successful political careers are routinely accused of prostitution or performing sexual services in return for political favors."[101] Women are discouraged from running for office by their families because of public maltreatment.[102]

Threats of Reprisal

According to a Refworld report on violence against women from 2012-2016, "fear of retaliation from perpetrators and limited access to legal aid all discourage reporting [of rape]."[103] Women in positions of leadership and those defending women's rights face reprisals related to their work: "In most cases, the authorities have failed to carry out prompt and thorough investigations. Moreover, the authorities have not put in place effective protection measures to enable the defenders to carry out their work without fear of reprisals, in violation of multiple

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[98] *Violence Against Women in Elections in Haiti: An IFES Assessment* (May 2018) International Foundation for Electoral Systems. P.3. Available at: http://aceproject.org/ero-en/misc/violence-against-women-in-elections-in-haiti-an (accessed on 4/10/20)
[99] *Id.* at 7.
[100] *Id.* at 15.
[101] *Id.* at 2.
[102] *Id.*
[103] *Violence Against Women, Including Sexual violence; State Protection and Support Services* (2012-June 2016). Refworld, Haiti. 12/15/16. Available at: https://www.refworld.org/docid/58d539d04.html (accessed on 4/10/20)

orders from the Inter-American Commission on Human Rights (IACHR)."[104] Female NGO employees working to provide assistance to rape victims in Haiti were targets of violence, and even suffered rape themselves.[105]

Access to Remedy

Mechanisms of justice are wanting: "Haiti's current criminal justice system does little to protect women and girls from rape and gender-based violence, and its health system is also failing victims."[106] Amnesty International reports that "[s]urvivors face entrenched impunity within the criminal justice system."[107] Public confidence in the justice system has deteriorated due to "deficiencies in mechanisms to monitor, investigate, prosecute and punish human rights violations, including such atrocities as extrajudicial executions, torture, and widespread crimes of sexual violence, including rape, as well as shortfalls in government policies and commitments in these areas."[108]

Criminal investigations, often bungled from the outset due to lack of resources, "frequently result in the dismissal of charges due to insufficient information."[109] The Haitian justice system is slow, underfunded, and sometimes corrupt. The result is that women face discrimination at each step of the process in seeking justice, and "unrepresented women's cases

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[104] *Urgent Action:Women's rights defender threatened with death,* Amnesty International (Haiti). P.2. 12/13/17. Available at: https://www.amnesty.org/download/Documents/AMR3675982017ENGLISH.pdf (accessed on 4/10/20)
[105] *Violence Against Women, Including Sexual violence; State Protection and Support Services* (2012-June 2016). Refworld, Haiti. 12/15/16. Available at: https://www.refworld.org/docid/58d539d04.html (accessed on 4/10/20)
[106] Amanda Klasing, *Hope for Haiti's Women*, Human Rights Watch. 1/17/12. Available at: https://www.hrw.org/news/2012/01/17/hope-haitis-women (accessed on 4/10/20)
[107] *Urgent Action: Women's rights defender threatened with death,* Amnesty International (Haiti). P.2. 12/13/17. Available at: https://www.amnesty.org/download/Documents/AMR3675982017ENGLISH.pdf (accessed on 4/10/20)
[108] *Haiti: Failed Justice or the Rule of Law,* IACHR. 10/26/05. ¶ 177. Available at: http://www.cidh.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf (accessed on 4/10/20)
[109] *Id.* at ¶178.

are rarely heard due to disorganization and corruption; cases are often prioritized based on whether bribes are available to the judges or clerks taking the case."[110] According to the Institute for Justice and Democracy in Haiti, all courts were closed from October through November 2019 because of security concerns, and on two occasions that year the office of the prosecutor in Port-an-Prince was burglarized and material evidence was stolen.[111]

WOMEN'S RIGHTS IN HONDURAS

Statement of Positive Law and Treaties

Honduras is a party to the major international human rights treaties, including CEDAW. Honduras is also a party to the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. The State of Honduras has not ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.[112]

At the national level, Honduras has adopted policies for the advancement of women, such as the National Plan Against Violence Towards Women, adopted in 2014.[113] Honduras has also proposed legislation to fund specialized projects to investigate femicides, crimes against women, and generally improve access to remedy for women.[114] Efforts have been made to promote the

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[110] *Review of Haiti's Report under the International Covenant on Civil and Political Rights Access to Judicial Remedies in Haiti*. Republic of Haiti Submission for the 112th Session of the United Nations Human Rights Committee. 10/8/14. ¶ 4. Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HTI/INT_CCPR_CSS_HTI_18243_E.pdf (accessed on 4/10/20)

[111] *Human rights and Rule of Law in Haiti: Key Recent Developments*, Institute for Justice and Democracy in Haiti. February 2020. Available at: http://www.ijdh.org/2020/02/projects/human-rights-and-rule-of-law-in-haiti-key-recent-developments/ (accessed on 4/10/20)

[112] *Ratification Status for Honduras*, UN Treaty Body Database. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=76&Lang=EN (accessed on 4/10/20)

[113] Global Database on Violence Against Women - Honduras, UN Women. Available at: https://evaw-global-database.unwomen.org/en/countries/americas/honduras (accessed on 4/10/20)

[114] *Id.*

representation of women, including the Law on Equality of Opportunities for Women and a regulation requiring the participation of women in electoral processes.[115]

Implementation of Women's Rights in Honduras

In a February 2020 report on Honduras, the UN High Commissioner for Human Rights found that "[s]tructural inequality persisted and women continued to experience discrimination in all spheres of life. Women in conditions of poverty, indigenous and Afro-Hondurans, as well as trans and lesbian women experienced multiple forms of discrimination."[116]

OHCHR stated that "[w]idespread violence against women, inequality, insecurity and impunity fuel migration and women human rights defenders in Honduras are regularly criminalized, intimidated and even killed."[117] It noted as well that the issues "stem from a *machismo* society."[118]

Honduras has one of the highest murder rates in the world.[119] Although violent deaths of women were down recently, IACHR has warned "that the murders of women because of their gender have not decreased in the same proportion as the other homicides in the country."[120] Furthermore, femicides are especially disturbing, as they are committed with "particular cruelty against women and indicate a pattern of extreme violence against them that includes kidnappings, disappearances, torture in 'crazy houses', mutilations, dismemberments, crushing

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[115] *Honduras – Political and Electoral System*, Gender Equality Observatory. Available at: https://oig.cepal.org/en/countries/15/system (accessed on 4/10/20)
[116] *Situation of human rights in Honduras*, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras. 2/24/20. ¶ 64. Available at: HRC/43/3/Add.2 (accessed on 4/10/20)
[117] *Honduras: Results from women's rights progress long overdue, say experts,* OHCHR. 11/14/18. Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23875&LangID=E (accessed on 4/10/20)
[118] *Id.*
[119] *Honduras - Events of 2019*, Human Rights Watch. Available at: https://www.hrw.org/world-report/2020/country-chapters/honduras (accessed on 4/10/20)
[120] *Situation of Human Rights in Honduras*, IACHR. 8/27/19. P. 132. Available at: http://www.oas.org/es/cidh/informes/pdfs/Honduras2019.pdf (accessed on 4/10/20)

of the face, body burns and other hate crimes."[121] The situation prompted a sobering recommendation from the OHCHR: "After travelling throughout the country and hearing the daunting reality women face, we saw that promising initiatives are not enough. Results must follow."[122]

Gender Equality

Women in Honduras have no reproductive rights. Honduras maintains a complete prohibition of abortion regardless of circumstances.[123] Very few countries maintain an absolute ban, making no exceptions for rape, incest, or endangering the mother. According to the High Commissioner, this "very restrictive legislation on sexual and reproductive rights represented a major gap in the State's fulfilment of its international obligations. Between 2008 and June 2019, at least 47 women were prosecuted for abortion, including 28 since 2014."[124] Employment standards have been found to be exploitive, and women earn much less than men: "women are 29 percent less likely to have equal economic participation and opportunities than men. That year, Honduras scored 0.59 in estimated earned income, which shows a gender pay gap of approximately 41 percent (on average, women's income was estimated to be 41 percent lower than men's)."[125]

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[121] *Id.*
[122] *Honduras: Results from women's rights progress long overdue, say experts,* OHCHR. 11/14/18. Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23875&LangID=E (accessed on 4/10/20)
[123] *Honduras 2019*, Amnesty International. Available at: https://www.amnesty.org/en/countries/americas/honduras/report-honduras/ (accessed on 4/10/20)
[124] *Situation of human rights in Honduras*, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras. 2/24/20. ¶ 65. Available at: HRC/43/3/Add.2 (accessed on 4/10/20)
[125] *Gender gap index in the area of economic participation and opportunity in Honduras in 2020, by category,* Statista. Available at: https://www.statista.com/statistics/803807/honduras-gender-gap-labor-market-category/ (accessed on 4/10/20)

Participation

Despite the regulations designed to increase female representation, "the proportion of women in national political leadership has actually gone down in recent years," and the "rules on equal representation of women and men in politics were distorted so that fewer women were elected."[126] Moreover, female participation in Honduran civil and political society is a dangerous undertaking: "[w]omen aiming for public and political life often faced discouragement and sometimes violence."[127]

Threats of Reprisal

Women and those seeking to improve the plight of women in Honduran society face threats of reprisal: "Human rights defenders and journalists remain exposed to surveillance, threats, harassment, smear campaigns, acts of violence and criminalization of their legitimate activities."[128] Threats of reprisal and reprisal itself find no impediment in Honduras. According to Amnesty International, "[t]he vast majority of attacks registered against human rights defenders remained unpunished, as a result of multiple obstacles hindering investigations and trials."[129]

Access to Remedy

While threats of reprisal may deter women from reporting crimes, incompetence and discriminatory practices "undermine public trust in the authorities and the justice system."[130]

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[126] *Honduras: Results from women's rights progress long overdue, say experts,* OHCHR. 11/14/18. Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23875&LangID=E (accessed on 4/10/20)
[127] *Id.*
[128] *Situation of human rights in Honduras*, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras. 2/24/20. ¶ 53. Available at: HRC/43/3/Add.2 (accessed on 4/10/20)
[129] *Honduras 2019*, Amnesty International. Available at: https://www.amnesty.org/en/countries/americas/honduras/report-honduras/ (accessed on 4/10/20)
[130] *Id.*

Unsurprisingly, a culture of impunity prevails: "Impunity remained high in these cases, as authorities lacked sufficient capacity and resources to investigate, prosecute and punish those responsible."[131] Overall, the system for remedy is "marred by corruption and abuse, the judiciary and police remain largely ineffective."[132] Upwards of ninety-five percent of femicides will go unsolved.[133] The lack of access to remedy exists in concentric rings. Human Rights Watch has reported that "Government efforts to investigate and prosecute violence against members of these groups have generally made little progress,"[134] mirroring how "efforts to reform the institutions responsible for providing public security have made little progress."[135]

WOMEN'S RIGHTS IN MEXICO

Statement of Positive Law and Treaties

Mexico has ratified all the major international human rights treaties, including the CEDAW.[136] Mexico also has ratified the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belem do Pará").[137]

At the national level, the Constitution mentions women several times, specifying that "[m]an and woman are equal under the law."[138] It also provides that "[d]uring pregnancy, women

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[131] *Id.*
[132] *Honduras*, Human Rights Watch. Available at: https://www.hrw.org/americas/honduras (accessed on 4/10/20)
[133] *Honduras: 30 Femicides in January with 95% Impunity Rate*, Telesurtv.net. Available at: https://www.telesurenglish.net/news/Honduras-30-Femicides-in-January-with-95-Impunity-Rate-20190204-0015.html (accessed on 4/10/20)
[134] *Honduras*, Human Rights Watch. Available at: https://www.hrw.org/americas/honduras (accessed on 4/10/20)
[135] *Id.*
[136] *Country Factsheet Series - Mexico*, International Justice Resource Center. Available at: https://ijrcenter.org/wp-content/uploads/2018/04/Mexico-Factsheet.pdf (accessed on 4/10/20)
[137] *Id.*
[138] Article 4, Constitution of Mexico. Available at: https://www.constituteproject.org/constitution/Mexico_2015.pdf?lang=en (accessed on 4/10/20)

shall not perform such work that requires excessive physical effort and could be dangerous regarding pregnancy." Women have the right to "enjoy a disability leave due to childbirth" and "receive their full wages and retain their employment and the rights acquired under their labor contract."[139] Additionally, "The National Development Plan (2013–2018) for the first-time mainstreams gender equality and women's empowerment in all its areas, and the National Gender Equality Policy (2013 – 2018) is focused on advancing substantive equality."[140]

Implementation of Women's Rights in Mexico

The situation in Mexico vividly demonstrates that the existence of formal commitments and laws does not always translate into positive trends on the ground. The UN Commission on Women recently reported that "Mexico faces social, economic and land ownership disparities, as well as persistent social disadvantages and high indices of discrimination that are the cause and consequence of continuous marginalization in wide sectors of the population, mainly women, girls, indigenous population and migrants."[141] Beyond day to day discrimination, Amnesty International has found that "[g]ender-based violence against women and girls continued to be widespread. The authorities failed to investigate these crimes and perpetrators were rarely brought to justice ... The most recent official statistics on gender-based violence, those for 2016, estimated that 66.1 percent of women and girls aged 15 or above had experienced gender-based violence at least once in their lives and that 43.5 percent of women had experienced gender-based intimate-partner violence."[142]

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[139] *Id.*
[140] UN Women – Mexico. Available at: https://lac.unwomen.org/en/donde-estamos/mexico (accessed on 4/10/20)
[141] *Id.*
[142] *Mexico 2019*, Amnesty International. Available at: https://www.amnesty.org/en/countries/americas/mexico/report-mexico/ (accessed on 4/10/20)

Noting the broader trend in Latin America, IACHR reported "that [w]omen in Mexico, as in other countries, continue to be the victims of certain crimes at rates higher than men."[143] Widespread violence against women led to the Alert of Gender Violence Against Women (AVGM),"[144] which as mentioned above has done little to stop the trend. Likewise, the UN special rapporteur on torture pointed to "the use of sexual violence as a form of torture, mainly against women detainees. Sexual torture includes forced nudity, insults and verbal humiliation, groping of breasts and genitals, insertion of objects in the genitals and repeated rape by multiple individuals. Few of these cases have been investigated or punished, or else they have been classified as less serious conducts, and they present particular challenges for victims, who are often revictimized when they file complaints or undergo medical examinations."[145]

Gender Equality

The UN Commission on Women reports that "[i]n Mexico and the world, efforts have been made to achieve gender equality; however, women still have less participation in public life compared to men, there are fewer women in leadership positions, and they have fewer opportunities in the labor market."[146] Wages for women are 16.5 percent less than the average wage for men.[147] Women also complete more than 30 hours of unpaid domestic labor per week, compared to men who contribute about ten hours.[148] "In 2019, the participation rate of women in

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[143] *The Human Rights Situation in Mexico,* IACHR. 12/31/15. P.112. Available at: http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf (accessed on 4/10/20)
[144] *Id.*
[145] *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/28/68/Add.3, ¶ 28. 12/29/14. Available at: https://www.refworld.org/docid/54fea9bf4.html (accessed on 4/10/20)
[146] Mexico - UN Women. Available at: https://mexico.unwomen.org/es (accessed on 4/10/20)
[147] *Id.*
[148] *Id.*

the labor market in Mexico is 45 percent, compared with 77 percent of men."[149] Women experience disproportion levels of illiteracy: "This leaves women in a situation of vulnerability in the labor market, as well as marked wage gaps that reach up to 35 percent."[150]

Gender equality in Mexico has been at the forefront of recent legislative efforts. In the last 5 years, Mexico has passed hundreds of reforms. Yet the benefit remains unclear. According to the World Economic Forum, Mexico in 2018 was unable to rise out of the bottom half of 144 countries assessed for gender equality and had actually fallen from its 2014 ranking.[151]

"Discriminatory laws and practices, gender stereotypes, inequality in access to education, [and] violence against women and girls,"[152] have resulted in few opportunities for women and inability for women to gain financial independence. While aspirational policies have been undertaken, the UN Commission on Women says the Mexican State's "accountability of gender equality achievements is still deficient."[153]

Participation

The Mexican Constitution contains provisions such as: "Promote indigenous women development by supporting their productive projects, protecting their health, granting incentives for their education and fostering indigenous women participation in decision-making process of

[149] *Id.*
[150] *Id.*
[151] *The Global Gender Gap Report 2018*, The World Economic Forum. P.185. Available at: http://www3.weforum.org/docs/WEF_GGGR_2018.pdf (accessed on 4/10/20)
[152] UN Women – Mexico. Available at: https://lac.unwomen.org/en/donde-estamos/mexico (accessed on 4/10/20)
[153] *Id.*

their communities."[154] The Constitution also provides: "The political parties' main objectives shall be ... to guarantee gender equality in candidates to local and federal Congress."[155]

Advances in the field of female representation have recently been codified: "In March 2015 ... parity became a statutory obligation to register candidates."[156] Yet: " [g]ender equality in Mexico faces a series of structural challenges characterized by an unrelenting gap between formal and substantive equality in all areas of development; it means that there is an implementation gap between what is stated in the laws, plans, programs and budgets on women's rights and practical implementation and compliance in daily life."[157] While CEDAW was ratified by Mexico with the intention of eliminating discrimination against women, the Commission notes that "[p]olicy harmonization with international commitments, especially CEDAW ... is still partial[.]"[158]

Threats of Reprisal

The Government of Mexico faces "allegations of sexual violence, especially against women in detention and the reports of assaults, killings and acts of harassment against female human rights defenders and journalists."[159] The UN Commission on Women has shared this sentiment: "A cause for concern is the escalation of generalized violence in several target areas of the country, showing patterns of human rights violations and impunity at all levels, in

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[154] Constitution of Mexico. Available at: https://www.constituteproject.org/constitution/Mexico_2015.pdf?lang=en (accessed on 4/10/20)
[155] *Id.*
[156] UN Women – Mexico. Available at: https://lac.unwomen.org/en/donde-estamos/mexico (accessed on 4/10/20)
[157] *Id.*
[158] *Id.*
[159] *The Human Rights Situation in Mexico,* IACHR. 12/31/15. P.112. Available at: http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf (accessed on 4/10/20)

particular enforced disappearances, torture, arbitrary detention, as well as attacks on human rights activists and journalist men and women alike."[160]

Access to Remedy

Laws seem to be impotent in both the protection of women and in the pursuit of justice. Ninety-eight percent of crimes committed in Mexico go unpunished.[161] The police are corrupt, and the judiciary is no better: "The problem permeates the police, the courts, and many public prosecutors' offices, producing a generalized perception of impunity."[162]

The climate of generalized violence has serious consequences for the rule of law in Mexico: "In particular, when violent crimes—whether committed by private parties or State agents—end up in impunity, the violence is perpetuated, as the perpetrators do not face the consequences of their actions, creating a spiral of impunity."[163]

Like many Latin American countries, women are victims of murder because of their gender in Mexico. The General Law on Women's Access to a Life Free from Violence includes the term "femicide violence," which is defined as "an extreme form of gender-based violence against women, resulting from the violation of their human rights, in the public and private spheres, consisting of misogynistic conduct that can lead to social and state impunity and may culminate in homicide and other forms of violent death of women."[164]

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[160] UN Women – Mexico. Available at: https://lac.unwomen.org/en/donde-estamos/mexico (accessed on 4/10/20)
[161] *The Human Rights Situation in Mexico,* IACHR. 12/31/15. P.37. Available at: http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf (accessed on 4/10/20)
[162] *Id.* at 47.
[163] *Id.* at 46.
[164] *The Human Rights Situation in Mexico,* IACHR. 12/31/15. P.116. Available at: http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf (accessed on 4/10/20)

To address rampant gender-based violence, the Mexican government created alerts for gender-based violence against women. According to Amnesty International, by the end of 2019 "there was no indication that the alert mechanisms had reduced gender-based violence."[165] Femicides are up 10 percent in 2019 from the previous year. Ten women die violent deaths each day in Mexico, up from seven per day in 2017.[166] Recently, Mexican women staged a national strike in March 2020 to protest violence against women.[167]

INDIGENOUS RIGHTS

The state of indigenous rights in Latin America and the Caribbean exists in two almost entirely separated worlds: the law on the books and then the law, or more precisely, the lack of the law in action. While many nations in Latin America and the Caribbean have ratified or endorsed critical international instruments, there continues to be a severe lack of adherence to the principles and values they enshrine. The reality for many indigenous individuals and groups is that they overwhelmingly face persecution, discrimination, violence and economic ruin as a result of both government and non-government actors. Further exacerbating this tragedy is the stark lack of access to remedial measures and a near uniform fear of reprisals for attempting to do so.

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[165] *Mexico 2019*, Amnesty International. Available at: https://www.amnesty.org/en/countries/americas/mexico/report-mexico/ (accessed on 4/10/20)
[166] Kirk Semple and Paulina Villegas, *The Grisly Deaths of a Woman and a Girl Shock Mexico and Test Its President,* The New York Times. 2/19/20. Available at: https://www.nytimes.com/2020/02/19/world/americas/mexico-violence-women.html (accessed on 4/10/20)
[167] Paulina Villegas, *In Mexico, Women Go on Strike Nationwide to Protest Violence*, New York Times. 3/9/20. Available at: https://www.nytimes.com/2020/03/09/world/americas/mexico-women-strike-protest.html (accessed on 4/10/20)

Each nation studied in this report has endorsed the United Nations Declaration on the Rights of Indigenous People (UNDRIP). Article 43 of the declaration states that "The rights contained in this Declaration . . . constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the Americas."[168] The articles, principles, and vision of UNDRIP combine with other signed, ratified, and assented treaties, declarations, conventions, and other regimes to establish the rights of indigenous peoples.

The nations studied in this report are bound by the UN Charter,[169] and other international legal instruments that have codified indigenous rights to culture[170] and religion.[171] These rights are positively identified in every international instrument addressing indigenous rights.[172] ILO No. 169, for example, states that governments "shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship."[173]

The right to culture and indigenous rights encompasses many aspects of life, including self-determination and religion. The Human Rights Committee observes that "culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as

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[168] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) art. 43. Available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (accessed 15 April 2020)
[169] U.N. Charter, art. 1(3).
[170] Convention on Biological Diversity (CBD), at art. 8(j); International Covenant on Economic Social and Cultural Rights (ICESCR), at art, 6(2); International Covenant on Civil and Political Rights (ICCPR), at art. 27.
[171] ICCPR at art. 18.
[172] *See e.g.*, Rio Declaration, at Principle 22; UNDRIP, art. 20; *see also* ILO No. 169, at art. 13(1)
[173] ILO 169 Art 13.1

fishing or hunting."[174] Article 27 of the ICCPR prohibits states from denying minorities, which include indigenous peoples,[175] the right "to enjoy their own culture [or] to profess and practice their own religion."[176]

Indigenous rights to culture are, by their "raison d'etre," owned collectively.[177] The Human Rights Committee clarified that the rights identified in Article 27 of the ICCPR are collectively as well as individually actionable.[178] The "persons designed to be protected . . . are those who belong to a group and who share in common a culture, religion and/or a language."[179] Collective rights under Article 27 have been asserted with success at the international level when natural resource extraction caused environmental damage that threatened an indigenous people.[180]

Regional standards have also been adopted and added to the body of accepted principles and rights for indigenous peoples. For example, the American Declaration on the Rights of Indigenous Peoples, was adopted by the Organization of American States in 2016.

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[174] U.N. Human Rights Comm., CCPR General Comment No. 23: Article 27 (Rights of Minorities), ¶ 7, Apr. 8, 1994, CCPR/C/21/Rev.1/Add.5 [hereinafter General Comment No. 23]; Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38, at ¶ 7 (1994).
[175] ICCPR at art. 27.
[176] *Id*.
[177] Francesco Francioni and Martin Scheinin, *Cultural Human Rights*, MARTINUS NIJHOFF, 123-24, (2008) [hereinafter Francioni and Scheinin].
[178] Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada, Communication No. 1671984 (Mar. 26, 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1, ¶ 32.1 (1990) [hereinafter Lubicon v. Canada]; s*ee also* Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Individual Report on the International Covenant on Civil and Political Rights, Report No. 2, ¶ 36 (December 2013).
[179] General Comment No. 23, at ¶ 5.1.
[180] Lubicon v. Canada*,* at ¶ 16.2 (showing Canada violated the Ominayak and Lubicon Lake Band's cultural rights under Article 27 when it granted oil and gas leases on their traditional lands); Apirana Mahuika et al. v. New Zealand, Communication No. 547/1993, U.N. Doc. CCPR/C/70/D/547/1993 (2000) [hereinafter Mahuika v. New Zealand] (showing New Zealand violated Maori cultural rights when it granted commercial fishing licenses to non-indigenous operators in its traditional waters); The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*,* Merits, Reparations and Costs, Inter-Am. Comm. H.R., (Ser. C) No. 79, ¶ 153 (2001) [hereinafter Mayagna v. Nicaragua] (showing Nicaragua violated Awas Tingni cultural rights when it granted concessions on their ancestral lands without their consent).

In addition to the exploration of traditional indigenous rights in the Americas, this report also examines Afro-descendant rights. The OAS estimates that 200 million people of African descent live throughout the Americas.[181] While representing a substantial portion of the population, this group has faced disproportionately high levels of hardship and discrimination. In response to the unique hardships faced by this community, there are a variety of international and regional legal instruments and standards specifically addressing the rights of Afro-descendants.

The UN Committee on the Elimination of Racial Discrimination (CERD) described those rights in its General Recommendation No. 34 regarding racial discrimination against people of African descent.[182] It outlined those rights in part to be

> 3. People of African descent shall enjoy all human rights and fundamental freedoms in accordance with international standards, in conditions of equality and without any discrimination. 4. People of African descent live in many countries of the world, either dispersed among the local population or in communities, where they are entitled to exercise, without discrimination, individually or in community with other members of their group, as appropriate, the following specific rights: (a) The right to property and to the use, conservation and protection of lands traditionally occupied by them and to natural resources in cases where their ways of life and culture are linked to their utilization of lands and resources; (b) The right to their cultural identity, to keep, maintain and foster their mode of life and

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[181] Department of International Law, *Afro-descendants,* (Organization of American States, 2020). Available at: http://www.oas.org/dil/afrodescendants.htm (accessed 12 April 2020)

[182] UN Committee on the Elimination of Racial Discrimination (CERD), General recommendation no. 34 adopted by the Committee : Committee on the Elimination of Racial Discrimination : racial discrimination against people of African descent, 3 October 2011, CERD/C/GC/34, available at: https://www.refworld.org/docid/4ed350d82.html (accessed April 10, 2020)

forms of organization, culture, languages and religious expressions; (c) The right to the protection of their traditional knowledge and their cultural and artistic heritage; (d) The right to prior consultation with respect to decisions which may affect their rights, in accordance with international standards.[183]

In addition to CERD, the Declaration of Santiago and the Declaration of Durban acknowledge the discrimination and the unique circumstance that many Afro-descendants face throughout the Americas.[184] These instruments have helped develop and expand the already existing body of international human rights standards that have been enshrined in a plethora of international treaties, conventions, declarations and cases concerning rights for indigenous and Afro-descendant individuals and groups.

INDIGENOUS RIGHTS IN BRAZIL

National Law Supplementing International and Regional Obligations

Brazil's domestic legislation has references to both indigenous rights as well as Afro-Brazilian anti-discrimination laws. These protections and recognitions have taken various forms from legislation and constitutional provisions to governmental agencies. "Brazil's domestic legal system provides for a clear prohibition of racial discrimination. The Constitution of Brazil criminalizes acts of racism subjecting them to imprisonment without the right to bail or prescription. This prohibition is reflected in Law No. 7716 that was later modified by Law No. 9459, which expanded its focus to include acts arising not only from racial discrimination but

[183] *Id*. at Article 3, 4.
[184] Department of International Law, *Afro-descendants,* (Organization of American States, 2020). Available at: http://www.oas.org/dil/afrodescendants.htm (accessed 12 April 2020)

also discrimination based on ethnicity, religion or nationality"[185] Additionally, Article 231 of the Brazilian Constitution grants "original rights [to indigenous peoples] over the lands they traditionally occupy."[186]

These provisions have been further expanded with additional legislation. "Law No. 10.369 of 2003 established guidelines and bases for national education and included mandatory teaching of Afro-Brazilian history and culture in educational institutions."[187] In addition to varying degrees of domestic legislative initiatives, Brazil has instituted several governmental organizations such as Fundação Nacional do Índio or (FUNAI), aimed at implementing some of the rights and protections enshrined in domestic legislation.

Record of implementation

Brazil has a relatively positive track record in adopting international and regional standards. But the actual implementation of these policies and rights has been sparse and at times non-existent. The current constitutional system of indigenous territory demarcation has been criticized by proponents of indigenous rights, who say that the process of demarcation has been painfully slow.[188] This is exacerbated by the fact that the FUNAI, the governmental agency tasked with the protection of Indigenous rights, lacks the resources to properly protect territory from encroachment once registered.[189]

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[185] UN Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its Fourteenth Session, Addendum: Mission to Brazil*, 23 September 2014, A/HRC/27/68/Add.1. Available at: https://www.refworld.org/docid/543794674.html (accessed 12 April 2020)
[186] *Constitution of the Federal Republic of Brazil,* available at: http://www.oas.org/es/sla/ddi/docs/acceso_informacion_base_dc_leyes_pais_B_1_en.pdf (accessed 12 April 2020)
[187] *Id*. at ¶16
[188] Beto Borges, et. al., *Indigenous Rights in Brazil: Stagnation to Political Impasse* (South and Meso American Indian Rights Center). Available at http://saiic.nativeweb.org/brazil.html (accessed April 17, 2020)
[189] David Maybury-Lewis, *Hope for the Indigenous Peoples of Brazil* (Cultural Survival Quarterly Spring 2003). Available at https://www.culturalsurvival.org/publications/cultural-survival-quarterly/hope-indigenous-peoples-brazil (accessed 17 April 2020).

The issues surrounding FUNAI have worsened under the current government, which has prevented the demarcation of indigenous lands from continuing.[190] At an IACHR hearing in February 2019, a coalition of indigenous groups told the Commission that the newly installed Bolsonaro government "has ramped up land grabs, intimidation and killings." They also described "a sharp uptick in attacks on indigenous people since Bolsonaro won the presidency in the October 2018 elections."[191] The groups reported that they have seen local healthcare centers set ablaze, including being firebombed by farmers, as well as being shot at with rubber bullets. Many indigenous members were injured during this conflict and some were killed. Angela Amanakwa Kaxuyana, coordinator of an umbrella group of Brazilian indigenous organizations, stated that "now these attacks are institutionalized, as in the president himself incites hatred."[192] In response, IACHR "stressed its concern about the structural issues regarding [indigenous] communities, . . . including the demarcation of indigenous land, the time requirement condition, the institutional weakening of [FUNAI], as well as threats, attacks and harassment against indigenous leaders and defenders."[193]

Although the American Declaration on the Rights of Indigenous Peoples says that indigenous peoples should be able to "freely pursue their *economic*, social, and cultural development,"[194] this right has not been protected in Brazil. Rather, environmentalists and

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[190] Daniel Schweimler, *Brazil's indigenous people protest against Bolsonaro's policies* (Al Jazeera 2019). Available at https://www.aljazeera.com/news/2019/01/brazils-indigenous-people-protest-bolsonaros-policies-190131092752717.html (accessed 12 April 2020)
[191] Mia Alberti, *Brazil's indigenous groups decry Bolsonaro's escalating attacks* (Al Jazeera, 20q9) https://www.aljazeera.com/news/2019/02/brazil-indigenous-groups-decry-bolsonaro-escalating-attacks-190213205305375.html (accessed 12 April 2020)
[192] *Id*.
[193] *Public Hearings Held During the 171st Period of Sessions, Addendum to Press Release 38/19* (OAS February 21, 2019). Available at http://www.oas.org/en/iachr/media_center/PReleases/2019/038A-EN.pdf (accessed 31 March 2020)
[194] Article 3, ADRIP; https://www.oas.org/en/sare/documents/DecAmIND.pdf (accessed 12 April 2020)

indigenous peoples have been viewed as opponents to economic growth and barriers to development by private economic groups and, at times, the government.[195]

A recent World Bank examination of indigenous rights in Latin America found that "indigenous peoples continue to be confronted with glass ceilings and structural barriers that limit their full social and economic inclusion. While indigenous peoples make up 8 percent of the population in the region, they represent approximately 14 percent of the poor and 17 percent of the extremely poor in Latin America. Also, they still face challenges to gain access to basic services and the adoption of new technologies, a key aspect of increasingly globalized societies."[196] This trend applies to Brazil as well. There has been a clear dichotomy between the advances of society as a whole and the exploitation of the lands and resources of indigenous individuals and groups within Brazil.[197]

The negative trends in Brazil's protection of indigenous rights were documented by the UN Special Rapporteur on the rights of indigenous peoples in a 2016 trip to the country. After noting Brazil's laudable formal protections for indigenous rights and past advances, she noted that in the eight years between her visit and that of her predecessor, "there has been a disturbing absence of progress in the implementation of his recommendations and the resolution of long-standing issues of concern to indigenous peoples. Instead, information received points to an

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[195] A. Zhouri, *"Adverse Forces" in the Brazilian Amazon: Developmentalism Versus Environmentalism and Indigenous Rights.* The Journal of Environment & Development, *19*(3), 252–273 (2010). Available at https://doi.org/10.1177/1070496510378097 (accessed 12 April 2020)

[196] *Indigenous Latin America in the Twenty-First Century* (World Bank, 2018). Available at https://www.worldbank.org/en/region/lac/brief/indigenous-latin-america-in-the-twenty-first-century-brief-report-page (accessed 12 April 2020)

[197] Mia Alberti, *Brazil's indigenous groups decry Bolsonaro's escalating attacks* (Al Jazeera 2019). Available at https://www.aljazeera.com/news/2019/02/brazil-indigenous-groups-decry-bolsonaro-escalating-attacks-190213205305375.html (accessed 12 April 2020)

extremely worrying regression in the protection of indigenous people's rights."[198] She identified a variety of concerns ranging from economic development and land use to death and detention of indigenous peoples attempting to assert their legal rights.

This report highlights the issues of land use and economic development: "A constant refrain from indigenous peoples throughout the country was the urgent need to complete the land demarcation processes, as this is fundamental to all their rights. They repeatedly stressed that the State's prolonged lack of effective action and protection is forcing them to reclaim their lands in order to guarantee their survival. Many even stated that if faced with evictions they would not leave their lands and would be prepared to die on them, if necessary."[199] As was highlighted with FUNAI, land demarcation has been halted under the current administration in Brazil. This has led to increased conflict with those seeking to exploit or develop these otherwise "traditionally occupied" lands guaranteed to indigenous groups under Article 231 of the Brazilian Constitution.[200]

The Special Rapporteur expressed particular concern that "there is no adequate mechanism for consultation with indigenous peoples in relation to major development projects."[201] Nor do indigenous peoples have meaningful input in the adoption of laws, regulations and policies that directly affect them.[202] These deficiencies amount to "a failure on the part of the Government to implement good faith consultations with indigenous peoples in

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[198] Report of the Special Rapporteur on the Rights of Indigenous Peoples on Her Mission to Brazil, ¶ 92, A/HRC/33/42/Add.1 (Aug. 8, 2016) http://unsr.vtaulicorpuz.org/site/index.php/en/documents/country-reports/154-report-brazil-2016 (accessed 12 April 2020)
[199] *Id*. at ¶ 21
[200] *Id*. at ¶ 11
[201] *Id*. at ¶ 63
[202] *Id*. at ¶ 64

order to obtain their free, prior and informed consent"[203] in violation of Brazil's obligations under national, regional and international law and standards.

This backward movement in protecting basic indigenous rights to self-determination and free, prior and informed consent comes in a context of violence.[204] The Special Rapporteur noted that "[a] matter of pressing concern is the number of documented and reported attacks on indigenous peoples."[205] Despite some governmental acknowledgement that it must protect human rights defenders and indigenous leaders, "[i]n most cases, impunity allows violent practices by private security forces, armed mercenaries and State forces to continue unabated."[206]

The disadvantaged nature of the Afro-Brazilian community is stark: "Despite making up more than half the country's population, Afro-Brazilian economic participation is only 20 per cent of gross domestic product. Unemployment is 50 percent higher among Afro-Brazilians than European descendants and the average monthly income of European descendants is US $860, nearly double that of Afro-Brazilians at US $466. "[207]

Despite constitutional protection of minority groups and laws against racial and other forms of discrimination, Afro-Brazilians still face enormous challenges within legal mechanisms and structures. "Despite the high percentage of Afro-Brazilians in the population and the serious efforts and advances that have been made in combating direct discrimination against people of African descent, the Working Group is concerned by the ongoing structural and institutional

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[203] *Id*. at ¶ 65
[204] *See id.* at ¶¶ 17-20
[205] *Id*. at ¶ 17
[206] *Id*. at ¶ 20
[207] UN Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its fourteenth session, Addendum: Mission to Brazil*, 23 September 2014, A/HRC/27/68/Add.1. Available at: https://www.refworld.org/docid/543794674.html (accessed 13 April 2020)

racial discrimination and xenophobia that cannot be effectively addressed by the existing legal mechanisms and legislation."[208]

Reprisals and Remedy

Lack of access to remedy is a serious problem for indigenous peoples in Brazil. The 'significant barriers' they encounter include "a lack of resources, cultural and linguistic barriers, institutional racism and ignorance of their cultures and rights on the part of the judiciary and law enforcement forces."[209] These barriers to remedy are compounded by what the Special Rapporteur calls "the increasing criminalization of indigenous peoples and violent attacks and killings with impunity."[210] More recently, speaking of the region as a whole, she has explained that "[c]riminalization is really about using the justice system to stop indigenous peoples from pursing their own activities and their own actions against projects that are destructive to them."[211]

There are still stark challenges for victims of racism and discrimination from both indigenous and Afro-Brazilian communities in seeking access to justice and remedy. "[V]ictims of racism and discrimination face several barriers to accessing justice and seeking remedies. These include lack of awareness or knowledge of existing protective laws which may prevent them from reporting cases or pressing charges; negative experiences of the justice system and lack of confidence in the process; discriminatory attitudes or lack of interest among the police

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[208] *Id*. at ¶ 104
[209] Report of the Special Rapporteur on the Rights of Indigenous Peoples on Her Mission to Brazil, ¶ 79, A/HRC/33/42/Add.1 (Aug. 8, 2016). Available at http://unsr.vtaulicorpuz.org/site/index.php/en/documents/country-reports/154-report-brazil-2016 (accessed 12 April 2020)
[210] *Id.* at ¶ 80
[211] Anastasia Moloney, *UN lambasts Latin America for abusing indigenous rights* (Reuters January 11, 2018) https://www.reuters.com/article/us-latam-rights-landrights/u-n-lambasts-latin-america-for-abusing-indigenous-rights-idUSKBN1F02J6 (accessed March 31, 2020)

and lawyers; lack of financial resources; and geographical marginalization. . . racism cases did not often reach court as at each stage they became weaker and weaker and…they arrived at court as "injuries" cases not considered as racial discrimination."[212] The ability for individuals and groups to access justice and remedial mechanism, and to be free from the fear of reprisal is critical to facilitating human rights, and international, regional, and national legal obligations.

INDIGENOUS RIGHTS IN COLOMBIA

National Law Supplementing International and Regional Obligations

Colombian national laws supplementing international and regional obligation for indigenous groups and Afro-Colombians have been sparse, and often go unapplied or implemented. Often, governmental agencies provide licenses and other forms of development over protected ingenious and Afro-Colombian lands in contravention of international, regional and even national commitments and obligations. "Over the years, the Colombian authorities have granted licenses to mining and other companies looking to exploit these lands and their vast natural resources, and in the case of the territories of Indigenous and Afro-descendant communities they have often done so without properly consulting with them and obtaining their free, prior and informed consent."[213] Free, prior and informed consent is a cornerstone of UNDRIP and internationally and regional recognized indigenous rights, and has often been disregarded with development projects in Colombia.

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[212] *Report of the Working Group of Experts on People of African Descent on its Fourteenth Session*, (23 September 2014) at ¶58. Available at https://www.refworld.org/pdfid/543794674.pdf (accessed 13 April 2020)
[213] *Colombia Must Prioritize Rights of Indigenous People and Afro-descendant communities above economic interests,* (Amnesty International 4 November 2015). Available at https://www.amnesty.org/en/latest/news/2015/11/colombia-must-prioritize-rights-of-indigenous-people-and-afro-descendant-communities-above-economic-interests/ (accessed 12 April 2020)

In addition to uneven application of international and regional legal obligations, domestic legislation which flies directly against those enshrined principals has often been adopted. "[L]egislation introduced by the government could actually make it more difficult for those forced off their land to gain legal ownership and effective control. For example, Law 1753, approved by Congress in June 2015, could make it easier for companies to set up operations on misappropriated lands or lands over which control has been secured through human rights violations and abuses, including on territories collectively owned by Indigenous People and Afro-descendant communities."[214] Not only has there been sparse adoption of domestic legislation to enshrine and protect indigenous and Afro-Colombian communities, often there has been domestic legislation which has in effect stripped individuals and groups of those enshrined rights.

Record of implementation

Despite Colombia's formal adoption of relevant international and regional treaties and some domestic legislation, its record of protecting indigenous rights is fraught. As IACHR noted in 2014, "[a] variety of sources, including the Constitutional Court and the United Nations [Special] Rapporteur on the rights of indigenous peoples, have . . . pointed out that this sophisticated body of laws to protect indigenous peoples and their members stands in stark contrast to a reality of profound and repeated violations of the most basic human rights."[215]

A recent Amnesty International study found that "[f]orced displacement and the misappropriation of land, often through violence and intimidation, have been a defining feature

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[214] *Id*.
[215] IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia,* ¶ 753 (Dec. 31, 2013) http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf (accessed March 31, 2020)

of Colombia's internal armed conflict. These human rights violations and abuses have targeted above all Indigenous, Afro-descendant and peasant farmer communities. For these communities, whose identities and livelihoods are intimately linked with the land on which they live and work, the trauma of displacement has been particularly acute."[216] Despite a fragile peace deal between the government and FARC in 2016, there continues to be significant internal conflict over lands, rights and legal jurisdiction. The National Indigenous Organization of Colombia (ONIC) reported in 2019 that 87 indigenous leaders had been murdered since the peace deal was signed, and the number of human rights violations has increased.[217]

In their book *Law and Globalization from Below,* César A. Rodríguez-Garavito and Luis Carlos Arenas explore indigenous rights, transnational activism and legal mobilization of indigenous peoples in Colombia, whom they find "historically subjected to the cruelest forms of exclusion [and] [t]today. . . to be the 'poorest of the poor.'" [218]

"The head of Colombia's army, frustrated by the nation's faltering efforts to secure peace, has ordered his troops to double the number of criminals and militants they kill, capture or force to surrender in battle — and possibly accept higher civilian casualties in the process, according to written orders and interviews with senior officers."[219] Indigenous groups are facing

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[216] *Colombia: Restoring the land, securing the peace: Indigenous and Afro-Descendant Territorial Rights* (Amnesty International, November 2015). Available at https://www.amnesty.org/download/Documents/AMR2326152015ENGLISH.PDF (accessed 12 April 2020)
[217] *Indigenous World 2019: Colombia* (ONIC April 24, 2019). Available at https://www.iwgia.org/en/colombia/3395-iw2019-colombia.html (accessed on March 31, 2020)
[218] Boaventura de Sousa Santos, et. al., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, Sep 8, 2005).
[219] Nicolas Casey, *Colombia Army's New Kill Orders Send Chills Down Ranks,* (New York Times May 18, 2019). Available at https://www.nytimes.com/2019/05/18/world/americas/colombian-army-killings.html (accessed on 13 April 2020)

armed conflict with government actors as a result of increased militarization, as well as from non-governmental groups.

The complex relationship between government and nongovernment actors has had a serious and often detrimental impact on indigenous groups, including cultural extinction. "It is deeply disturbing to the IACHR that at the present time, numerous indigenous peoples in Colombia face a very real danger of physical and cultural extinction due to a number of complex factors. . .[including] the impact of the armed conflict. . . a number of organizations have observed that 65 indigenous peoples are on the verge of extinction. . . Columbia's Constitutional Court concluded that 34 indigenous peoples in Colombia are at risk of physical and cultural extinction as a consequence of the armed conflict and forced displacement."[220] The ongoing violence and instability in Colombia, despite the 2016 peace accord, has continued to bring substantial and potentially catastrophic results to Colombia's indigenous populations.

The struggle for human rights in Colombia is not limited to the plight of traditional indigenous individuals and groups alone. "For Indigenous People, Afro-descendants and peasant farmers, access to land is not a whim, but is an intrinsic part of their identity and existence as communities."[221]

Afro-Colombians, while representing a significant portion of the population, have confronted significant discrimination and violence, often as a result of attempting to assert legal rights. "'The single most targeted group was human rights defenders advocating on behalf of

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[220] IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia,* ¶ 754 (Dec. 31, 2013) http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf (accessed 31 March 2020)
[221] *Colombia must prioritize rights of indigenous people and Afro-descendant communities above economic interest*, (Amnesty International 4 November 2015), https://www.amnesty.org/en/latest/news/2015/11/colombia-must-prioritize-rights-of-indigenous-people-and-afro-descendant-communities-above-economic-interests/ (accessed 13 April 2020)

community-based and specific ethnic groups such as indigenous peoples and Afro-Colombians', Marta Hurtado told reporters in Geneva, adding that the number of women human rights defenders killed increased 'by almost 50 per cent in 2019 compared to 2018.'"[222]

Afro-Colombians and human rights advocates are continuing to encounter violence and even death. This trend of increased suffering can be identified though specific examples. "On Saturday May 4 [2019], unknown armed men opened fire and tossed a grenade at a group of prominent Afro-Colombian leaders in the town of Santander de Quilichao, in the southwestern department of Cauca. The attack is emblematic of the deteriorating security situation faced by human rights leaders in ethnic communities, as well as the Colombian government's inability to provide them with basic measures of protection and justice."[223] While there have been important steps in Colombia in addressing the decades of armed conflict within the nation, recent trends indicate an increase in attacks and deaths of human rights defenders in indigenous and Afro-Colombian communities.

Reprisals and Access to Remedy

Colombia has seen significant violence aimed at indigenous and Afro-Colombian communities. Often this violence is tied to territory and land disputes related to the decades long internal conflict. "Dozens of indigenous and social leaders have been killed in the aftermath of Colombia's historic 2016 peace accord as illegal armed groups and dissidents seek to exert control over former rebel territory and lucrative drug routes. . . An initial investigation suggested

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[222] *Colombia: 'Staggering number' of human rights defenders killed in 2019* (UN News 14 January 2020). Available at https://news.un.org/en/story/2020/01/1055272 (accessed 13 April 2020)
[223] *U.S. and Colombian authorities must respond strongly to brazen attack on Afro-Colombian Human Rights Groups* (WOLA 8 May 2019). Available at https://www.wola.org/2019/05/u-s-and-colombian-authorities-must-respond-strongly-to-brazen-attack-on-afro-colombian-human-rights-groups/ (accessed 13 April 2020)

the massacre came in retaliation for the capture of three members of a residual FARC front by members of the indigenous guard unit, community leaders who mete out justice in their territories."[224] Retaliatory measures by armed groups seeking to assert control over indigenous lands and territories is a substantial impediment to attempts to protect lands, and assert legal rights.

This lack of access to meaningful remedies for these indigenous and Afro-Colombian groups and individuals has led to conflict, as well as the very real and sizeable marginalization of these groups. "The nearly 2 million Colombians belonging to 115 indigenous groups carry less political and economic weight than their brethren in neighboring countries like Ecuador or Peru and are largely relegated to poverty-stricken areas traditionally neglected by the state and where alternatives to growing illicit crops are hard to come by."[225] The marginalized position in society of these groups has made them especially vulnerable to intimidation and violence, as legal remedies are often sparse, and reprisals can be swift and devastating.

INDIGENOUS RIGHTS IN HAITI

National Laws Supplementing International and Regional Obligations

While Haiti has adopted more treaties, conventions, and declarations than almost any country in the region, the recognition and protection of indigenous rights in domestic legislation is limited and implementation and adherence is almost non-existent. This difficulty in the administration of law in Haiti has deep and significant historical roots. "'Lawyers' immunity is under constant threat. Under the Duvalier regime, lawyers were intimidated from defending their

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[224] Christian Escobar Mora, *Slaying of 5 Indigenous leaders shocks Colombians* (October 30, 2019). Available at https://apnews.com/5610abec59e646a7a7104cb0bbed569d (accessed April 13 2020)
[225] *Id*.

clients through pressure and violence. Courts of justice were in effect "run by the judges, appointed by the "President for Life" (the Duvaliers), who lacked the independence to make judgments about abuses against human rights."[226] Domestic laws of significance on the rights of indigenous and Afro-descendant groups and individuals are strikingly absent. Additionally, the adherence to and implementation of laws at all levels is inconsistent, at best; most often, the law is outright disregarded.

Record of implementation

Haiti has been plagued by political instability, immense poverty, and significant violence throughout its history. During unrest in 2018, dozens of civilians were brutally murdered in the capital city in an orchestrated political and social attack on impoverished communities. "During that period, Nov. 13-17, men, women and even children as young as 4 were shot to death, their bodies then fed to dogs and pigs. Women were raped and set on fire, as was a police officer . . . The lack of accountability for the massacre is a festering problem for [President Jovenal] Moïse, along with the U.S. government, the UN and others who want to see Haiti move beyond crisis upon crisis."[227] Haiti is a nation that has been suffering human rights abuses for decades. Often these abuses arise from government and non-government forces alike, and the abuse is often indiscriminate.

In many ways it is difficult to distinguish the abuses of individuals and groups in Haiti, as there is a complete lack of protection for Haiti's poorest citizens. The overlap between Afro-

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[226] Edward H. Lawson, et. al. *Entry on 'Haiti'*, (Encyclopedia of Human Rights 2nd edition (revised) Taylor and Francis, 1996) p. 652.
[227] Jacqueline Charles, *Dozens brutally killed, raped in Haiti massacre police say. 'Even young children were not spared'* (May 15, 2019). Available at https://www.miamiherald.com/news/nation-world/world/americas/haiti/article230380739.html (accessed 13 April 2020)

descendants, indigenous groups, and the general population of impoverished individuals within Haiti is significant. While approximately 95 percent of the nation is of predominantly African descent, Haiti was initially inhabited by three distinct indigenous populations — the Guanahatabey, the Arawaks or Tainos, and the Caribs.[228] Today these groups share many of the same struggles for basic rights and freedoms. [229]

The rule of law in Haiti is tenuous at best. Haiti's elites dominate political and governmental agencies to the detriment of the larger population.[230] Coupled with political instability and a lack of economic and jurisprudential reform, Haiti continues to be one of the least-safe and most corrupt nations in the region.[231] "The country's most vulnerable communities continue to face environmental risks, such as widespread deforestation, pollution from industry, and limited access to safe water and sanitation."[232]

This highly corrupt and dysfunctional justice system has led to arbitrary arrests and severe overcrowding of prisons.[233] The weak rule of law contributes greatly to wider human rights abuses throughout the nation, and a nearly complete lack of adherence to its international commitments on human rights.

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[228] *Did You Know? The Natives of Haiti,* (Haitian Times 2019). Available at https://haitiantimes.com/2019/01/13/did-you-know-the-natives-of-haiti/ (accessed 13 April 2020); Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Haiti* (Minority Rights Group International 2007). Available at: https://www.refworld.org/docid/4954ce1ac.html (accessed 13 April 2020)
[229] Department of International Law, *Afro-descendants,* (Organization of American States, 2020). Available at: http://www.oas.org/dil/afrodescendants.htm (accessed 12 April 2020)
[230] *Haiti Rule of Law Assessment* (Democracy International 2015). Available at http://democracyinternational.com/projects/haiti-rule-of-law-assessment/ (accessed 13 April 2020)
[231] *Id*.
[232] *Haiti Events of 2018* (Human Rights Watch 2018). Available at https://www.hrw.org/world-report/2019/country-chapters/haiti (accessed 13 April 2020)
[233] *Id*.

"Inequality continues to be a serious concern and remains the core cause of the critical situation of human rights in the country."[234] Haiti, for example, did not submit its required report to the Committee on the Elimination of Racial Discrimination for the 14th periodic report.[235] In fact, Haiti has been at least 10 years overdue on its submission of its report on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination, of which it is a party.[236]

Reprisals and Access to Remedy

One significant issue for indigenous individuals and groups seeking remedy of legal wrongs is the fear of reprisals.[237] With the rule of law tenuous at best throughout Haiti, the fear of reprisal for attempting to assert human rights and indigenous rights is significant. The Haitian government has often struggled to provide an even application of the law, free from corruption. As a result, this makes it especially challenging for indigenous peoples to seek remedy from the government or from international institutions. Beyond this challenge is simply creating an accurate depiction of the state of indigenous rights in the nation, as the suffering of the indigenous community is nearly indistinguishable from the plight of Haitians in general.

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[234] UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, 12 February 2016, A/HRC/31/77 at ¶ 10. Available at: https://www.refworld.org/docid/56f176144.html (accessed 12 April 2020)

[235] UN Human Rights Council, *Report of the Independent Expert on the situation of human rights in Haiti*, 12 February 2016, A/HRC/31/77 at ¶ 19. Available at: https://www.refworld.org/docid/56f176144.html (accessed 12 April 2020)

[236] *Report on the Committee on the Elimination of Racial Discrimination Seventy-Eighth Session* (14 Febuary-11 March 2011), at 132. Available at https://www2.ohchr.org/english/bodies/cerd/docs/A.66.18.pdf (accessed 18 April 2020)

[237] The United Nations Declaration of the Rights of Indigenous Peoples, *A Manual for National Human Rights Institutions.* Available at https://www.ohchr.org/Documents/Issues/IPeoples/UNDRIPManualForNHRIs.pdf (accessed 13 April 2020)

INDIGENOUS RIGHTS IN HONDURAS

National Law Supplementing International and Regional Obligations

Domestic legislation aimed at the protection of indigenous rights in Honduras has lagged behind nearly every other nation in the region. There is very little domestically implemented legislation and rights for indigenous individuals and groups in Honduras. "Honduran domestic legislation contains hardly any recognition of or protection for the rights of indigenous peoples. . . . The only reference to indigenous peoples' rights in the Constitution comes in article 346, which provides for the duty of the State to 'adopt measures to protect the rights and interests of indigenous communities in the country, especially the lands and forests where they have settled.'"[238]

This challenging legal landscape has created a system of little to no adherence to internationally and regionally recognized rights. While there have been recent attempts to create administrative support, the implementation of these directives has been ripe with corruption and challenge. "The recent administrative reform and the establishment of various ministries do not seem to have resulted in any improvement in incorporating the rights of indigenous peoples into State activities, owing to poor coordination and institutional weakness."[239] These institutional weaknesses, combined with scant national legislation, have allowed for some of the greatest human rights abuses of indigenous rights in the region.

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[238] *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras*, A/HRC/33/42/Add.2 (21 July 2016) ¶ 8. Available at http://unsr.vtaulicorpuz.org/site/images/docs/country/2016-honduras-a-hrc-33-42-add-2-en.pdf (accessed April 1, 2020)

[239] Id. at ¶ 17

Record of implementation

Honduras has a significant indigenous and Afro-descendant population, with estimates ranging from seven percent (2001 census) to 20 percent of the population (2007 count by indigenous groups).[240] Honduras also is one of the most violent countries in the world and indigenous peoples are often on the frontlines of this widespread violence.[241] In a 2016 report, the UN Special Rapporteur on the rights of indigenous people aptly summed up the situation of indigenous peoples there: "Indigenous peoples face systemic problems that hinder the full enjoyment of their rights. The lack of protection for their lands, territories and natural resources, together with impunity and inadequate access to justice, are fundamental problems that leave them totally defenseless in the face of acts of violence by various parties."[242] She noted indigenous groups whose leaders had been murdered. Violence against indigenous groups that oppose major development projects is a particular problem, illustrated by the murder of Berta Cáceres, who led opposition to a dam being built on the ancestral lands of the Lenca people.[243]

Violence against indigenous peoples is closely connected to their efforts to assert or protect their rights to land, particularly in the context of major development projects.[244] Indigenous leaders Armando Fúnez Medina, Ricardo Soto Fúnez and María Enriqueta were all

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[240] *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras*, A/HRC/33/42/Add.2 (July 21, 2016) at ¶ 4. Available at http://unsr.vtaulicorpuz.org/site/images/docs/country/2016-honduras-a-hrc-33-42-add-2-en.pdf (accessed April 1, 2020)

[241] *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz Addendum THE SITUATION OF INDIGENOUS PEOPLES IN HONDURAS,* (21 July 2016) at ¶19, http://unsr.vtaulicorpuz.org/site/index.php/documents/country-reports/148-report-honduras (accessed 13 April 2020)

[242] *Id*. at ¶ 18

[243] *Id*. at ¶ 20

[244] *See, e.g.,* Annex to Report of the Special Rapporteur, A/HRC/33/42/Add.2 (21 July 2016) (providing observations on the hydroelectric project in Rio Blanco, where Berta Caceres was murdered). Available at http://unsr.vtaulicorpuz.org/site/index.php/documents/country-reports/148-report-honduras (accessed 13 April 2020)

shot while participating in a peaceful protest against mining and logging trucks passing through their lands.[245] A January 2017 Global Witness report finds that the overwhelming majority of attacks are not investigated, and often the institutions of the judiciary, military and police are co-opted into supporting the interests of private companies and those who attack indigenous communities.[246] Jalileh Garcia summed up the tremendous challenges facing indigenous communities in Honduras:

> In 2017, Honduras was considered the deadliest country for land and environmental defenders, affecting many of the Indigenous Peoples who live there. . . [Despite legal safeguards], indigenous communities in Honduras have been excluded from free, prior, and informed consent and consultation regarding the development of extractive industries such as mining, hydro-electric, and monoculture projects that occur in their territories. As a result, this has caused conflicts between the indigenous communities and the state, as the state has allowed for companies to enter their territories and extract raw materials from their lands. Effectively, this has had devastating effects from the contamination of water sources to a loss of food supply, infringing on cultural values and overall violating Indigenous rights. Throughout this, both the state and companies are complicit in these extractive schemes.[247]

The U.S. State Department's annual human rights report affirms that the range of issues confronting indigenous and Afro-descendant communities includes violence, discrimination and inadequate social services.[248]

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[245] *See* Global Witness, *Honduras the deadliest place to defend the planet* (January 2017) at 5. Available at https://www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/ (accessed 16 April 2020)
[246] *See id*.
[247] Jalileh Garcia, *Celebrating World Indigenous peoples' Day and Confronting Challenges in Defending Indigenous Languages and Territory*, (August 10, 2019). Available at http://blogs.cuit.columbia.edu/rightsviews/tag/language/ (accessed 13 April 2020)
[248] *See Honduras 2018 Human Rights Report* (Department of State, 2018). Available at https://www.state.gov/wp-content/uploads/2019/03/HONDURAS-2018.pdf (accessed 13 April 2020)

Reprisals and Access to Remedy

Much of the violence described above amounts to reprisals against indigenous peoples for asserting their rights, and the impunity with which those reprisals are carried out reflect how inaccessible meaningful remedy is to those communities. The barriers to justice for indigenous peoples range from ignorance on the part of judges and others of the indigenous rights to lack of capacity in the justice system to manipulation of the system by unscrupulous actors.[249] The State Department reported being told by community leaders and others that "the government failed to redress actions taken by security forces, government agencies, and private individuals and businesses to dislodge farmers and indigenous persons from lands over which they claimed ownership based on land reform law or ancestral land titles."[250]

INDIGENOUS RIGHTS IN MEXICO

National Laws Supplementing International and Regional Obligations

Mexico has in recent years adopted a variety of constitutional and domestic laws which aim to protect and enshrine indigenous rights. Article 2 of the Mexican Constitution has reference to indigenous peoples.[251] These rights are further expounded upon in Article 27 of the Constitution which recognizes communal landholdings such as Ejidos.[252] In 2013, however, a constitutional amendment "relating to the energy sector and the necessary implementing laws

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[249] *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz Addendum THE SITUATION OF INDIGENOUS PEOPLES IN HONDURAS,* (21 July 2016) ¶¶ 30-31. Available at http://unsr.vtaulicorpuz.org/site/index.php/documents/country-reports/148-report-honduras (accessed 13 April 2020)

[250] *Honduras 2018 Human Rights Report* (Department of State, 2018) at 9. Available at https://www.state.gov/wp-content/uploads/2019/03/HONDURAS-2018.pdf (accessed 13 April 2020)

[251] *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Mexico,* (10-28 September 2018) at ¶ 8. Available at http://unsr.vtaulicorpuz.org/site/images/docs/country/2018-mexico-a-hrc-39-17-add2-en.pdf (accessed April 13 2020)

[252] *Id*. at ¶ 9

were adopted, without due regard for existing legislation on the rights of indigenous peoples; these new provisions allow for contracts to be awarded to private companies in the hydrocarbon sector and facilitate the exploitation of natural resources many of which are located on indigenous territories."[253] This type of legislation can often confuse or obfuscate other forms of legislation and constitutional commitments.

This law appears to contradict in some important ways a 2011 constitutional amendment further enshrining the rights of indigenous individuals and groups. "The Political Constitution of the United Mexican States, adopted in 1917, was amended in 2011 and 2016 to incorporate several references to the rights of indigenous peoples, including the right to self-determination through the autonomous exercise of internal government in accordance with their traditional rules, procedures and customs, and the right to elect indigenous representatives for the town council in municipalities with indigenous populations. The authorities in Mexico are constitutionally obligated to consult indigenous peoples when preparing national, state and local development plans, and to incorporate their recommendations and proposals if appropriate."[254] Of the nations examined in this report, Mexico has adopted arguably the most comprehensive mechanisms and laws for the protection of indigenous rights, but these rights are often still unevenly applied.

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[253] *Id*. at ¶ 10.
[254] *The State of the World's Indigenous Peoples, 4th edition, Implementing the United Nations Declaration on the Rights of Indigenous Peoples* (UN 2019) at 10. Available at https://social.un.org/unpfii/sowip-vol4-web.pdf (accessed 13 April 2020)

Record of implementation

The reality for many indigenous peoples in Mexico is a pattern of discrimination, disenfranchisement, violence and lack of any meaningful reform such as free, prior, and informed consent for impactful development.

The UN Special Rapporteur on Indigenous Peoples Rights, Victoria Tauli-Corpuz, urged Mexico in late 2017 to work to achieve an equal and respectful relationship with indigenous peoples, in order to end a 'serious pattern' of human rights abuses.[255] One example of the issues highlighted by the Special Rapporteur was during a October 2017 dispute between two municipalities in the state of Chiapas. In that dispute 5,323 Tzotziles indigenous individuals were displaced as a result of violence between the communities. This resulted in women, children and elderly indigenous individuals abandoning their homes to flee violence.[256]

Despite Mexico's international, regional, and domestic constitutional commitments, there continue to be significant infringements against indigenous individuals and groups. Violations of indigenous rights stem both from dysfunctional governmental entities that are unable or unwilling to protect these rights and organized criminal elements and third parties that create violence towards those who seek to assert their rights. The Special Rapporteur found "a serious pattern of exclusion and discrimination, which in turn reflects in a lack of access to justice, among other human rights violations." She also noted that "indigenous peoples are not being

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[255] *Mexico must end pattern of discrimination against indigenous peoples – UN Expert,* (20 November 2017). Available at https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22417&LangID=E (accessed April 13 2020)

[256] See *Mexico 2018 Human Rights Report* (Department of State 2018). Available at https://www.state.gov/wp-content/uploads/2019/03/MEXICO-2018.pdf (accessed April 13 2020)

properly consulted, according to international standards, on projects and other decisions that affect their rights, including their right to life."[257]

Activist Julián Carrillo was a community leader in the indigenous community who was attempting to defend his territory from organized crime, illicit development, and the indifference and occasional brutality of his own government. "In an interview, Julián Carrillo told Amnesty International that his greatest concern was the high level of violence in the territory of Coloradas de la Virgen resulting from the divisions in the community created by the granting of ejido rights to non-Indigenous people of mixed heritage and organized crime. According to Julián Carrillo and other members of the community, organized criminal networks had appropriated the Indigenous territory with the aim of sowing illicit crops, especially cannabis and poppies."[258]

The struggle to assert indigenous territory and land rights for Julián Carrillo ultimately resulted in his death. "For more than 15 years Julián struggled to defend the territory and, because of this, he received numerous death threats and in the last three years five of his relatives have been killed. The day we met, he told me with great sadness that the same thing had happened to other community leaders. . . When I said goodbye to Julián, I thought that I would soon see him again in las Coloradas de la Virgen. But two weeks later I woke up to the news that Julián had been killed. I felt frustrated and helpless; his death had long been predicted and it was

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[257] *Mexico must end pattern of discrimination against indigenous peoples – UN Expert,* (20 November 2017) https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22417&LangID=E (accessed 13 April 2020)

[258] *Caught Between Bullets and Neglect, Lack of Protection for Defenders of the Territory in the Tarahumara Sierra* (Amnesty International 2019). Available at https://www.amnesty.org/download/Documents/AMR4195542019ENGLISH.PDF (accessed 13 April 2020)

evident that the state, despite knowing the risks he faced, had not taken the necessary measures to guarantee that he would stay alive."[259]

Reprisals and Access to Remedy

Indigenous activists in Mexico face violence or death when they dare to assert their national, regional and international legal rights, a problem compounded by lack of access to legal remedies and fear of reprisals. Issues of reprisals and lack of access to remedy have been flagged as worthy of concern by the UN Special Rapporteur on Indigenous Peoples Rights. "[F]indings expresses concern over a range of issues including lands and territories, autonomy, self-determination and political participation, self-identification, violence, impunity and access to justice."[260]

In 2010 armed men attacked two indigenous women in San Juan Copala in the state of Oaxaca. One of these women was shot at while the other was raped. These women say their families could be at risk of reprisal for reporting the incident.[261] The fear of reporting extreme violence to authorities over the concern for reprisals is significant and can skew official reporting of such crimes. "The Indigenous Rarámuri people of the community of Coloradas de la Virgen have for years faced a series of attacks and threats because of their work defending human rights

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[259] Rodrigo Sales, *Julian Carrillo Defended the Forest with his Life* (Amnesty International 28 November 2018). Available at https://www.amnesty.org/en/latest/news/2018/11/la-mortal-defensa-del-bosque-por-julian-carrillo/ (Accessed 13 April 2020)

[260] *Mexico must end pattern of discrimination against indigenous peoples – UN Expert,* (20 November 2017) https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22417&LangID=E (accessed 13 April 2020)

[261] *Mexico: Attacked Indigenous Women Risk Reprisals: Further Information,* (Amnesty International 10 September 2010). Available at https://www.amnesty.org/en/documents/AMR41/068/2010/en/ (accessed 13 April 2020)

and their ancestral territory,"[262] according to the Americas Director of Amnesty International's response to the killing of Julián Carrillo. His murder was an obvious failure of the Mexican authorities' obligation to guarantee protections from violence and threats of reprisals from those working to defend human and indigenous rights.[263]

"Amnesty International believes that Mexico has failed to guarantee the protection of the Coloradas community territory, despite appeals to different judicial bodies since 1992 lodged by various Rarámuri Indigenous members of the community. . . In the 28 years since the community filed the first appeal, Mexico has not fulfilled its responsibility to guarantee the Rarámuri people's effective ownership of their ancestral lands because it failed to establish conditions that would allow them to exercise effective control of their territory."[264]

Recently the son of 'El Chapo' was released by police forces in Culiacan after his capture by Mexican authorities. Cartel members responded to his capture with extreme violence on par with active war zones. The release of this cartel leader by the Mexican authorities highlights the inability for the government to have any meaningful control over certain regions of the nation, or to exert legal control on basic levels. This incident highlights the fear of reprisals that is present for government officials, police, and military members in the region, let alone the fear that is present for marginalized citizens fighting to assert their legal rights.[265]

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[262] *Mexico: State Protection Measures were not enough to prevent the killing of environmental defender Julian Carrillo,* (Amnesty International 24 January 2019). Available at https://www.amnesty.org/en/latest/news/2019/01/mexico-state-protection-measures-were-not-enough-to-prevent-the-killing-of-environmental-defender-julian-carrillo/ (accessed 13 April 2020)

[263] *Id.*

[264] *Caught Between Bullets and Neglect, Lack of Protection for Defenders of the Territory in the Tarahumara Sierra* (Amnesty International 2019). Available at https://www.amnesty.org/download/Documents/AMR4195542019ENGLISH.PDF (accessed 13 April 2020)

[265] Dave Graham, et.al., *Cartel gunman terrorize Mexican city, Free El Chapo's son,* (Reuters October 17 2019). Available at https://www.reuters.com/article/us-mexico-violence-sinaloa/cartel-gunmen-terrorize-mexican-city-free-el-chapos-son-idUSKBN1WW34M (accessed 13 April 2020)

FREEDOM OF INFORMATION

INTERNATIONAL AND REGIONAL STANDARDS

Under international law, freedom of information (FoI) is defined as the right of the public to access information held by the national government and governmental institutions which may only be withheld by the government for legitimate reasons, including personal privacy, law enforcement and national security. FoI is considered to be an integral part of freedom of expression and is recognized by Resolution 59 of the UN General Assembly of 1946, and Article 19 of the Universal Declaration of Human Rights (UDHR) of 1948.[266] Under Article 19, the fundamental right of freedom opinion and expression includes the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers."[267] Although the UDHR is not legally binding, it does set out the basic premise for fundamental freedoms, including FoI, and similar language has been incorporated in various international legal instruments, including the International Covenant on Civil and Political Rights (ICCPR) of 1966, and the American Convention on Human Rights (ACHR) of 1969.[268]

Article 13 of the ACHR provides that "everyone has the right to freedom of thought and expression. This right includes the right to seek, receive and impart information and ideas of all kinds."[269] To date, 23 States of the Organization of American States have ratified the ACHR,

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[266] *Freedom of Information, (*United Nations Educational, Scientific and Cultural Organization),. Available at: www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/ (Accessed on April 10, 2020)
[267] United Nations General Assembly, *Universal Declaration of Human Rights*, (United Nations) Article 19. Available at: https://www.un.org/en/universal-declaration-human-rights/ (Accessed on April 10, 2020)
[268] *Freedom of Information, (*United Nations Educational, Scientific and Cultural Organization). Available at: www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/ (Accessed on April 10, 2020)
[269] *American Convention on Human Rights*, (Organization of American States), Art. 13. Available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (Accessed on April 10, 2020)

including the five countries that are the subject of this study. The Inter-American Commission on Human Rights (IAC) and the Inter-American Court of Human Rights (IACHR) oversee member compliance with the ACHR.[270] In 1997, IAC created the Office of Special Rapporteur for Freedom of Expression (OSRFOE) to support promotion and the defense of FoI laws in the region. Later, IAC established a legal and regulatory framework for FoI laws, the Inter-American Declaration of Principles on Freedom of Expression.[271]

The IACHR has developed FoI in several cases. Among its important decisions, the Court in *Claude Reyes et al. v. Chile* reaffirmed that FoI is an integral component of the right to freedom of expression under Article 13 of the ACHR (as it also is under the ICCPR and the UDHR). Emphasizing the importance of "the principle of maximum exposure,"[272] the Court found that a person requesting information from a public agency does not generally need to prove a direct interest to justify the request.[273] In *Gomes Lund v. Brazil*, the Court held that a government cannot invoke "official secret[s] or confidentiality" or "reasons of public interest or national security" as grounds for denying access to information relating to human rights violations.[274] In addition to the terms of the American Convention, the Court also bases its

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[270] *What is the IACHR?,* (Organization of American States). Available at: https://www.oas.org/en/iachr/mandate/what.asp (Accessed on April 10, 2020)
[271] *Freedom of Information in Latin America and the Caribbean,* (United Nations Educational, Scientific and Cultural Organization). Available at: http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-latin-america-and-the-caribbean/ (Accessed on April 10, 2020)
[272] *Order of the Inter-American Court of Human Rights, Case of Claude-Reyes el al. v. Chile Judgment of September 19, 2006, (Merits, Reparations, and Costs),* ¶ 92, (Corte Interamericana de Derechos Humanos). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf (Accessed on April 16, 2020)
[273] *Id.*
[274] *Order of the Inter-American Court of Human Rights, Case of Claude-Reyes el al. v. Chile Judgment of September 19, 2006, (Merits, Reparations, and Costs),* ¶92, (Corte Interamericana de Derechos Humanos). Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf: (Accessed on April 16, 2020)
See also Caso Gomez Lund Y Otros ("Guerrilha Do Araguaia") vs. Brazil, (Right 2 Info, 2010), ¶202. Available at: https://www.right2info.org/resources/publications/case-pdfs/iachr_gomes-lund_decision_esp (Accessed on April 18, 2020)

progressive development of FoI law on "a regional consensus . . . about the importance of access to public information and the need to protect it."[275]

Nineteen Latin American and Caribbean countries have national FoI laws, including Brazil, Colombia, Honduras, and Mexico; Haiti is the one state that is the subject of this study that does not have a national FoI law.[276] Thus, the right of access to information has also developed in national case law, including the principle of maximum disclosure, limitations to that principle, and the nature of FoI as a fundamental right.[277] In this way, national court decisions have helped the development of FoI laws by forcing each state to identify the scope of the right of access to information and enforce that right. Some countries have created specialized, nonjudicial bodies to supervise the right to access information, such as Mexico's Federal Institute for Access to Information and Protection of Data, *Instituto Federal de Acceso a la Información y Protección de Datos de México (INAI).* These bodies have received international acclaim and contributed to notable progress in advancing basic democratic principles in the region.[278]

Most recently, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) was adopted in March 2018. Though focused on environmental issues, the treaty has important

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[275] *Id.* at ¶78.
[276] *Freedom of Information in Latin America and the Caribbean,* (United Nations Educational, Scientific and Cultural Organization). Available at: http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-latin-america-and-the-caribbean/ (Accessed on April 10, 2020)
[277] *Judicial Best Practice with Respect to Access to Information in the Americas: Chapter IV, The Right to Access Information*, (Organization of American States). Available at: http://www.oas.org/en/iachr/expression/docs/reports/access/Good%20pratices%20Access%20to%20information%202012.pdf (Accessed on April 10, 2020)
[278] *Id.*

human rights components, including its provisions on access to information.[279] In praising the agreement's "ground-breaking" nature, twenty-seven UN human rights experts hailed its FoI aspects, which "would allow everyone, particularly those in more vulnerable situations – including older persons, access to timely and reliable information, so that they could participate meaningfully in decisions affecting their lives, and seek redress and remedy when their rights have been infringed."[280] Twenty-two states have signed the treaty, and eight have ratified.[281] The treaty will come into effect after the eleventh ratification.

Despite these positive legal trends in the region, difficulties remain in effective implementation, including establishing the proper legal mechanisms to secure the right to access information and promoting the change from a culture of secrecy to one of transparency.[282]

The right to access information is also necessary for fighting corruption because it enables citizens to hold public officials accountable for their decisions and for the way public funds are spent, and it puts a duty on governments to proactively release information to the

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[279] *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, United Nations, Digital Repository: Economic Commission for Latin America and the Caribbean. Available at: https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf: (Accessed on April 18, 2020) *See also "Americas: Historic Environmental and Human Rights Treaty gains Momentum as 12* Countries Sign" (Amnesty International, Sept. 27, 2018). Available at: https://www.amnesty.org/en/latest/news/2018/09/americas-12-countries-sign-historic-environmental-treaty/ (Accessed on April 2, 2020)

[280] *UN experts urge prompt ratification of landmark Latin America and Caribbean environment treaty,* (United Nations Office of the High Commissioner, Sept. 13, 2018). Accessed on April 2, 2020. Available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23557

[281] Ratifying countries are Antigua, Barbuda, Bolivia, Guyana, Nicaragua, Panama, St. Kitts and Nevis, St. Vincent and the Grenadines, and Uruguay: *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, (United Nations Treaty Collection, March 4, 2018). Accessed on April 16, 2020. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-18&chapter=27&clang=_en

[282] *Freedom of Information in Latin America and the Caribbean,* (United Nations Educational, Scientific and Cultural Organization). Accessed on April 10, 2020. Available at: http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-latin-america-and-the-caribbean/

public.[283] Thus, this analysis also includes a summary of Transparency International's Corruption Perceptions Index (CPI) of 2019. According to the CPI, the Americas region has made no progress in the fight against corruption and has maintained a stagnant score of 43 points out of 100 for four consecutive years.[284]

Transparency International notes that the Americas region has faced great challenges from political leaders acting in their own self-interest.[285] As an example, the 2014 Lava Jato investigation or "Operation Car Wash" involved more than 20 corporations, including Brazilian oil and construction business giants, and more than US$1 billion in bribes to political leaders in Brazil[286] and other countries, including Angola, Bolivia, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru, and Venezuela.[287]

Despite positive developments in the Americas toward establishing FoI laws, the region still struggles with issues of transparency and corruption. It is this in-depth analysis of data from different states within the Americas that demonstrates that FoI laws are not enough. Sometimes FoI laws do not meet international standards or are not properly promoted and implemented. Simultaneously, the lack of transparency hinders citizens in demanding that their governments

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[283] *Chapter VI: Report on Access to Information in the Hemisphere*, (Organization of American States, 2003), ¶13. Accessed on April 18, 2020. Available at: http://www.oas.org/en/iachr/expression/docs/reports/access/ACCESS%20TO%20INFORMATION%202003.pdf

[284] The rating scale has a minimum score of zero that represents states that are highly corrupt and a maximum score of 100 for states that are very clean. These scores are an accumulation of the perceived levels of public sector corruption from experts and businesses in 180 states and territories around the world: *Corruption Perceptions Index 2019*, (Transparency International, 2019). Accessed on April 17, 2020. Available at: https://www.transparency.org/cpi2019

[285] *Id.*

[286] Michael Smith, et el., *No One Has Ever Made a Corruption Machine Like This One*, (Bloomberg Businessweek, June 8, 2017). Accessed on April 16, 2020. Available at: https://www.bloomberg.com/news/features/2017-06-08/no-one-has-ever-made-a-corruption-machine-like-this-one

[287] Ciara Long, *Brazil's Car Wash Investigation Faces New Pressures,* (Foreign Policy, June 17, 2019). Accessed on April 16, 2020. Available at: https://foreignpolicy.com/2019/06/17/brazils-car-wash-investigation-faces-new-pressures/

provide access to public information because they are unaware that they can request it.[288] This analysis will examine the implementation of FoI laws for Brazil, Colombia, Haiti, Honduras, and Mexico.

FREEDOM OF INFORMATION IN BRAZIL

Domestic Laws

The right to freedom of information is guaranteed by Article 5 of the 1988 Constitution, which states that "access to information is ensured to everyone and the confidentiality of the source shall be safeguarded whenever necessary to the professional activity." The demand for more open government and more detailed protection than offered in the Constitution began when transparency advocates drafted an Access to Information (ATI) bill in 2005. Then, the Inter-American Court's ruling in *Gomez Lund* highlighted Brazil's obligation to the American Convention of Human Rights. *Gomez* involved the forced disappearance and torture of about 70 people from the 1970s, and as noted above the Court held that the government could not rely on claims of secrecy or national security to deny information. It also said that the government must act in good faith and diligently to ensure the right of access to information, especially with matters related to human rights violations.[289] The transparency advocacy campaign and the *Gomez* case contributed to passage of the ATI bill in 2011.[290] Brazil also became a permanent member of the Open Government Partnership, an initiative aimed at securing government

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[288] *Right to Information: Knowledge is Power*, (Transparency International, September 27, 2018), Accessed on April 16, 2020. Available at: https://www.transparency.org/news/feature/Right_to_information_knowledge_is_power

[289] Lucia Bellochio, *The Right of Access to Information at the Inter-American Court of Human Rights*, (Improving Public Policies in a Digital World, 2018), Part G. Accessed on April 18, 2020. Available at: https://ojs.imodev.org/index.php/RIGO/article/view/241/385; *see also Caso Gomez Lund y Otros ("Guerrilha Do Araguaia") vs. Brazil*, (Right 2 Info, 2010), ¶202, Accessed on April 18, 2020. Available at: https://www.right2info.org/resources/publications/case-pdfs/iachr_gomes-lund_decision_esp

[290] *Brazil: What's New*, (The Global Network of Freedom of Information Advocates), Accessed on April 16, 2020. Available at: http://www.freedominfo.org/regions/latin-america/brazil/

commitments to advance transparency, combat corruption, and social development of new technologies.[291]

The ATI law's scope is broad. It guarantees access to information and records concerning public financial expenditures, contracts, and other activity, including public programs and projects and applies to all levels and branches of government.[292] It also encompasses entities that are responsible for administering public money, from nonprofits that provide government services to state enterprises.[293] In 2017, Article 19 assessed the first five years of implementation and found that there was an increase in the quantity of information released to the public, the use of data used by the press and researchers, the establishment of mechanisms for information requests, and an increase in local and regional municipalities implementing FoI laws.[294]

Record of Implementation

Still, many states and municipalities faced issues implementing the law, because not all entities had internet access, or the legal framework needed to execute it.[295] The federal government, however, was better prepared to comply and created an online platform to monitor

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[291] Marcelo Sarkis, *Access to Public Information in Brazil, What Will Change With Law No. 12.527/2011?,* (The Global Network of Freedom of Information Advocates, May 14, 2012). Accessed on April 16, 2020. Available at: http://www.freedominfo.org/2012/05/access-to-public-information-in-brazil-what-will-change-with-law-no-12-5272011/

[292] Natalia Mazotte, *Brazil's new Information Access Law goes into Effect*, (Knight Center for Journalism in the Americas, May 17, 2012). Accessed on April 16, 2020. Available at: https://knightcenter.utexas.edu/blog/00-10151-brazils-new-information-access-law-goes-effect

[293] Evelyn Contreras, et al., *From Opacity to Transparency? Evaluating Brazil's Access to Information Law at 5 Years Later,* (Brazilian Journal of Public Administration, August 2018). Accessed on April 16, 2020. Available at: https://www.researchgate.net/profile/Gregory_Michener/publication/325499735_From_Opacity_to_Transparency_Evaluating_Access_to_Information_in_Brazil_Five_Years_Later/links/5b76ffeb4585151fd119cead/From-Opacity-to-Transparency-Evaluating-Access-to-Information-in-Brazil-Five-Years-Later.pdf

[294] *Brazil: Five years of the Access to Information Law*, (Article 19, May 22, 2017). Accessed on April 16, 2020. Available at: https://www.article19.org/resources/brazil-five-years-of-the-access-to-information-law/

[295] Natalia Mazotte, *Brazil's new Information Access Law goes into Effect*, (Knight Center for Journalism in the Americas, May 17, 2012), Accessed on April 16, 2020. Available at: https://knightcenter.utexas.edu/blog/00-10151-brazils-new-information-access-law-goes-effect

requests called the Electronic System for Information Citizen (e-SIC).[296] Other challenges include the lack of understanding of the ATI law by state and local authorities, the repeated requirement for applicants to provide more personal data than is necessary, and low-quality responses to information requests. Information requests were reported to be threatening to the applicant in states or municipalities that require extra information, such as the applicant's identifying information. This is most dangerous in cities where people are more likely to be identified. In addition, the information request process can be discriminatory, leaving the requests of certain individuals unanswered. This type of discrimination typically affects journalists, who are likely to face more difficulty and longer delays when trying to get answers. This occurs at the federal level but is amplified at the local level.[297] Further, ombudsmen that have been instrumental in the success of ATI law in their areas have suffered downgrading of their political status.[298]

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[296] *Id.*

[297] *Brazil does not punish public servants who don't comply with access to information law, says Article 19,* (Knight Center for Journalism in the Americas, May 22, 2017). Accessed on April 16, 2020. Available at: https://knightcenter.utexas.edu/blog/00-18423-brazil-does-not-punish-public-servants-who-dont-comply-law-access-information-says-art

[298] Research conducted in 2017 shows that 16 of 27 state regulations and 10 of 26 state capitals assign oversight responsibility. Local authorities also demonstrated their lack of understanding of ATI by asking researchers their motives (which is prohibited under Article 10 of ATI) in 50 percent of phone calls made requesting information, 57 percent didn't realize that they were responsible for complaints concerning access to information, and 47 percent asked to call requesters at a later time. Such statistics show public officials have little knowledge of the ATI and are not properly trained. *See* Gregory Michener, et al., *From Opacity to Transparency? Evaluating Brazil's Access to Information Law at 5 Years Later,* (Brazilian Journal of Public Administration, August 2018), Accessed on April 16, 2020. Available at: https://www.researchgate.net/profile/Gregory_Michener/publication/325499735_From_Opacity_to_Transparency_Evaluating_Access_to_Information_in_Brazil_Five_Years_Later/links/5b76ffeb4585151fd119cead/From-Opacity-to-Transparency-Evaluating-Access-to-Information-in-Brazil-Five-Years-Later.pdf

Another issue with the ATI law is its enforcement. Despite penalties provided under the ATI, no official suffered any sanctions for failing to comply with the ATI in its first five years.[299] The lack of enforcement and noncompliance with ATI are the law's main challenges. For example, a survey by Transparencia Brasil revealed that 56 percent of information requests were not responded to, 25 percent of requests were answered or partially answered, and the remaining 19 percent denied. Approximately 80 percent of federal information requests were deemed to be minimally accurate or better.[300] In 2020, Freedom House reported that Brazil's ATI Law is still not being consistently implemented, as the government sometimes does not provide requested information and state and local compliance with the law is varied.[301]

Since 2011, transparency advocates have been fighting for an independent to oversee compliance with the ATI without success. The Office of the Comptroller General (CGU) was the federal agency in charge of transparency and preventing corruption. Its creation in 2003 was an important step in attacking corruption.[302] It experienced many setbacks, however, including budget cuts and loss of staff and status. It finally was dissolved in 2016, when interim President

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[299] *Brazil does not punish public servants who don't comply with access to information law, says Article 19,* (Knight Center for Journalism in the Americas, May 22, 2017), Accessed on April 16, 2020. Available at: https://knightcenter.utexas.edu/blog/00-18423-brazil-does-not-punish-public-servants-who-dont-comply-law-access-information-says-art

[300] Gregory Michener, et al., *From Opacity to Transparency? Evaluating Brazil's Access to Information Law at 5 Years Later,* (Brazilian Journal of Public Administration, August 2018), Accessed on April 16, 2020. Available at: https://www.researchgate.net/profile/Gregory_Michener/publication/325499735_From_Opacity_to_Transparency_Evaluating_Access_to_Information_in_Brazil_Five_Years_Later/links/5b76ffeb4585151fd119cead/From-Opacity-to-Transparency-Evaluating-Access-to-Information-in-Brazil-Five-Years-Later.pdf

[301] *Freedom in the World 2020: Brazil*, (Freedom House, 2020). Accessed on April 2, 2020. Available at: https://freedomhouse.org/country/brazil/freedom-world/2020

[302] Fabio Morosini, et al., *The Regulation of Corporate Bribery in Brazil*, (Mexican Law Review, Vol. 7, Issue 1, July – December 2014). Accessed on April 16, 2020, Available at: https://www.elsevier.es/en-revista-mexican-law-review-123-articulo-the-regulation-corporate-bribery-in-S1870057816300117

Michel Temer (who himself was convicted of violating campaign limits)[303] decided to replace it with a cabinet-level Ministry of Transparency, Monitoring, and Oversight (MTMC).[304]

The change was criticized by transparency advocates and experts because the MTMC will have less autonomy than the CGU, making it susceptible to political interference. Just nineteen days after it was created, the concerns were vindicated in dramatic fashion when Minister Fabiano Silverio was forced to resign after a recording surfaced in which he discussed with another top politician how to block the investigation into a far-reaching scandal involving the national oil giant Petrobas.[305] Soon after, Transparency International suspended its cooperation with the ministry.[306] TI also pointed out that more than half of the members of Brazil's Congress had previous criminal convictions.[307]

The situation has not improved in the past four years. Freedom House concluded in 2020 that "[c]orruption and graft are endemic in Brazil, especially among elected officials."[308] Transparency International's 2019 CPI ranked Brazil 106th most perceived corrupt country out of 180 countries with an aggregate score of 35 out of 100 points. That score is Brazil's lowest since 2012, putting it on TI's watch list. Transparency International explains that corruption continues

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[303] *Brazilian Lawmaker Behind Rouseff Impeachment is Told to Step Down*, (New York Times, May 6, 2016). Accessed on April 16, 2020. Available at: https://www.nytimes.com/2016/05/06/world/americas/cunha-rousseff-brazil-impeachment.html

[304] Simon Romero, *Recording Spurs Anticorruption Minister to Resign in Brazil* (New York Times, May 30, 2016). Accessed on April 16, 2020. Available at: https://www.nytimes.com/2016/05/31/world/americas/brazil-fabiano-silveira-resign.html?_r=1

[305] *Id.*

[306] *Brazil's Corruption Clean-Up*, (Transparency International, 31 May 2016). Accessed on April 16, 2020. Available at: https://www.transparency.org/news/feature/brazils_corruption_clean_up

[307] *Id.; See also* Andrew Jacobs, *Brazil's Graft-Prone Congress: A Circus That Even Has a Clown,* (New York Times, May 14, 2016). Accessed on April 2, 2020. Available at: https://www.nytimes.com/2016/05/15/world/americas/brazils-most-entertaining-show-may-be-congress.html

[308] *Freedom in the World 2020: Brazil*, (Freedom House, 2020). Accessed on April 2, 2020. Available at: https://freedomhouse.org/country/brazil/freedom-world/2020

to be the greatest impediment for economic and social growth in Brazil. According to Transparency International, "These ongoing challenges include growing political interference with anti-corruption institutions, congressional approval of legislation that threatens the independence of law enforcement, and government impunity." Like other countries in Latin America, corruption and mounting impunity continue to hinder Brazil's transparency efforts.[309]

Despite overwhelming congressional objection,[310] an executive order altering the ATI law was adopted in January 2019 by the new Bolsonaro administration. The decree allows a broad group of public officials, potentially over 1200 permanent and temporary officials, to classify public documents as secret or top-secret, preventing disclosure for fifteen and twenty-five years, respectively. The decree undermines core principles of the ATI law and the constitution, not to mention Brazil's obligations under the American Convention, in which secrecy must be exceptional and transparency the default rule.[311] The decision surprised members of the government who were shocked at the spontaneous reform and the lack of public discussion in making the changes.[312]

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[309] *CPI 2019 Americas*, *Countries to Watch: Brazil,* (Transparency International, 2019). Accessed on April 17, 2020. Available at: https://www.transparency.org/cpi2019

[310] *Brazil's Bolsonaro Suffers First Defeat in Congress*, (Reuters, February 19, 2019). Accessed on April 16, 2020. Available at: https://www.reuters.com/article/us-brazil-politics/brazils-bolsnaro-suffers-first-defeat-in-congress-idUSKCN1Q908X

[311] *Brazil: New Access to Information Decree Undermines Government Transparency*, (Article 19, January 30, 2019). Accessed on April 16, 2020. Available at: https://www.article19.org/resources/brazil-new-access-to-information-decree-undermines-government-transparency/

[312] Jill Langlios, *Brazil Puts in Place New Regulations to Keep Government Data and Documents Secret*, (LA Times, January 24, 2019). Accessed on April 16, 2020. Available at: https://www.latimes.com/world/la-fg-brazil-secrecy-20190124-story.html

FREEDOM OF INFORMATION IN COLOMBIA

Domestic Laws

Colombia was one of the first countries in the world to recognize the right to access public information and was the first state in Latin America to establish an FoI law. Colombia's Law 57 of 1985 recognized an individual's right to see documents held by public offices and to be issued copies of such documents, provided the documents were not confidential or did not involve defense or national security. Law 57, however, was too broad and had to be complemented by other laws. Law 594 of 2000, for example, specified the conditions of access to public information and Law 1233 of 2008 regulated the right to personal data.[313]

The country underwent significant political and economic reform when it adopted a new constitution in 1991.[314] That constitution states that "every person has a right to access public documents except in cases established by law."[315] With international assistance and support from the government and civil organizations, Colombia adopted a new FoI law in 2014. It compels political parties and entities that distribute public funds and resources to abide by FoI laws and proactively publish certain information. Further, the law reduces the number of years that public information can be classified by the government as confidential (from 30 to 15 years). Colombia

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[313] *Open Government Policies and Initiatives in Colombia*, OECD Public Governance Reviews Open Government in Latin America, November 17, 2014, p. 127 – 171. Accessed on April 16, 2020. Available at: https://www.oecd-ilibrary.org/governance/open-government-in-latin-america/open-government-policies-and-initiatives-in-colombia_9789264223639-8-en

[314] *Id.*

[315] Oxford University Press, *Colombia's Constitution of 1991 with Amendments through 2005*, (Constitute Project, August 12, 2019), Art. 74. Accessed on April 16, 2020. Available at: https://www.constituteproject.org/constitution/Colombia_2005.pdf

continues to be criticized for the government's broad power to withhold information and for its failure to designate a single agency to implement FoI laws.[316]

The Global RTI Rating considers Colombia's FoI legal framework to be weak but notes the positive influence of Colombian court decisions in helping enforce FoI laws. Though Colombia does not have a specialized independent appeals body, the Colombian judiciary has provided effective oversight of FoI laws. These major problems with the legal framework include its limited scope, (FoI laws do not apply to inquiries concerning the legislature or judiciary), the government's broad power to classify public information and make it harder to obtain, and the lack of a public interest override for exceptions to access. Moreover, the legal framework for current FoI laws do not provide legal protection for public officials, that on good faith, release information that discloses government wrongdoing.[317]

There are no internet or media specific laws in Colombia, only a legal framework that digitally supports the right to information.[318] For example, citizens can request information and resolve appeals to requests for free or at a low cost through the Colombian e-government portal, Online Government. Online Government is an electronic means of accessing information and services provided by government entities. The Online Government was created in 2008, and its aim is to build a more efficient, transparent, and participatory State.[319]

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[316] Freedom House, *Freedom House Report 2013: Colombia*, (U.S. Department of Justice, 2013). Accessed on April 16, 2020. Available at: https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/21/Colombia.pdf

[317] *RTI Rating: Colombia*, (Global RTI Rating). Accessed on February 14, 2020. Available at: https://www.rti-rating.org/country-detail/?country=Colombia

[318] *Colombia's Sprawling Spy Network a Threat to Freedom*, (Deutsche Welle, February 2, 2019). Accessed on April 16, 2020. Available at: https://www.dw.com/en/colombias-sprawling-spy-network-a-threat-to-freedom/a-47691828-0

[319] U4 Expert Answer, *Colombia: Overview of Corruption and Anti-Corruption*, (Transparency International, March 15, 2013). Accessed on April 16, 2020. Available at: https://www.transparency.org/files/content/corruptionqas/373_Colombia_Overview_of_corruption_and_anti-corruption.pdf

Record of Implementation

Colombia's low digital literacy, threat of government surveillance, and high costs associated with internet access, continue to slow the widespread use of access to information online. Further, a climate of fear, violence, and self-censorship also constrains the release of information. In 2016, a national survey of media outlets revealed that 25 percent of respondents avoided publishing information due to fear of aggression, 21 percent feared losing their jobs or having their media outlets closed, and 21 percent were aware of media sources that avoided publishing information due to fear of losing advertising profits.[320]

Colombian FoI laws do not provide for protection against reprisals. In contrast, the press encounters different types of government reprisals in the quest for information. In 2015, 232 victims of press freedom violations were registered by the Foundation for Press Freedom. The most significant cases include the murders of Luis Peralta and Flor Alba Nunez, journalists who reported on crime and corruption. Other cases involved kidnapping, death threats, defamation, and litigation against media outlets. Another case involved the repeated postponements of a trial involving the kidnapping and sexual assault of a reporter. Though the conviction of former member of Congress Dixon Ferney Tapasco for his involvement in the murder of a journalist in 2002 was considered to be an advance toward accountability, impunity for those who threaten, attack, or kill continues to prevail.[321]

Government information is generally available to the public, although information has been reported to be faulty and certain information, particularly information related to the military

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[320] *Freedom on the Net 2019: Colombia,* (Freedom House, 2019), Part C. Accessed on March 14, 2020. Available at: https://freedomhouse.org/country/colombia/freedom-net/2019#C

[321] *Id.*

and security affairs, has been reported to be difficult to access.[322] Despite the implementation of various electronic information systems, states and municipalities continue to fail to provide information to the public. Recently, there have been several FoI referendum proposals, but all have failed to gain the necessary legislative traction to be enacted into law, including a proposal that would require officials to disclose their financial information and lobbying activity.[323]

FREEDOM OF INFORMATION IN HAITI

Domestic Laws

In Haiti, the right to information is considered a fundamental component of the right to freedom of expression and is guaranteed by the 1987 Constitution. Pursuant to Article 40, Section I (Right to Information), "the State has the obligation to publicize in the press, in both Creole and French, all laws, orders, decrees, international agreements, and conventions on everything affecting national life, except for information concerning national security."[324] Additionally, the Constitution gives power to the Office of Citizen Protection, which is meant to protect all individuals against any form of abuse by the government.[325] Other than these provisions, however, Haiti does not have national FoI laws to protect the right to access information.[326] Under the constitution, international treaties supersede conflicting laws and

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[322] *Freedom in the World 2019: Colombia,* (Freedom House, 2019), Part A, Accessed on March 15, 2020. Available at: https://freedomhouse.org/country/colombia/freedom-world/2019#PR
[323] *Id.*
[324] *1987 Constitution of Haiti*, (Georgetown University, 2011), Art. 40. Accessed on April 16, 2020. Available at: http://pdba.georgetown.edu/Constitutions/Haiti/haiti1987.html
[325] *Id.*
[326] *Freedom in the World 2019: Colombia,* (Freedom House, 2019), Part A. Accessed on March 15, 2020. Available at: https://freedomhouse.org/country/colombia/freedom-world/2019#PR

become Haitian law. So, the freedom of information provisions of the American Convention and the ICCPR are incorporated into Haitian law.[327]

Record of Implementation

Reports by IACHR and other interested groups reveal common restrictions on public access to information. One common issue for Haitians in accessing information is that all the current newspapers are in French, a language that less than 20 percent of Haitians speak. Less than 10 percent of Haitians can afford other sources of information, like internet and television. The press also faces challenges including physical threats and violence as well as defamation lawsuits with criminal sanctions and license revocations.[328] This fear of defamation and risk of violent reprisals serves as a deterrent for Haitians to the unrestrained discussion of sensitive public issues.[329] Another form of intimidation encountered by Haitian journalists includes "stonewalling," a term used to describe the government's denial to journalists in interviewing public officials and accessing public information. As a result, the Institute for Justice and Democracy in Haiti and the Center for Law and Global Justice at the University of San Francisco

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[327] *1987 Constitution of Haiti*, (Georgetown University, 2011), Art. 40. Accessed on April 16, 2020. Available at: http://pdba.georgetown.edu/Constitutions/Haiti/haiti1987.html

[328] Boston College Law School, et al., *Republic of Haiti: Submission for the 112th Session of the United Nations Human Rights Committee, October 8 & 9, 2014 - Freedom of Expression in Haiti: Violations of the Freedom of the Press*, (United Nations Human Rights Office of the High Commissioner, September 12, 2014), ¶11. Accessed on April 17, 2020, Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HTI/INT_CCPR_CSS_HTI_18249_E.pdfhttps://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HTI/INT_CCPR_CSS_HTI_18249_E.pdf

[329] *Freedom in the World 2019: Haiti,* (Freedom House, 2019), D4. Accessed on March 15, 2020. Available at: https://freedomhouse.org/country/haiti/freedom-world/2019

recommended that "all public agencies make every effort to ensure easy, prompt, effective and practical access to information."[330]

According to Freedom House, Haiti's government operates at a very low level of openness and transparency. Investigations also reveal that it is generally difficult to obtain government data and records.[331] Out of 180 countries, Transparency International's Corruption Perception Index (CPI) of 2019 ranked Haiti 168, with an aggregate score of 18. In other words, Haiti was perceived to be one of the 15 most corrupt countries in the world. The veil of secrecy that the Haitian government hides behind allows for impunity and the perpetration of human rights violations.

The 2010 earthquake resulted in the loss of government documents and exposed the limits of governmental record-keeping.[332] Given the mass destruction – damages and losses that equaled 120 percent of Haiti's GDP – the United Nations Educational, Scientific and Cultural Organization (UNESCO), UNESCO partners, and the Haitian authorities came together to reconstruct Haitian archives and to create other private and public institutions to safeguard important Haitian records.[333] Still, distinguished experts in the field recognized that much of the destruction could have been prevented and was a result of human failure. These experts point out that progress in Haiti must focus on creating a strong, independent Haitian government to

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[330] *Freedom of Press in Haiti: Report finds Haitian Journalists face Death Threats, Intimidation, Retaliation, and Hindered Access to Information*, (Institute for Justice and Democracy in Haiti, September 27, 2012), ¶4. Accessed on April 17, 2020. Available at: http://www.ijdh.org/2012/09/topics/politics-democracy/freedom-of-press-in-haiti-report-finds-haitian-journalists-face-death-threatsintimidation-retaliation-and-hindered-access-to-information/

[331] *Freedom in the World 2019: Haiti,* (Freedom House, 2019). Accessed on March 15, 2020. Available at: https://freedomhouse.org/country/haiti/freedom-world/2019

[332] *Bi-annual Report on Human Rights in Haiti January-June 2012,* (United Nations Office of the High Commissioner for Human Rights, October 2012). Accessed on April 17, 2020. Available at: https://www.ohchr.org/Documents/Countries/HT/MINUSTAH-OHCHRJanuaryJune2012_en.pdf

[333] *UNESCO in Action: Working Together for Haiti,* (UNESCO Digital Library, 2011), Accessed on February 29. 2020. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000190539

effectively provide services to its people.[334] Even ten years later, observers are recognizing that Haiti is a long way from fully recovering from such disasters as a result of political dysfunction, economic troubles, and the decline of foreign investors.[335]

The lack of reports by leading organizations on freedom of information in Haiti, including – to name a few – the IACHR's Special Rapporteurs for Freedom of Expression, Centre for Law and Democracy, Access Info, World Wide Web Foundation, Freedom of Information Advocates Network, and the Open Government Partnership, is alarming for it exposes the lack of progress in the establishment and enforcement of FoI laws in Haiti. Annual reports from leading think tanks and other FoI advocate groups suggests that Haiti is not fulfilling its obligations under international law and its constitution to protect the right to access information and that Haiti needs further monitoring and assistance in advancing FoI. In Haiti, citizens are restricted by the lack of national FoI laws and legal mechanisms that enforce their right to the access of information. As a result, the right to information in Haiti is generally unrealized.[336]

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[334] Lauren Gold, *Devastation in Haiti had Human Causes, Too, Panelists Say*, (Cornell Chronicle, January 26, 2010). Accessed on April 17, 2020. Available at: https://news.cornell.edu/stories/2010/01/panel-devastation-haiti-had-natural-and-human-causes

[335] *Things have Gotten Worse: Weary Haitians Approach a Somber Anniversary*, (National Geographic, January 10, 2020). Accessed on April 17, 2020. Available at: https://www.nationalgeographic.com/history/2020/01/things-gotten-worse-haiti-approaches-somber-anniversary/#close

[336] Global Justice Clinic, NYU School of Law, *Haiti Submission to the United Nations Periodic Review: Human Rights Impacts of Gold Mining in Haiti,* (Universal Periodic Review, November 7-9 2016). Accessed on April 17, 2020. Available at: https://chrgj.org/wp-content/uploads/2018/02/Human-Rights-Impacts-of-Gold-Mining-in-Haiti.pdf

FREEDOM OF INFORMATION IN HONDURAS

Domestic Laws

There is no right to access public information in the Honduran Constitution. Under article 182 of the Constitution, a person has the right of "habeas data," that is information about oneself or one's property.[337] In 2006, Honduras enacted the Law of Transparency and for Access to Public Information, which guarantees a citizen's right to all information contained in public entities, except for classified information. This law extends the constitutional protection of habeas data and forbids the distribution of personal information that may cause discrimination or any moral or economic damage to a person.[338] The law also created the Institute for Access to Public Information (IAIP), a decentralized government body that is responsible for enforcing transparency and FoI laws in Honduras. The law was expanded in 2008 to provide for a definition of databases containing personal confidential information and guidelines for the requirement of data-subject consent prior to the use of information by a third party.[339] The Institute for Access to Public Information created the Electronic Information System of Honduras (SIEHLO), an online system that manages FoI requests and processes appeals.[340]

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[337] *Honduras's Constitution of 1982 Amendments through 2013*, (Constitute Project, 2013), Art. 182, Accessed on February 4, 2020. Available at: https://www.constituteproject.org/constitution/Honduras_2013.pdf?lang=en

[338] *Data Protection Laws of the World: Honduras*, (DLA Piper Data Protection, January 28, 2019). Accessed on April 17, 2020. Available at: https://www.dlapiperdataprotection.com/index.html?t=law&c=HN

[339] Paola Nalvarte, *Honduran Secrecy Law Endangers Access to Public Information: RSF*, Knight Center for Journalism in the Americas, January 21, 2014). Accessed on April 17, 2020. Available at: https://knightcenter.utexas.edu/blog/00-14996-honduran-secrecy-law-endangers-access-public-information-rsf

[340] Edison Lanza, *The Right to Access to Public Information in the Americas: Specialized Supervisory and Enforcement Bodies*, (Organization of the American States, March 2015), ¶ 64. Accessed on April 17, 2020. Available at: http://www.oas.org/en/iachr/expression/docs/reports/ACCESS/Thematic%20Report%20access%20To%20public%20information%202014.pdf

Record of Implementation

In 2014, Honduran FoI experienced a setback when the government covertly adopted the Law of Secrets, which enables the president and other public officials to withhold public access to information for different periods of time. Under this law, the government can restrict information related to security or defense matters by classifying it into one of the four categories: restricted, confidential, secret, and ultra-secret. These classifications restrict the release of information for 5, 10, 15 and 25 years, respectively. Consequently, IAIP's implementation of FoI laws would effectively be superseded by public officials in charge of state entities that can classify information as secret without any accountability.[341] The law created the Presidential Office of Transparency, Modernization, and Reform of the State which is meant to strengthen transparency in Honduras by formulating and proposing transparency policies and programs. At the same time, the Law for the Classification of Public Documents made the National Council for Defense and Security responsible for classifying information related to defense and national security. This law allows the Council to classify information in important state public and private institutions including the Supreme Court of Justice, Secretariat of the Interior Security and National Police Directorate, National Migration Institute, Executive Revenue Agency, National Registry of People, Social Security Institute of Honduras, Property Institute, Financial Intelligence Unit for the Bank and Securities Commission, Merchant Marines, Aviation

[341] Paola Nalvarte, *Honduran Secrecy Law Endangers Access to Public Information: RSF*, Knight Center for Journalism in the Americas, January 21, 2014). Accessed on April 17, 2020. Available at: https://knightcenter.utexas.edu/blog/00-14996-honduran-secrecy-law-endangers-access-public-information-rsf

Authority, National Electric Power Firm, and the Autonomous National Service of Aqueducts.[342] This change was criticized by FoI advocates, who fear that the transfer of responsibilities to the Council will undermine the IAIP. Another concern is that this law does not define a national security matter; thus, giving the government broad discretion to classify documents. Human rights experts also argue that the law allows corrupt government officials to avoid prosecution because the statute of limitations in Honduras is 25 years, the maximum number of years that information can be classified. Further, the law impedes the country's development by failing to disclose information related to government spending to human rights experts.[343]

In 2014, IACHR's Rapporteur for Freedom of Expression commended the growing consensus in the Americas supporting the right to information through the implementation of FoI laws and the creation of independent oversight mechanisms to enforce these laws. The Rapporteur noted, however, that a critical issue is that the oversight agencies lack the power to issue binding dispute resolutions and compel other agencies to grant access to information. The Honduran IAPI, for example, cannot issue binding resolutions, which has allowed other agencies to challenge its decisions and delayed the disclosure of the requested information.[344]

The most recent Global RTI report ranked Honduras's access framework 69th out of 128 countries. The Global RTI noted the country's poor recognition of the right to information and

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[342] *Crime, Drugs, and Power in Honduras: Searching for Better Measures of State Fragility*, (Global Drug Policy Observatory, September 2018), pg. 6, ¶ 3. Accessed on April 17, 2020. Available at: https://www.swansea.ac.uk/media/Crime,-Drugs,-and-Power-in-Honduras-Searching-for-Better-Measures-of-State-Fragility.pdf

[343] *Id. at* pg. 6, ¶ 4.

[344] Edison Lanza, *The Right to Access to Public Information in the Americas: Specialized Supervisory and Enforcement Bodies*, (Organization of the American States, March 2015), ¶ 84. Accessed on April 17, 2020. Available at: http://www.oas.org/en/iachr/expression/docs/reports/ACCESS/Thematic%20Report%20access%20To%20public%20information%202014.pdf

the ineffective implementation of existing FoI laws. Other weaknesses include Honduras's failure to impose penalties on public agencies or public agents that violate the right to information. Honduras received a significantly low score in every category, except under scope and promotional measures of its FoI laws. Under scope, Honduras received an acceptable score because its FoI laws apply to the executive, judicial and legislative branches and to central government agencies. Honduras's promotional measures received a high score for having an independent agency responsible for the promotion of FoI laws. Nonetheless there were still low scores for certain sections within those categories. Under promotional measures, for example, Honduras received a low score for not having public awareness efforts required by law. It received low scores in scope because the right of access did not apply to state-owned enterprises. The Global RTI Rating also determined that the law's vague definitions make it vulnerable to interference from the government and from other legislation.[345]

The latest Freedom House report states that the Honduran government continues to operate in almost total secrecy. Freedom House suggests that the secrecy laws adopted in 2014 have allowed the government to withhold a broad range of information that should be made available to the public, including information regarding public funding.[346] As an example, current laws require government officials, such as the president, and parliament members to comply with asset disclosure requests, but because these laws fail to specify the assets that must be declared and require special permission from the individual whom the information concerns,

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[345] *RTI Rating: Honduras*, (Global RTI Rating, 2006). Accessed on February 14, 2020. Available at: https://www.rti-rating.org/country-detail/?country=Honduras

[346] *Freedom in the World 2019: Honduras*, (Freedom House, 2019). Accessed on February 14, 2019. Available at: https://freedomhouse.org/country/honduras/freedom-world/2019

most requests are typically not released.[347] In general, protection of FoI, like the overall stability of Honduras and the attainment of basic human rights, is undermined by institutional weakness, corruption, violence, and government impunity.[348]

The weakness of FoI implementation has perpetuated a culture of secrecy in the government that has allowed breathtaking, possibly life-threatening corruption. In 2013, it was discovered that $350 million had been embezzled from Honduras's national health care system. An investigation into the embezzlement uncovered a clear misuse of funds, including excessive payouts for employees, and medical purchases that were recorded over 500 percent the original value.[349] Juan Orlando Hernandez, the current president of Honduras, even admitted to diverting public funds to finance his 2013 presidential campaign.[350] In 2015, another informer reported purchase irregularities from a public hospital to the national Transparency International chapter, Asociación para una Sociedad mas Justa (ASJ). The ASJ investigation revealed a bidding scandal, in which hospital managers created fake bids and companies to recoup the payments made for hospital medicines.[351]

These scandals left many Hondurans wondering how many other governmental agencies were as corrupt and sparked public protests. Thus, the Mission to Support the Fight Against

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[347] Maíra Martini, *Overview of Corruption and Anti-Corruption in Honduras*, (Transparency International Anti-Corruption Help Desk, February 2013), pg. 8. Accessed on April 18, 2020. Available at: https://www.transparency.org/files/content/corruptionqas/Overview__of__corruption__and__anti__corruption__in__Honduras.pdf

[348] *Freedom in the World 2019: Honduras*, (Freedom House, 2019). Accessed on February 14, 2019. Available at: https://freedomhouse.org/country/honduras/freedom-world/2019

[349] *The Wolves of Honduras,* (Council on Hemispheric Affairs, September 25, 2014). Accessed on April 17, 2020. Available at: http://www.coha.org/the-wolves-of-honduras/

[350] Elyssa Pachico, et al., *Q&A: The Threats Facing Honduras's Fight Against Corruption*, (Washington Office on Latin America, January 15, 2020). Accessed on April 2020. Available at: https://www.wola.org/analysis/threats-facing-honduras-fight-corruption-maccih/

[351] *Corruption revealed in Honduran Hospital*, (ASJ Honduras, October 25, 2019). Accessed on April 17, 2020. Available at: https://voices.transparency.org/corrupt-hospital-managers-stopped-in-their-tracks-f30169146321

Corruption and Impunity in Honduras (MACCIH), an autonomous organization under the joint auspices of the Organization of American States (OAS) and the Honduran government, was created in 2016.[352] But MACCIH did not possess investigatory or prosecutorial powers of its own; it only supported existing investigators and prosecutors in Honduras. This significantly limited MACCIH's potential as it could not demand information from the government or issue binding decisions. The Honduran government has also enacted laws that disrupted transparency efforts, including a law that blocks the investigation of cases involving the misappropriation of state funds. Further, FoI bills drafted by MACCIH have been sitting with Congress since 2017.[353]

In 2018, Juan Jimenez announced his resignation as the head of MACCIH, citing limited resources and the lack of cooperation from the Honduran government.[354] The resignation followed a series of government scandals, including the "Pandora case," an investigation that involved dozens of Honduran officials, including the President and the alleged misuse of about $12 million in government funds.[355] Recently, the OAS announced that the MACCIH would not continue due to the lack of agreement with the Honduran government to renew the mission's

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[352] *Mission to Support the Fight Against Corruption and Impunity in Honduras*, (Organization of American States). Accessed on March 9, 2020, Available at: http://www.oas.org/en/spa/dsdsm/maccih/new/mision.asp#areas

[353] Elyssa Pachico, et al., *Q&A: The Threats Facing Honduras's Fight Against Corruption*, (Washington Office on Latin America, January 15, 2020). Accessed on April 2020. Available at: https://www.wola.org/analysis/threats-facing-honduras-fight-corruption-maccih/

[354] *Head of OAS Anti-Corruption Mission in Honduras Resigns*, (Reuters, February 15, 2018), Accessed on April 18, 2020. Available at: https://www.reuters.com/article/us-honduras-corruption/head-of-oas-anti-corruption-mission-in-honduras-resigns-idUSKCN1G00A2

[355] Parker Asmann, *Honduras Anti-Corruption Probe Implicates President*, Opposition, (InSight Crime, June 15, 2018). Accessed on April 18, 2020. Available at: https://www.insightcrime.org/news/analysis/honduras-anti-corruption-probe-implicates-president-opposition/

mandate.[356] MACCIH's last report recommended that Honduras' strengthen transparency and accountability in public bodies. This recommendation included working towards improving the registration, storage, and management of information in public institutions. It also recognized five impediments to the progress of transparency: the partial or complete failure to enforce FoI laws, the restrictive nature of FoI laws, the lack of mechanisms monitoring FoI law compliance and registering people and crimes, and the absence of prosecutorial support for crimes involving illicit enrichment.[357]

According to the 2019 CPI, Honduras was perceived to be the 34th most corrupt country in the world, with a score of 26.[358] Marred by corruption and abuse, the Honduran government has made little progress in securing the right to information for its citizen, despite the enactment of FoI laws. Part of Honduras inability to address transparency issues stems from the state's ineffectiveness and unwillingness to prosecute offenders in cases that involve high levels of the government or society. In some cases, judges that have investigated human rights abuses have received death threats and been attacked.[359] Further, journalists and interest groups have reported

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[356] Hector Silva Avalos, et al., *A Death Foretold: MACCIH Shuts Down in Honduras*, (InSight Crime, January 22, 2020). Accessed on April 18, 2020. Available at: https://www.insightcrime.org/news/analysis/a-death-foretold-maccih-shuts-down-in-honduras/

[357] *Sixth-Semi Annual Report: Mission to Support the Fight against Corruption and Impunity in Honduras and the General Secretariat of the Organization of the American States*, (Organization of the American States, April 2019), pg. 25. Accessed on April 18, 2020. Available at: http://www.oas.org/documents/eng/press/CP40861ESIXTHBIANNUALREPORTMACCIH.pdf

[358] CPI: 2019: Americas, Transparency International (January 23, 2020). Accessed on April 18, 2020. Available at: https://www.transparency.org/news/feature/cpi_2019_Americas

[359] *Crime, Drugs, and Power in Honduras: Searching for Better Measures of State Fragility*, (Global Drug Policy Observatory, September 2018), pg. 6, ¶ 3.Accessed on April 17, 2020. Available at: https://www.swansea.ac.uk/media/Crime,-Drugs,-and-Power-in-Honduras-Searching-for-Better-Measures-of-State-Fragility.pdf

difficulty in obtaining information from the government and have been reported to be especially vulnerable to violence.[360]

FREEDOM OF INFORMATION IN MEXICO

Domestic Laws

Mexico was one of the first countries in Latin America to pass right to information laws, and these laws are generally considered to be among the most progressive FoI laws.[361] The positive features include strong procedural guarantees, the creation of an independent mechanism for overseeing the implementation of FoI laws, and the prohibition of classifying information regarding serious human rights violations.[362] Still, current events demonstrate Mexico's struggle to enforce FoI laws that fight corruption and promote an open government.

The right to freedom of information was originally defined by Article 8 of the 1977 Constitution. Chapter One, Human Rights and Guarantees, of the Mexican Constitution provides that "the State shall guarantee the right to information." Although the Mexican Constitution recognizes international treaties as the supreme law of the land, the influence of international law on domestic law has been a point of controversy. In 1999, for example, the Mexican Supreme Court held that international treaties took precedence over federal and state law, but that the

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[360] Maíra Martini, *Overview of Corruption and Anti-Corruption in Honduras*, (Transparency International Anti-Corruption Help Desk, February 2013). Accessed on April 18, 2020. Available at: https://www.transparency.org/files/content/corruptionqas/Overview__of__corruption__and__anti__corruption__in__Honduras.pdf

[361] *Mexico: International Focus,* (University College London), Accessed on April 18, 2020. Available at: https://www.ucl.ac.uk/constitution-unit/research/research-archive/foi-archive/international-focus/mexico

[362] Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, (UNESCO, 2008), Second Edition, pg. 81, Accessed on April 18, 2020. Available at: https://law.yale.edu/sites/default/files/documents/pdf/Intellectual_Life/CL-OGI_Toby_Mendel_book_%28Eng%29.pdf

constitution is superior to international treaties.[363] Later in 2013, the Mexican Supreme Court issued a judgment in compliance with the Inter-American Court of Human Rights' decision in *Radilla-Pacheco*. With 10 out of 11 votes, the Court decided that "all persons shall enjoy the human rights recognized by the Mexican Constitution and international treaties to which Mexico is a party, as well as the guarantees for their protection," and that these sources are hierarchical when the legal issues involve human rights.[364] Mexican FoI laws provide that Mexican laws must be interpreted in accordance with the constitution, the Universal Declaration of Human Rights (UDHR), the American Convention on Human Rights (ACHR), and the International Covenant on Civil and Political (ICCPR). Taken together, domestic laws combined with Mexico's international and regional obligations establish a strong guide for the implementation of FoI laws.[365]

In 2002, Mexico's FoI laws were expanded when the Federal Law of Transparency and Access to Information Law came into force. States and local jurisdictions followed suit and by 2008 all jurisdictions had adopted FoI laws. This law put an obligation on the federal government to protect the access to public information. A feature of this law included the establishment of an independent and specialized government body, the Federal Institute for

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[363] Ralph Gaebler, et al., *Sources of State Practice in International Law*, (Brill Nijhoff, 2014), Second Revised Edition, pg. 375. Accessed on April 18, 2020. Available at: https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1036&context=ylss

[364] Christina Cerna, *Status of Human Rights Treaties in Mexican Domestic Law,* (American Society of International Law, February 23, 2016), Vol. 20, Issue 4. Accessed on April 18, 2020. Available at: https://www.asil.org/insights/volume/20/issue/4/status-human-rights-treaties-mexican-domestic-law#_edn1

[365] *Congratulations Mexico for The World's Best Right to Information Law*, (Centre for Law and Democracy, September 28, 2016). Accessed on April 18, 2020. Available at: https://www.law-democracy.org/live/congratulations-mexico-for-the-worlds-best-right-to-information-law/

Access to Information (IFAI), which oversees all federal aspects of the FoI process and is responsible for guaranteeing the right to access public information.[366]

Probably Mexico's greatest achievement in the context of FoI laws is the creation of IFAI. IFAI is an autonomous government agency meant to promote transparency, monitor developments in the access to information, and settle disputes between citizens and government bodies over responses to FoI requests. IFAI is responsible for monitoring the use of Infomex, one of the most advanced Web-based information portals in the world. Infomex allows users to consult with a government official for every FoI request, send FoI requests, and appeal agency decisions online.[367] IFAI also plays a role in advocating for a culture of transparency and has taken its own initiative to make IFAI operations transparent. For example, IFAI has posted all the travel expenses of IFAI officials on its website, and has signed agreements with other entities, including the National Commission on Human Rights, Mexican universities, and nongovernmental organizations (NGOs), to conduct workshops and courses for the public on transparency laws and the promotion of the right to access information.[368] Still, human rights advocates argue that IFAI is not sufficiently accountable because there is no governmental oversight or review of IFAI's actions.[369] Despite this concern, the establishment of the IFAI has made Mexico a global leader in the FoI laws.[370]

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[366] *Mexico Freedom of Information: Overview,* (Freedom Info). Accessed on February 14, 2020. Available at: http://www.freedominfo.org/regions/latin-america/mexico/mexico2/
[367] *Id.*
[368] David Sobel, et al., *The Federal Institute for Access to Information in Mexico and a Culture of Transparency*, (University of Pennsylvania Scholarly Commons, 2006), pg. 28 & 65. Accessed on April 18, 2020. Available at: https://repository.upenn.edu/cgi/viewcontent.cgi?article=1017&context=cgcs_publications
[369] *Id.* at pg. 79
[370] *Id.* at pg. 1

Record of Implementation

In 2003, however, the IACHR Rapporteur on Freedom of Expression reported concern that the principles of maximum disclosure and transparency in the new FoI laws were not being strictly followed by the legislative and judicial branches and other constitutional agencies, like the National Human Rights Commission (NHRC). The Rapporteur was especially concerned with the cases the NHRC was turning down and that it was interpreting FoI laws in a way that was not in keeping with its principles.[371]

The new FoI laws of 2002 also made Mexico the first Latin American country to require the federal government to open information related to serious human rights abuses. Under Article 14, "[i]nformation may not be classified when the investigation of grave violations of fundamental rights or crimes against humanity is at stake." Unfortunately, the extent of Article 14 has not been fully tested and implemented. In 2009, out of the five requests made under this provision, one of the cases was heavily redacted. The denial to release information in another case was overturned, but the information was never released to the public.[372]

Forty-three male students from Ayotzinapa Rural Teachers' College in Iguala, Guerrero, disappeared in 2014. The case sparked a wave of protest around the country, as many suspected government involvement and noticed the lack of willingness by authorities to find the students. The disappearance led to investigations led by federal prosecutors and resulted in the finding of 39 bodies – none of which belonged to the students. [373] As a result, the public began to demand

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[371] Judicial Best Practice with Respect to Access to Information in the Americas
[372] *Mexico Freedom of Information: Overview,* (Freedom Info). Accessed on February 14, 2020. Available at: http://www.freedominfo.org/regions/latin-america/mexico/mexico2/
[373] Daniel Wilkinson, *Mexico: The Other Disappeared*, (Human Rights Watch, January 15, 2019). Accessed on April 18, 2020. Available at: https://www.hrw.org/news/2019/01/15/mexico-other-disappeared#

the investigations for other missing peoples. This led to the exhumation of more than 160 bodies.[374] Then UN High Commissioner for Human Rights at the time, Zeid Ra'ad al Hussein, stated the investigation of the Ayotzinapa case "point[ed] to a pattern of committing, tolerating, and covering up torture." Zeid said the case was "a test case of the Mexican authorities' willingness and ability to tackle serious human rights violations." The comment came after serious criticism from local and international human rights experts that Mexico's official account of the Ayotzinapa case was not consistent.[375] In 2016, the Interdisciplinary Group of Independent Experts (GIEI), a group appointed by IACHR, found evidence suggesting coerced confessions, the government's release of false information to the media, the government's exclusion of information that could have been important to the case, and the government's willful intent to impede progress on the case.[376] There have not been any convictions in connection with the Ayotzinapa case, and only one out of the 43 students has been found. This case is not unique, but one of 61,637 registered disappearance cases[377] and demonstrates Mexico's long history of failing to implement basic human rights laws, including the right to information.[378]

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[374] *Id.*
[375] Stephanie Nebehay , et al., *U.N. Accuses Mexico of Torture, Cover-up in Case of 43 Missing Students*, (Reuters, March 15, 2018). Accessed on April 18, 2020. Available at: https://www.reuters.com/article/us-mexico-rights/u-n-accuses-mexico-of-torture-cover-up-in-case-of-43-missing-students-idUSKCN1GR18V
[376] Maureen Meyer, *On 5th Anniversary of Mexico's Emblematic Ayotzinapa Case*, (Washington Office on Latin America, September 26, 2019). Accessed on April 18, 2020. Available at: https://www.wola.org/2019/09/congress-calls-for-progress-mexico-atyozinapa-case/: See also *4 Ways the Mexican Government Obstructed Justice and Impeded the Investigation into the 43 Disappeared Students*, (Washington Office on Latin America, April 23, 2016). Accessed on April 18, 2020. Available at: https://www.wola.org/analysis/4-ways-the-mexican-government-obstructed-justice-and-impeded-the-investigation-into-the-43-disappeared-students/
[377] *Desaparecidos en Mexico: el Recuento del Gobierno del AMLO hace Disparar la Cifra Oficial*, (BBC, January 7, 2020). Accessed on April 18, 2020. Available at: https://www.bbc.com/mundo/noticias-america-latina-51015691
[378] Daniel Wilkinson, *Mexico: The Other Disappeared*, (Human Rights Watch, January 15, 2019). Accessed on April 18, 2020. Available at: https://www.hrw.org/news/2019/01/15/mexico-other-disappeared#

Mexico's FoI laws were amended again in 2007. The amendments established that all information public authorities hold is public, the protection of personal data, the right to file a request for information without motive or costs, the creation of summary proceedings to review answers to FoI requests, the obligation to publish government spending, and punishments for public officials that failed to comply with the law. Despite the 2007 amendments, concerns regarding the lack of FoI compliance for legislative and judicial powers and the lack of consistency between federal and local laws persisted. In an attempt to harmonize local and federal laws, FoI laws were amended again in 2014 and 2016. The results of the amendments made any individual or agency that received public funds subject to transparency and obligated each state to implement basic standards to comply with international and national norms.[379] Mexico's FoI laws contributed to democratic transition in the country and region. [380] In fact, many states, including the Dominican Republic, Ecuador, Peru, Argentina and Brazil, adopted similar FoI laws after Mexico's enactment of FoI laws in 2002.[381] Mexico has led several collaborations with states, like Chile and Guatemala, in the development of FoI laws and enforcement mechanisms.[382]

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[379] Instituto Nacional de Transparencia Acceso a la Información y Protección de Datos Personales, *General Act of Transparency and Access to Public Information*, (Centre for Law and Democracy, December 13, 2015). Available at: http://www.law-democracy.org/live/wp-content/uploads/2012/08/Mexico-General-Act-of-Transparency-and-Access-to-Public-Information-compressed.pdf (Accessed on April 18, 2020)
[380] *Mexico Freedom of Information: Overview,* (Freedom Info). Available at: http://www.freedominfo.org/regions/latin-america/mexico/mexico2/ (Accessed on February 14, 2020)
[381] Zachary Bookman, et al., *Two Steps Forward, One Step Back: Assessing the implementation of Mexico's Freedom of Information Act*, Universidad Nacional Autonoma de Mexico, (Mexican Law Review January 2009) Available at: https://revistas.juridicas.unam.mx/index.php/mexican-law-review/article/view/7721/9690 (Accessed on April 18, 2020)
[382] *Mexico Freedom of Information: Overview,* (Freedom Info). Available at: http://www.freedominfo.org/regions/latin-america/mexico/mexico2/ (Accessed on February 14, 2020)

In 2010 and 2014, the Centro de Investigación y Docencia Económicas (CIDE) published studies regarding the quality and effectiveness of Mexico's FoI laws. Both studies included an analysis of the legal framework, public information online, answers to individual FoI requests, and the institutional design of oversight bodies. The results revealed crucial differences in each jurisdiction's aggregate scores under each category.[383] The report mostly showed that the quality of FoI laws, *de jure* transparency, did not relate to the effectiveness of access, *de facto* transparency.[384] In 2014, for example, 61 percent of the jurisdictions improved regulations scores, while 18 percent remained the same and 21 percent decreased in scores. Further, the data revealed that the effectiveness of FoI laws declined by 89 percent from 2010 to 2014, while 24 jurisdictions had greater de jure transparency than de facto transparency in 2014. This data suggests that having more FoI laws does not necessarily correlate with effective access to information. [385]

According to the Global Right to Information (RTI), Mexico is presently rated as the country with the second-best FoI laws in the world. Mexico's aggregate score is 136 out of 150. The lowest scores received involved the legal framework for the appeal process (26 out of 30 points) and sanctions and protections (4 out of 8 points).[386] According to the Global RTI rating, Mexico's low scores in the appeals category resulted from a lack of a law offering a simple, free, and efficient appeals process, the lack of restrictions on individuals with strong political

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[383] Adriana Garcia, *Transparency in Mexico: An Overview of Access to Information Regulations and their Effectiveness at the Federal and State Level*, (Wilson Center, December 2016). Available at: http://www.omm.org.mx/images/stories/Documentos%20grandes/transparency_in_mexico_an_overview_of_access_to_information_regulations_and_their_effectiveness_at_the_federal_and_state_level.pdf (Accessed on February 14, 2020)

[384] *Id.*

[385] *Id.*

[386] *Right to Information: Mexico*, (Global RTI Rating, 2002). Available at: https://www.rti-rating.org/country-data/Mexico/ (Accessed on February 14, 2020.)

connections from being appointed to IFAI, and the lack of power given to the IFAI to review classified documents. Mexico also scored low for i) not having a sanctions and protections system that addresses the issue of public authorities that fail to disclose information; ii) not granting legal immunity to independent overseeing bodies and its staff members for acts undertaken in good faith in the exercise of a duty under FoI laws; and iii) not having legal protections for whistleblowers.[387] The Global RTI rating is useful in reviewing the strength of a country's legal framework for the right to information, however, it is important to note that the rating does not include an analysis of FoI law implementation.[388] Other reports by Human Rights advocates provide another perspective in determining the progress of transparency in Mexico.

In 2019, Mexico scored 29, ranking it the 130th out of 180 countries in perceptions of corruption. Mexico's CPI rating has been significantly declining since 2012.[389] Freedom House's 2019 report for Mexico suggests the reason for its' increased CPI is due to violence perpetrated by organized crime, corruption, human rights abuses committed by state and nonstate actors, and rampant impunity. Freedom House notes that Mexico's FoI laws of 2002 have increased federal transparency, but that state and local enforcement is uneven. Freedom House also points to Mexico's failure in releasing relevant information regarding the 2014 investigation of the disappearance of 43 students in Ayotzinapa and a government scandal involving contracts with

[387] *Id.*
[388] *Id.*
[389] CPI: 2019: Americas, Transparency International (January 23, 2020). Available at: https://www.transparency.org/news/feature/cpi_2019_Americas

an Israeli company to provide spyware for official use against Mexican activists and journalists.[390]

Regardless of positive trends towards the enactment of FoI laws in Mexico, annual reports and studies conducted by human rights advocates suggest that Mexico's promise of access to information has fallen short by failing to provide effective implementation. The analyses from these reports show that FoI laws in Mexico do not necessarily produce per se effective transparency, and that Mexico still struggles with serious issues of corruption in a way that hinders progress towards true open government and the access to information.

FREEDOM OF ASSEMBLY AND ASSOCIATION

Freedom of Peaceful Assembly and of Association ("FoAA") ensures an individual's right to join with others and to take part in gatherings to express interests, beliefs, or goals. FoAA is foundational to further fundamental rights such as the right to protest and the right to form a union.

INTERNATIONAL AND REGIONAL STANDARDS

Article 20 of the Universal Declaration of Human Rights provides that "[e]veryone has the right to freedom of peaceful assembly and association."[391] Likewise, Article 21 of the International Covenant on Civil and Political Rights ("ICCPR") establishes "the right of peaceful assembly,"[392] while Article 22 guarantees to "everyone . . . the right to freedom of association

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[390] *Freedom in the World 2019: Mexico*, (Freedom House, 2019). Accessed on February 14, 2019. Available at: https://freedomhouse.org/country/mexico/freedom-world/2019
[391] Universal Declaration of Human Rights, Article 20 (Dec. 10, 1948). Available at: https://www.un.org/en/universal-declaration-human-rights/index.html (accessed on April 3, 2020)
[392] International Covenant on Civil and Political, Article 21 (Dec. 16, 1966). Available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx (accessed on April 3, 2020)

with others."[393] The International Covenant on Economic, Social and Cultural Rights ("ICESCR") also recognizes FOAA in the context of the right to form labor unions.[394] The right permeates other major international human rights instruments.[395] To mark the 50th anniversary of the UDHR, the UN General Assembly adopted on December 9, 1998, a declaration on human rights defenders reiterating that "everyone has the right…at the national and international levels to meet or assemble peacefully…[and]…to form, join, and participate in…associations" in the specific context "of promoting and protecting human rights and fundamental freedoms."[396]

The right to peaceful association and assembly was incorporated into regional human instruments in the Americas starting with Articles 20 and 21 of the American Declaration of the Rights and Duties of Man in 1948.[397] The American Convention on Human Rights incorporates FOAA through Articles 15 and 16.[398] IACHR's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas provides that "persons deprived of liberty shall have the right to freedom of…association, and peaceful assembly."[399]

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[393] International Covenant on Civil and Political Rights, Article 22 (Dec. 16, 1966). Available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx (accessed on April 3, 2020)
[394] International Covenant on Economic, Social and Cultural Rights, Article 8 (Dec. 16, 1966). Available at: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx (accessed on April 3, 2020)
[395] See, e.g., International Convention on Elimination of All Forms of Racial Discrimination, Article 5(ix) (Dec. 21, 1965). Available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx (accessed on April 3, 2020); Convention on the Rights of the Child, Article 15 (Nov. 20, 1989). Available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (accessed on April 3, 2020)
[396] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 5 (Dec. 9, 1998), A/RES/53/144, Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement (accessed on April 3, 2020)
[397] American Declaration of the Rights and Duties of Man, Article 20-21 (1948). Available at: http://www.oas.org/en/iachr/mandate/Basics/declaration.asp (accessed on April 3, 2020).
[398] American Convention on Human Rights, Article 15-16 (Nov. 22, 1969). Available at: https://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm (accessed on April 3, 2020).
[399] Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XVI (March 2008). Available at: http://www.oas.org/en/iachr/mandate/Basics/principlesdeprived.asp (accessed on April 3, 2020)

FREEDOM OF ASSEMBLY AND ASSOCIATION IN BRAZIL

Domestic Laws

Brazil generally accepts FoAA as a basic human right.[400] Article 5 of the constitution provides that "[a]ll persons may hold peaceful meetings…so long as they do not interfere…[and]…there is total freedom of association."[401] The Brazilian Federal Supreme Court has upheld FoAA. In 2011, for example, when the Federal Prosecutor's Office filed a case against demonstrators urging legalization of drug use—arguing that the demonstrations in effect justified criminal activity—the Court ruled that the constitution protected such gatherings to call for a change in public policy.[402]

Record of Implementation

Increased political turmoil in recent years, however, has threatened the ability of Brazilians to exercise their right to FoAA. In 2016, Brazil saw a transformation in the area of politics. Demonstrators protesting the impeachment of President Dilma Rousseff were met with force from the police.[403] After her impeachment, protestors took the streets to challenge austerity measures taken by interim President Michel Temer.[404] The situation came to a head in May 2017

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[400] Freedom in the World 2020: Brazil, Freedom House. Available at: https://freedomhouse.org/country/brazil/freedom-world/2020 (accessed on April 3, 2020)
[401] Brazil's Constitution of 1988 with Amendments through 2014, Article 16-21 (2014). Available at: https://www.constituteproject.org/constitution/Brazil_2014.pdf (accessed on April 8, 2020)
[402] Eduardo Soares, *Brazil: Freedom of Assembly and Expression Upheld by Federal Supreme Court*, Library of Congress: Global Legal Monitor (June 20, 2011). Available at: https://loc.gov/law/foreign-news/article/brazil-freedom-of-assembly-and-expression-upheld-by-federal-supreme-court/ (accessed on April 8, 2020)
[403] *Brazil: Guarantee Protestor's Rights Investigate Police Use of Force*, Human Rights Watch (Sept 7, 2016). Available at: https://www.hrw.org/news/2016/09/07/brazil-guarantee-protesters-rights# (accessed on April 8, 2020)
[404] Simon Romero, *Protests Erupt Across Brazil as Senate Approves Austerity Measure*, The New York Times (Dec 13, 2016). Available at: https://www.nytimes.com/2016/12/13/world/americas/brazil-protests-senate-austerity-michel-temer.html (accessed on April 8, 2020)

when President Temer deployed troops who fired on demonstrators, injuring dozens.[405] Temer stepped down when populist Jair Bolsonaro was inaugurated in January 2019.[406] Later that year, as protests mounted in other Latin American countries, Bolsonaro warned Brazilians not to follow suit and asked the Congress for authority to use troops.[407]

FREEDOM OF ASSEMBLY AND ASSOCIATION IN COLOMBIA

Domestic Laws

Article 23 of Colombia's constitution provides that "every individual has the right to present respectful petitions," while Article 38 guarantees "the right of free association for the promotion of various activities."[408] The broad word choice and lack of detail sets up a rocky starting point for the building of human rights through the freedom of assembly. With one of the longest standing democracies in Latin America, this nation can be seen stumbling through their establishment of FoAA.[409]

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[405] Rowman & Littlefield, *Freedom in the World 2018: The Annual Survey of Political Rights and Civil Liberties, Brazil*, Freedom House (Jan 3, 2019). Available at: https://books.google.com/books?id=O512DwAAQBAJ&pg=PA139&lpg=PA139&dq=temer+deployed+troops+protest+freedom&source=bl&ots=_5v2i7Cbd2&sig=ACfU3U1aTLqYsfjctl3OFCun0wTCRjmSOA&hl=en&sa=X&ved=2ahUKEwiOsPSd1uXoAhUQrJ4KHepUBjoQ6AEwAHoECA0QKQ#v=onepage&q=temer%20deployed%20troops%20protest%20freedom&f=false (accessed on April 8, 2020)

[406] *OAS Mission Congratulates the Brazilian People for Peaceful Vote and Highlights the TSE's Professional Work*, Organization of American States, Press Release (Oct 29,2018). Available at: https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-066/18 (accessed on April 8, 2020)

[407] Terrence McCoy and Marina Lopes, *As Protests Sweep Latin America, Bolsonaro Warns Brazil: Don't Try it Here*, The Washington Post (Nov 26, 2019). Available at: https://www.washingtonpost.com/world/the_americas/as-protests-sweep-latin-america-bolsonaro-warns-brazil-dont-try-it-here/2019/11/26/a076ac24-105d-11ea-924c-b34d09bbc948_story.html (accessed on April 8, 2020)

[408] Colombia Constitution 1991 (rev. 2015), Article 23, 38 (2015). Available at: https://www.constituteproject.org/constitution/Colombia_2015?lang=en (accessed on April 8, 2020)

[409] Jeff Desjardins, *Mapped: The World's Oldest Democracies*, World Economic Forum (Aug 8, 2019). Available at: https://www.weforum.org/agenda/2019/08/countries-are-the-worlds-oldest-democracies/ (accessed on April 8, 2020)

Record of Implementation

Colombian officials made public commitments in 2018 to protect the right of citizens to protest peacefully.[410] And those commitments seemed to bear some fruit in late 2018 when large protests occurred without disruption.[411] But formal legal protection is undermined by the use of violence and arbitrary arrests against protestors.[412]

There also was a dramatic increase in the killings of community leaders and heads of human rights organizations.[413] Indeed, more human rights defenders were killed in Colombia between 2016 and 2019 than in any other country in Latin America.[414] OHCHR reports 107 activists were killed last year, 115 in 2018, and 13 within the first month of 2020.[415] The single most targeted group was human rights defenders advocating on behalf of specific ethnic groups,[416] including community leaders, Afro-Colombians, indigenous people, environmentalists, journalists and women's rights defenders.[417] Contributing factors to these

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[410] *See* Report of the United Nations High Commissioner for Human Rights, Human Rights Council ¶¶ 38-39 (Feb 4, 2019). Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/025/43/PDF/G1902543.pdf?OpenElement (accessed on April 8, 2020)
[411] *Id*.
[412] Freedom in the World, 2019: Colombia, Freedom House (2020). Available at: https://freedomhouse.org/country/colombia/freedom-world/2019 (accessed on April 8, 2020); *see also* Report of the Special Rapporteur on the situation of human rights defenders: Visit to Colombia ¶ 31, A/HRC/43/51/Add.1 (Dec. 26, 2019). Available at: https://undocs.org/en/A/HRC/43/51/Add.1 (accessed on April 16, 2020)
[413] Michel Forst, *End of Mission Statement by the United Nations Special Rapporteur on Situation of Human Rights Defenders*, United Nations Human Rights Office of the High Commissioner (2019). Available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23960&LangID=E (accessed on April 8, 2020)
[414] Report of the Special Rapporteur on the situation of human rights defenders: Visit to Colombia ¶ 20, A/HRC/43/51/Add.1 (Dec. 26, 2019). Available at: https://undocs.org/en/A/HRC/43/51/Add.1 (accessed on April 16, 2020)
[415]Marta Hurtado, *Colombia: Human Rights Activists Killings*, United Nations Human Rights Office of the High Commissioner (Jan 14, 2020). Available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25461&LangID=E (accessed on April 8, 2020)
[416] *Id*.
[417] *Colombia: Terrible Trend of Rights Defenders Killed, Harassed; UN Calls for Significant Effort to tackle Impunity*, UN News (May 10, 2019). Available at: https://news.un.org/en/story/2019/05/1038281 (accessed on April 8, 2020)

killings stem from the commonality that the killings occur in rural areas with high trends of poverty and crime.[418] The UN High Commissioner for Human Rights has recommended that the Colombian government increase its presence in rural areas in order to promote and guarantee citizens' rights, including FoAA.[419]

In addition to violence directed at group leaders, there has been a practice of criminalizing organizations, for example by alleging that they are in league with illegal armed groups.[420] The UN Special Rapporteur on human rights defenders found that "at least 202 defenders have been prosecuted since 2012."[421] He documented cases in which criminalization of group members came in the context of development projects where there was an alarming entwining of state officials, including the military, and private companies.[422]

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[418] Annual Report 2019: Colombia, Amnesty International (2020). Available at: https://www.amnesty.org/en/countries/americas/colombia/report-colombia/ (accessed on April 8, 2020)
[419] Report of the United Nations High Commissioner for Human Rights, Human Rights Council (Feb 4, 2019). Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/025/43/PDF/G1902543.pdf?OpenElement (accessed on April 8, 2020)
[420] *See* Report of the Special Rapporteur on the situation of human rights defenders: Visit to Colombia ¶¶ 27-31, A/HRC/43/51/Add.1 (Dec. 26, 2019). Available at: https://undocs.org/en/A/HRC/43/51/Add.1 (accessed on April 16, 2020)
[421] *Id.* at ¶ 29
[422] *Id.* at ¶¶ 29-30

FREEDOM OF ASSEMBLY AND ASSOCIATION IN HAITI

Domestic Laws

Haiti is a party to the ICCPR and ICESCR.[423] It also is a party of the American Convention.[424] Article 31 of the Haitian constitution guarantees "freedom of unarmed assembly and association for political, economic, social, cultural or any other peaceful purposes."[425]

Record of Implementation

Haiti is one of the poorest countries in the world.[426] The country is hit with a natural disaster every 5-7 years and has been since the early 2000's. With every natural disaster or governmental decision, protests ensue; and anymore the initial response is to act against with brutality.[427] Due to this, the country's respect for FoAA has been limited.[428]

Haiti faced political disputes when Michel Martelly, a singer and performer with no political experience, was elected president of Haiti. Martelly had promises for his people and requested that the UN help maintain hope in his country and his transition;[429] but in the end he

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[423] Status of Ratification: Ratification of 18 International Human Rights Treaties, United Nations Human Rights Office of the High Commissioner (2014).Available at: https://indicators.ohchr.org/ (accessed on April 8, 2020)
[424] Signatories and Ratifications of the American Convention on Human Rights. Available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm (accessed on April 16, 2020)
[425] Constitution of Haiti 1987, Art. 31 (rev. 2012) (2012). Available at: https://www.constituteproject.org/constitution/Haiti_2012?lang=en (accessed on April 8, 2020)
[426] "Overview", The World Bank In Haiti (Oct 15, 2019). Available at: https://www.worldbank.org/en/country/haiti/overview (accessed on April 8, 2020)
[427] Maria Isabel Rivero, *Concerned About Worsening Violence and Scarcity in Haiti, IACHR Unveils Plans for Rapid and Integrated Response Coordination Unit to Monitor the Situation*, Organization of American States: Press Release (Feb 27, 2019). Available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/046.asp (accessed on April 8, 2020)
[428] Freedom in the World 2019: Haiti, Freedom House (2020). Available at: https://freedomhouse.org/country/haiti/freedom-world/2019 (accessed on April 8, 2020)
[429] *At General Assembly, Haitian President Calls for Keeping UN's Flame of Hope Alive*, UN News (Sept 26, 2012). Available at: https://news.un.org/en/story/2012/09/421242 (accessed on April 8, 2020)

could not fulfill his promises. Protests ensued calling for his resignation, and when he did, the country was left in turmoil as the election proceedings drew out.[430]

Despite Haiti's continuing difficulty in protecting human rights, the UN Human Rights Council acquiesced in March 2017 to the Haitian government's request to end the mandate of the independent expert, which had been established in 1995.[431] In 2018 and 2019, economic problems incited a wave of demonstrations.[432] The use of force by police during those demonstrations led to several dozen deaths and many more injured.[433]

FREEDOM OF ASSEMBLY AND ASSOCIATION IN HONDURAS

Domestic Laws

Honduras is both highly corrupt and very violent.[434] Keeping this in mind, it is not a surprise that the country has never had a high standard for respecting FoAA.[435] Honduras ratified the ICESCR in 1981 and the ICCPR in 1997, and the regional instruments mentioned above.[436] Articles 78 and 79 of the Honduran constitution guarantee freedom of association and assembly.[437]

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[430] World Report 2017: Haiti, Human Rights Watch (2018). Available at: https://www.hrw.org/world-report/2017/country-chapters/haiti (accessed on April 8, 2020)
[431] World Report 2018: Haiti, Human Rights Watch (2019). Available at: https://www.hrw.org/world-report/2018/country-chapters/haiti (accessed on April 8, 2020)
[432] World Report 2019: Haiti, Human Rights Watch (2020). Available at: https://www.hrw.org/world-report/2019/country-chapters/haiti (accessed on April 8, 2020); *See also* World Report 2020, Human Rights Watch (2020). Available at: https://www.hrw.org/world-report/2020/country-chapters/haiti (accessed on April 8, 2020)
[433] Human Rights Watch, "Haiti: Investigate Protest Deaths" (March 22, 2019). Available at: https://www.hrw.org/news/2019/03/22/haiti-investigate-protest-deaths (accessed on April 16, 2020)
[434] World Report 2019: Honduras, Human Rights Watch (2020). Available at:https://www.hrw.org/world-report/2019/country-chapters/honduras (accessed on April 8, 2020)
[435] Freedom in the World 2019: Honduras, Freedom House (2020). Available at: https://freedomhouse.org/country/honduras/freedom-world/2019 (accessed on April 8, 2020)
[436] Status of Ratification: Ratification of 18 International Human Rights Treaties, United Nations Human Rights Office of the High Commissioner (2014). Available at: https://indicators.ohchr.org/ (accessed on April 8, 2020)
[437] Constitution of Honduras 1982 (rev. 2013), Article 78-79 (2013). Available at: https://www.constituteproject.org/constitution/Honduras_2013?lang=en (accessed on April 8, 2020)

Record of Implementation

The 2017 re-election of President Juan Orlando Hernandez was marred by fraud, leading the OAS to call for a new election.[438] Post-election protests resulted in 232 people wounded[439] and 31 people killed.[440] This type of violence could become even more problematic based on changes to the Criminal Code that were adopted in 2018 that has the potential to place restrictions on FoAA.[441] These restrictions include a new definition of unlawful occupation of a premises that could cause an increase in the criminalization of individuals exercising their right to assembly and association.[442]

In 2015, the government enacted a law that created a 14-member National Council for the Protection of Human Rights Defenders (NCPHRD), as well as a "protection system" headed by the Secretariat of Justice, Human Rights, Governance, and Decentralization.[443] According to their website, NCPHRD coordinates with other institutions of the Government for the adequate protection of human rights.[444] They have had over 100 innovations focusing on the issues in

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[438] *Statement by the OAS General Secretariat on the Elections in Honduras*, Organization of the American States Press Release (Dec 17, 2017). Available at: https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-092/17 (accessed on April 8, 2020)

[439] *Violaciones a los Derechos Humanos en el contexto de las protestas anti fraude en Honduras*, Defensores Enlinea: Comité de Familiares Detenidos Desaparecidos en Honduras (2017). Available at: http://defensoresenlinea.com/wp-content/uploads/2018/01/Segundo-Informe-violaciones-a-DDHH-en-contexto-protesas-anti-fraude-en-Honduras.pdf (accessed on April 8, 2020)

[440] Post Electoral Crisis: Third Summary Report and Recommendations of the National Commissioner for Human Rights, United Nations Human Rights Office of the High Commissioner (2018). Available at: https://reliefweb.int/report/honduras/crisis-post-electoral-tercer-informe-sumario-y-recomendaciones-del-comisionado (accessed on April 8, 2020); see also *In Honduras, Protests Erupt in Wake of Presidential Election Results*, National Public Radio (Dec 18, 2017). Available at: https://www.npr.org/2017/12/18/571735611/in-honduras-protests-erupt-in-wake-of-presidential-election-results (accessed on April 8, 2020)

[441] Report of the Special Rapporteur on the Situation of Human Rights Defenders, Human Rights Council ¶ 19 (Jan. 11, 2019). Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/005/53/PDF/G1900553.pdf?OpenElement (accessed on April 8, 2020)

[442] *Id*.

[443] World Report 2017: Honduras, Human Rights Watch (2018). Available at: https://www.hrw.org/world-report/2017/country-chapters/honduras (accessed on April 8, 2020)

[444] "National Council for the Protection of Human Rights Defenders", Secretary of State in the Human Rights Office (2015). Available at: https://latinno.net/en/case/12047/ (accessed on April 8, 2020)

Honduras; a few of those are Open Town Halls (public meetings), Neighborhood City (violence preventions), and Human Rights Forums to seek consensus and improve compliance with human rights.[445] They also have represented over 6,000 legal cases; some of these featured cases focus on national forums for peace.[446]

FREEDOM OF ASSEMBLY AND ASSOCIATION IN MEXICO

Domestic Laws

Mexico is another country with broad safeguards put in place for the protection of FoAA. In some regions, however, there has been a trend of violations.[447] Mexico has ratified the ICESCR and ICCPR and is a party to the American Convention. The Mexican constitution provides in Article 9 that the "right to peacefully associate or assembly cannot be restricted."[448] Overall, Mexico maintains this constitutional right. Broadly speaking, protesting across the country is accepted.

Record of Implementation

President Andrés Manuel López Obrador attempted to work with the UN and the IACHR to combat the increased violence of protests by imposing policies against corruption and violence.[449] The Human Rights Committee recommended a number of steps, including adjusting state and federal legislation to be cognizant of human rights issues and establishing resources for

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[445] "Innovations", National Council for the Protection of Human Rights Defenders (2020). Available at: https://latinno.net/en/innovations/?country=honduras (accessed on April 8, 2020)
[446] Honduras, LATINNO Innovations for Democracy in Latin America (2020). Available at: https://latinno.net/en/country/honduras/ (accessed on April 8, 2020)
[447] Freedom in the World 2020: Mexico, Freedom House (2020). Available at: https://freedomhouse.org/country/mexico/freedom-world/2020 (accessed on April 8, 2020)
[448] Constitution of Mexico 1917 (rev. 2015), Article 9 (2015). Available at: https://www.constituteproject.org/constitution/Mexico_2015?lang=en (accessed on April 8, 2020)
[449] *Mexico: AMLO Will Work with UN on Human Rights, Corruption*, Telesurtv (July 27, 2018). Available at: https://www.telesurenglish.net/news/AMLO-to-Work-With-UN-to-Promote-Human-Rights-Fight-Corruption-20180727-0017.html (accessed on April 8, 2020)

local agencies to implement laws. [450] Torture, murder, disappearances, and sexual assault are just a few of the increased statistics that Mexico has seen in relation to FOAA.[451] This violence targets not only normal citizens, but politicians as well. Over half of the individuals affected by murder and disappearances are active politicians, and most of their deaths coincide with the time of a major election or campaign.[452]

FREEDOM OF EXPRESSION

INTERNATIONAL AND REGIONAL STANDARDS

Article 19 of the International Covenant on Civil and Political Rights guarantees everyone "the right to hold opinions" and "the right to freedom of expression."[453] Those rights have been hailed by the Human Rights Committee as "the foundation stone for every free and democratic society."[454] The American Convention on Human Rights similarly guarantees "the right to freedom of thought and expression."[455] IACHR expanded on the Convention's guarantee in 2000 by adopting the Declaration of Principles on Freedom of Expression.[456]

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[450] *Concluding Observations on the Sixth Periodic Report of Mexico*, Human Rights Commitee (Dec 4, 2019). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MEX/CO/6&Lang=En (accessed on April 8, 2020)

[451] World Report 2020: Mexico, Human Rights Watch (2020). Available at: https://www.hrw.org/world-report/2020/country-chapters/mexico (accessed on April 8, 2020)

[452] *Mexico Faces Unprecedented Wave of Political Violence Ahead of Elections*, National Public Radio (June 26, 2018). Available at: https://www.npr.org/2018/06/26/623646494/mexico-faces-unprecedented-wave-of-political-violence-ahead-of-elections (accessed on April 8, 2020)

[453] *International Covenant on Civil and Political Rights*, Art. 19(2). Available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx (Accessed on 4/5/2020)

[454] Human Rights Committee, General Comment No. 34 ¶ 2 (Sept. 12, 2011). Available at: https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf (Accessed on April 19, 2020)

[455] Art. 13, American Convention on Human Rights. Available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (Accessed on 4/5/2020)

[456] Inter-American Commission on Human Rights, *Declaration of Principles on Freedom of Expression* (October 2000). Available at: http://oas.org/en/iachr/expression/showarticle.asp?artID=26&lID=1 (Accessed on April 19, 2020)

FREEDOM OF EXPRESSION IN BRAZIL

Domestic Laws

Brazil's Federal Constitution promises Brazilians comprehensive admission to information from various sources within a democratic environment where freedom of speech and the press is guaranteed.[457] Article 220 of the constitution also promises freedom of the press and the ban of political and ideological censorship.[458]

Violence Against Journalists

The Inter-American Special Rapporteur on freedom of expression has described "a context of hostility toward the exercise of journalism and the free functioning of the media in Brazil."[459] This context of hostility includes violence against members of the press who criticize government officials. In 2018, for example, radio journalist Jairo de Sousa was killed when arriving at his office. Jairo was known for his reporting on local corruption and occasionally wore bulletproof vests due to persistent threats on his life.[460] According to Freedom House in 2018, another radio journalist, Jefferson Pureza Lopes, who was known for his scrutiny of local politicians, was shot dead at his home after repeated threats. Three months later, a police investigation concluded that a local politician had ordered the murder for political and personal reasons.[461] Likewise, two local journalists were killed in 2019.

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[457] Brazil's Constitution of 1988 with Amendments through 2017, pg. 152. Available at: https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en (Accessed on 4/11/2020)
[458] Id.
[459]
[460] *Brazil*, ¶24. Available at: https://freedomhouse.org/report/freedom-world/2019/brazil (Accessed on 4/11/2020)
[461] *Brazil*. Available at: https://freedomhouse.org/report/freedom-world/2019/brazil (Accessed on 4/11/2020)

At the national level, President Jair Bolsonaro has repeatedly denounced journalists whose coverage he does not like,[462] which contributed to "online and offline harassment" and "economic pressure from the government."[463]

Brazil has a ranking of 105 of out 180 in the press freedom index.[464] The index suggests that Brazil continues to be inhospitable to independent media.[465] In cases of violence, journalists, radio hosts and bloggers covering stories related to corruption, public policy or organized crime in small or mid-sized cities are more vulnerable to attack because of the lack of governmental accountability.[466] The danger to journalists is increasing. Attacks against them increased by over 50 percent in 2019.[467]

LGBT

Discrimination and violence against LGBT (lesbian, gay, bisexual, and transgender) people has been on the rise.[468] The March 2018 murder of Rio de Janeiro councilwoman Marielle Franco, a lesbian politician known for her vigorous advocacy on behalf of LGBT people and other minorities, was widely believed to have been tied to her identity and advocacy.[469]

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[462] Edson Lanza, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression* ¶ 190, OEA/Ser.L/V/II.Doc.5 (Feb. 24, 2020). Available at: http://www.oas.org/en/iachr/expression/reports/ENGIA2019.pdf (Accessed on April 19, 2020)
[463] *Brazil*. Available at https://freedomhouse.org/country/brazil/freedom-world/2020 (Accessed on April 19, 2020)
[464] *Ranking 2019*, pg.1. Available at: https://rsf.org/en/ranking (Accessed on 4/11/2020)
[465] *Brazil*, pg.1. Available at: https://rsf.org/en/brazil (Accessed on 4/11/2020)
[466] Id.
[467] Marina Estarque, et al., *Attacks on the press in Brazil rise 54% in 2019, according to Fenaj report*, ¶1-4. Available at: https://knightcenter.utexas.edu/blog/00-21522-attacks-press-brazil-rise-54-2019-according-fenaj-report (Accessed on 4/11/2020)
[468] *Brazil*. Available at: https://freedomhouse.org/report/freedom-world/2019/brazil (Accessed on 4/11/2020)
[469] *Id*.

Another example of the oppression of the LGBT community is Jean Wyllys, a gay congressman who was constantly harassed for his stance on LGBT issues.[470] Marielle Franco's assassination led Wyllys to enlist bodyguards.[471] But the pressure of threats and what he characterized as a climate of violence against LGBT people that had Grown frightening"[472] decided to resign his Congressional seat and flee the country.[473]

FREEDOM OF EXPRESSION IN COLOMBIA

Domestic Laws

Colombia's constitution promises the right of freedom of expression.[474] Article 20 provides that individuals are guaranteed the freedom to express thoughts and information.[475] Article 73 of the constitution guarantees journalists freedom of independence and safety.[476]

Attacks on Human Rights Defenders

Colombia is dangerous for human rights defenders, especially those who work for environmental causes.[477] Amnesty International reported in 2018 that on average a human rights

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[470] Francesca Paris, *'I Do Not Want To Be A Martyr': Openly Gay Lawmaker Leaves Brazil* (Jan. 25, 2019). Available at: https://www.npr.org/2019/01/25/688647722/i-do-not-want-to-be-a-martyr-openly-gay-lawmaker-leaves-brazil (Accessed on 4/11/2020)
[471] *Id*.
[472] *Id.*
[473] José Miguel Vivanco, et al., *A Voice for LGBT Rights Silenced in Brazil*. Available at: https://www.hrw.org/news/2019/01/24/voice-lgbt-rights-silenced-brazil (Accessed on 4/12/2020)
[474] *Colombia*, at 1. Available at: https://freedomhouse.org/sites/default/files/resources/Colombia.pdf (Accessed on 4/10/2020)
[475] *Colombia's Constitution of 1991 with Amendments through 2005*. Available at: https://www.constituteproject.org/constitution/Colombia_2005.pdf (Accessed on 4/10/2020)
[476] *Id*.
[477] *Americas: States must reverse rising tide of attacks against environmental human rights defenders* (July 24, 2018). Available at: https://www.amnesty.org/en/latest/news/2018/07/americas-states-must-reverse-rising-tide-of-attacks-against- environmental-human-rights-defenders/ (Accessed on 4/10/2020)

defender is killed in Colombia every 3 days.[478] One hundred twenty-one human rights advocates were murdered in 2017.[479] Aside from killings, activists also face many other forms of persecution and harassment, including death threats and criminalization through the misuse of the justice system.[480] Colombian authorities exert minimal effort to punish abusers. [481] For example, a UN expert claims that in rural Colombia one can buy their way out of any crime for $100.[482] Human Rights Watch claims that the government tries to hide the unabated slaughter of human rights defenders.[483] The United Nations High Commissioner for Human Rights (OHCHR) has established that 285 human rights advocates have been slain since January 2016. And the total may well be higher.[484]

The 2016 peace deal between the government and FARC guerrillas has not made human rights defenders safer. In fact, since the deal was signed, the murder rate of human rights defenders has gone up while the overall homicide rate has dropped by 40 percent.[485] The

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[478] Amnesty International, *Colombia: Authorities must investigate killings of community leaders and take urgent action to protect human rights defenders* (May 11, 2018). Available at: https://www.amnesty.org/en/latest/news/2018/05/colombia-authorities-must-investigate-killings-of-community-leaders-and-take-urgent-action-to-protect-human-rights-defenders/ (Accessed on 4/10/2020)

[479] *Id*.

[480] Amnesty International, *Americas: States must reverse rising tide of attacks against environmental human rights defenders*. Available at: https://www.amnesty.org/en/latest/news/2018/07/americas-states-must-reverse-rising-tide-of-attacks-against- environmental-human-rights-defenders/ (Accessed on 4/10/2020)

[481] Amnesty International, *Colombia: Killings of human rights defenders continue under a cloak of impunity and the silent complicity of the state* (July 9, 2018). Available at: https://www.amnesty.org/en/latest/news/2018/07/colombia-asesinatos-de-personas-defensoras-de-derechos-humanos-continuan-bajo-manto-de-impunidad-y-silencio-complice-del-estado/ (Accessed on 4/10/2020)

[482] Michel Forst, et al., *Colombia must act to stop killings and attacks against human rights defenders - UN expert* (Dec. 3, 2018). Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23968&LangID=E (Accessed on 4/10/2020)

[483] José Miguel Vivanco, et al., *Colombian Government Downplays Murder of Community Leaders* (June 19, 2019). Available at: https://www.hrw.org/news/2019/06/19/colombian-government-downplays-murder-community-leaders (Accessed on 4/10/2020)

[484] *Id*.

[485] Michel Forst, *Colombia must act to stop killings and attacks against human rights defenders - UN expert* (Dec. 3, 2018). Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23968&LangID=E (Accessed on 4/10/2020)

government is minimizing the crisis, claiming through the use of creative accounting a 32 percent decrease in the number of murders of community leaders and human rights defenders since President Iván Duque took office in August 2018.[486]

Amnesty International reports that advocacy groups are being followed and watched at their offices and homes.[487] This creates a fearful environment for activists that limits their freedom to do their jobs and deters others from entering the field. These surveillance techniques cause advocates to fear for their lives, given the context of Colombia.

Michel Forst, the UN Special Rapporteur on the situation of human rights defenders, recently visited Colombia. Forst concludes that despite an ambitious vision to develop a comprehensive policy on the prevention and protection of human rights defenders, the government's plan is too ambiguous and the networks and resources are lacking to implement it in rural areas.[488] The perpetrators of the human rights abuses are often unknown by the victims and are frequently in collaboration with local governments.[489] Human rights defenders are at risk throughout the country by attacks, threats and criminalization of their work.[490] There seems to be a lack of response and protection by the government in local areas.[491]

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[486] José Miguel Vivanco, et al., *Colombian Government Downplays Murder of Community Leaders* (June 19, 2019). Available at: https://www.hrw.org/news/2019/06/19/colombian-government-downplays-murder-community-leaders (Accessed on 4/10/2020)
[487] Amnesty International, *COLOMBIA: HUMAN RIGHTS DEFENDER AT RISK: LUZ MARINA ARTEAGA*, pg.1. Available at: https://www.amnesty.org/en/documents/amr23/1306/2019/en/ (Accessed on 4/11/20)
[488] Michel Forst, *United Nations Special Rapporteur on the situation of human rights defenders* (Dec. 3, 2018). Available at: https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf (Accessed on 4/11/2020)
[489] *Id*.
[490] *Id*.
[491] *Id*.

Attacks on Journalists

Reporters without Borders ranks Colombia 129th out of 180 countries in press freedom.[492] Journalists in Colombia are protected by Article 73 in the constitution. Although journalists are formally guaranteed safety, that is not often the reality. In 2015, Flor Alba Nunez, a 25-year-old reporter/radio host was shot in the back of the head outside of the radio station la Preferida Estero.[493] Also in 2015, radio station director Luis Antonio Peralta Cuéllar was shot in the head three times while he was resting in his home.[494] According to The Guardian, there were 477 attacks and threats against journalist in 2018, up 53 percent from 2017.[495] Impunity for violence against journalists seems to be the rule rather than the exception.[496]

FREEDOM OF EXPRESSION IN HAITI

Domestic Laws

Article 19 of Haiti's constitution guarantees freedom of expression.497 Journalists are also protected by Article 19, which provides that they are not subject to authorization or censorship.[498]

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[492] Reporters Without Borders, *Colombia*. Available at: https://rsf.org/en/colombia (Accessed on 4/11/2020).
[493] Committee to Protect Journalists, *Flor Alba Núñez Vargas*. Available at: https://cpj.org/data/people/flor-alba-nunez-vargas/index.php (Accessed on 4/11/2020)
[494] Committee to Protect Journalists, *Luis Antonio Peralta Cuéllar*. Available at: https://cpj.org/data/people/luis-antonio-peralta-cuellar/index.php (Accessed on 4/11/2020)
[495] Joe Parkin Daniels, *Journalist finally brings attackers to justice but warns: 'Colombia's sliding backwards'* (Jun. 16, 2019). Available at: https://www.theguardian.com/world/2019/jun/16/colombia-journalist-threats-violence (Accessed on 4/11/2020)
[496] *See* Edson Lanza, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression* ¶ 330, OEA/Ser.L/V/II.Doc.5 (Feb. 24, 2020). Available at: http://www.oas.org/en/iachr/expression/reports/ENGIA2019.pdf (Accessed on April 19, 2020)
[497] *Haiti's Constitution of 1987 with Amendments through 2012*, pg.8. Available at: https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (Accessed on 4/12/2020)
[498] *Id*.

Press Freedom

In May of 2019 the director of the National Human Rights Defence Network, Pierre Espérance reported that he had received death threats.[499] In September journalist Chery Dieu-Nalio was injured when a Senator fired shots near the Senate building.[500] The IACHR Special Rapporteur on freedom of expression raised concerns about violence against journalists accompanied by impunity.[501] These individuals, journalists and groups have been struggling to get the government of Haiti to adhere to even the most basic of human rights requirements and as a result they have faced arbitrary arrest, attacks and brutal killings.

The Haitian government is at best neutral to the idea of free press. Although the laws suggest a free and open expression policy, the government may not see that as being in its best interests. Liliane Pierre-Paul, president of the Association National de Médias Haïtiens (ANMH), Haiti's largest media organization states, "The Haitian state does not want freedom of the press that is not in their interest. They do not wish to respect transparency. They do not want to have awareness among the population, and they do not approve of our reporting that denounces their behavior in government."[502]

Reporters without Borders ranks Haiti 62nd out of 180 countries for press freedom.[503] Despite recent changes in Haiti's media liberty laws, journalists have suffered from a want of

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[499] Amnesty International, *HAITI 2019*. Available at: https://www.amnesty.org/en/countries/americas/haiti/report-haiti/ (Accessed on 4/12/2020)
[500] *Id*.
[501] *See* Edson Lanza, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression* ¶¶ 761-768, OEA/Ser.L/V/II.Doc.5 (Feb. 24, 2020). Available at: http://www.oas.org/en/iachr/expression/reports/ENGIA2019.pdf (Accessed on April 19, 2020)
[502] Shearon Roberts, et al., *Five years after earthquake, Haiti's journalists show resilience amid threats to freedom of the press*, ¶3. Available at: https://knightcenter.utexas.edu/blog/00-15897-five-years-after-earthquake-haiti%E2%80%99s-journalists-show-resilience-amid-threats-freedom-p (Accessed on 4/13/2020)
[503] *Ranking 2019*, pg.1. Available at: https://rsf.org/en/ranking (Accessed on 4/13/2020)

resources, an absence of institutional backing, and struggles in retrieving information. And some continue to be the victims of intimidation or physical violence, especially while covering protests.[504]

Violence Against Journalists

Although Haiti is safer for journalists than most parts of Latin America, the press still suffers persecution and even death.[505] In June 2010, radio journalist Petion Rospide was shot while driving home from work.[506] A multitude of incidents of violence and intimidation against journalists has been reported in the past decade.

Other reports declare, "A Haitian journalist was hit by a gunshot as police fired live ammunition during a protest in Port-au-Prince on Sept. 30, according to the radio station where he works, Radio Sans Fin, as reported by Reuters. Edmond Joseph Agénor, a cameraman for Radio Sans Fin, was covering a protest outside the Haitian capital's airport, which was the scene of clashes between protesters and police, according to the website Rezo Nòdwès. Police used live ammunition at the protest, according to what the director of the radio told the site. One shot hit Agénor's wrist, the site reported."[507]

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[504] Reporters Without Borders, *Dangerous and precarious work environment* (2019). Available at: https://rsf.org/en/haiti (Accessed on 4/13/2020)
[505] *Id*.
[506] Teresa Mioli, et al., *Radio journalist killed in Haiti amid protests against the country's president* (June 11, 2019). Available at: https://knightcenter.utexas.edu/blog/00-20956-radio-journalist-killed-haiti-amid-protests-against-countrys-president (Accessed on 4/14/2020)
[507] Carolina de Assis, *Haitian journalist shot while covering protest in Port-au-Prince* (Oct. 1, 2019). Available at: https://knightcenter.utexas.edu/blog/00-21270-haitian-journalist-shot-while-covering-protest-port-au-prince (Accessed on 4/14/2020)

FREEDOM OF EXPRESSION IN HONDURAS

Domestic Laws

The Constitution of Honduras protects freedoms of speech and the press.[508] Articles 72-75 in the Honduran Constitution protect freedom of speech.[509] Neither the government nor private parties may restrict freedom of speech directly or indirectly.[510] In 2014 Honduras enacted the Law for the Classification of Public Documents, this law does exactly what its name states, limits the medias access on how funds are managed.[511]

Honduras has laws that restrict freedom of expression, although some of those laws have come off the books in recent years. The Special Law on Interception of Private Communications, passed in 2011, allows the government to freely intercept online and telephone messages.[512] Threats of violence and intimidation by state and nonstate actors that curtail private discussion among the general population are enabled by this law.[513]

According to Freedom House, restrictive press laws were used to punish journalists who reported on sensitive issues such as government corruption and drug trafficking.[514] Congress in 2019 revised the penal code to remove criminal defamation—an important step forward in press

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[508] Freedom House, *Freedom of the Press 2016 – Honduras* (Sept. 28, 2016). Available at: https://www.refworld.org/docid/57f361e3c.html (Accessed on 4/5/2020)
[509] *Honduras's Constitution of 1982 with Amendments through 2013*. Available at: https://www.constituteproject.org/constitution/Honduras_2013.pdf?lang=en (Accessed on 4/8/2020)
[510] *Id*.
[511] Thelma Mejia, *Laws and Threats Undermine Freedom of Expression in Honduras* (Aug. 4, 2018). Available at: http://www.ipsnews.net/2018/08/laws-threats-curtail-freedom-expression-honduras/ (Accessed on 5/8/2020)
[512] *Id*.
[513] *Id*.
[514] Freedom House, *Freedom of the Press 2016 – Honduras* (Sept. 28, 2016). Available at: https://www.refworld.org/docid/57f361e3c.html (Accessed on 4/10/2020)

freedom.[515] It remains to be seen how legal reform will be implemented. And authorities systematically violate the constitution's press freedom guarantees.

Violence Against Activists and Journalists

Violence limits freedom of expression in Honduras. From 2014 to 2016, 38 activists and journalists were murdered.[516] One of the most prominent was indigenous rights activist Berta Cáceres.[517] The IACHR Special Rapporteur has documented that this violence is accompanied by impunity.[518]

Protests challenging the integrity of the 2017 elections were met with government violence, resulting in 31 deaths.[519] One of those was 19 year old Kimberly Fonseca, who witnesses said was shot dead by members of the military.[520] The government's reaction to the protests were so bad that OHCHR did a special report on the violations committed in the context of the 2017 elections. This report found that Honduras violated human rights by using lethal force to control and disperse protestors that led to the killing of at least 23 people.[521] OHCHR

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[515] Committee to Protect Journalists, *Honduras to drop criminal defamation from new penal code* (Sept. 3, 2019). Available at: https://cpj.org/2019/09/honduras-to-drop-criminal-defamation-from-new-pena.php (Accessed on 4/10/2020)
[516] Human Rights Watch, *Honduras Events of 2018*. Available at: https://www.hrw.org/world-report/2019/country-chapters/honduras (Accessed on 4/8/2020)
[517] *Id*.
[518] *See* Edson Lanza, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression* ¶ 786, OEA/Ser.L/V/II.Doc.5 (Feb. 24, 2020). Available at: http://www.oas.org/en/iachr/expression/reports/ENGIA2019.pdf (Accessed on April 19, 2020)
[519] Amnesty International, *HONDURAS 2019*. Available at: https://www.amnesty.org/en/countries/americas/honduras/report-honduras/ (Accessed on 5/8/2020)
[520] Jennifer Avila, et al., *Honduras post-election killings: families wait in vain for justice* (Aug. 17, 2018). Available at: https://www.theguardian.com/world/2018/aug/17/honduras-post-election-killings-families-wait-in-vain-for-justice (Accessed on 4/8/2020)
[521] UN Office of the High Commissioner for Human Rights, *Human rights violations in the context of the 2017 elections in Honduras*, p. 2. Available at: https://www.ohchr.org/Documents/Countries/HN/2017ReportElectionsHRViolations_Honduras_EN.pdf (Accessed on 4/8/2020)

thought that at least 16 people were shot to death by security forces, including 2 children.[522] In addition, OHCHR found that at least 1,351 people were imprisoned during this time, with ill-treatment being a common theme.[523]

Violence towards journalists is high in Honduras. After the 2017 protests, two gunmen murdered journalist Juan Carlos Argneal owner of a local television station and correspondent of Globo TV.[524] The preceding July, authorities discovered the body of Anibal Barrow, another correspondent of Globo TV.[525] Journalist Edgar Joel Aguilar was murdered in a barbershop in 2019.[526] Also in 2019, Sandra Maribel Sánchez, a journalist from Radio Progreso, had a gun pressed to her head as she arrived home from work; the gunman fled when a witness appeared.[527] On November 25, 2019, Jose Arita, TV host of "La Hora de la Verdad" (The Hour of Truth) was shot and killed outside a convenience store near his work.[528] Arita was known for his critique of the local government.[529] Buenaventura Calderon, another reporter known for criticizing the local government, and his wife were shot were shot to death.[530] These killings do not go unnoticed on the world stage, Director-General of UNESCO, Audrey Azoulay has condemned many of these

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[522] *Id*.
[523] *Id*.
[524] Amnesty International, *Happening Now: Journalists Being Murdered in Honduras*. Available at: https://www.amnestyusa.org/happening-now-journalists-being-murdered-in-honduras/ (Accessed on 4/8/2020)
[525] *Id*.
[526] Teresa Mioli, *Broadcast journalist who received death threats is killed in western Honduras* (Sept. 1, 2019). Available at: https://knightcenter.utexas.edu/blog/00-21178-broadcast-journalist-who-received-death-threats-killed-western-honduras (Accessed on 4/8/2020)
[527] Committee to Protect Journalists, *In Honduras, attacker holds gun to head of Radio Progreso anchor Sánchez* (October 3, 2019). Available at: https://cpj.org/2019/10/journalist-sandra-maribel-sanchez-escapes-attack-a.php (Accessed on 4/8/2020)
[528] Committee to Protect Journalists, H*onduran TV host José Arita shot dead in Puerto Cortés* (Nov. 27, 2019). Available at: https://cpj.org/2019/11/honduran-tv-host-jose-arita-shot-dead-puerto-cortes.php (Accessed on 4/8/2020)
[529] *Id*.
[530] Committee to Protect Journalists, *Radio host Buenaventura Calderón shot dead in Honduras* (Nov. 6, 2019). Available at: https://cpj.org/2019/11/radio-host-buenaventura-calderon-shot-dead-in-hond.php (Accessed on 3/10/2020).

killings, including the 2019 killing of journalist Leonardo Gabriel Hernandez, who was shot near his home in broad daylight.[531]

Freedom House gives Honduras one point out of a possible four for press freedom.[532] In its 2019 report, Reporters Without Borders ranked Honduras 146th out of 180 countries in their press freedom index.[533] This ranking was largely based on the high impunity rate and the trend of opposition or community media being targets of death threats and violence or being forced to flee abroad.[534]

Academic Freedom

Honduras lacks academic freedom, which is undermined by criminal groups who control all or parts of the educational system in some parts of the country and subject teachers and staff to extortion schemes.[535] Freedom House reports: "Authorities sometimes move to suppress student demonstrations by arresting participants and dispersing the events, and violent clashes between police and student protesters sometimes occur. Student demonstrators at the National Autonomous University of Honduras (UNAH) in Tegucigalpa clashed with riot police in July and August 2018 as they occupied the campus to demand lower fuel costs and subsidized public transport. Police fired tear gas into the demonstration."[536]

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[531] UNESCO, *Director-General urges investigation into murder of journalist Leonardo Gabriel Hernández in Honduras* (Apr. 11, 2019). Available at: https://en.unesco.org/news/director-general-urges-investigation-murder-journalist-leonardo-gabriel-hernandez-honduras (Accessed on 3/10/2020)
[532] Freedom House, *Honduras* (2020). Available at: https://freedomhouse.org/country/honduras (Accessed on 3/10/2020)
[533] *Id*.
[534] Reporters Without Borders, *Ever-changing threats* (2020). Available at: https://rsf.org/en/honduras (Accessed on 3/10/2020)
[535] Freedom House, *Honduras* (2019). Available at: https://freedomhouse.org/country/honduras/freedom-world/2019 (Accessed on 4/10/2020)
[536] *Id*.

FREEDOM OF EXPRESSION IN MEXICO

Domestic Laws

Mexico has ratified and put into law all of the treaties listed above. Article 1 of the Mexican Constitution states that all Mexicans are entitled to human rights under the constitution and through international treaties to which Mexico is a party. The constitution also protects the right of freedom of expression, including the distribution of information and ideas.[537] Article 6 and 7 of the Mexican constitution protect and the freedom of speech.[538]

In 2010, Mexico established a Special Prosecutor for Attention for Crimes Against Freedom of Expression (FEADLE) to help protect journalists,[539] but the agency has been less than effective. Besides being understaffed, many local journalists are dismissive of the agency because of its poor ability to investigate and because it has yet to convict a murderer.[540]

Although defamation was repealed as a federal offense in 2007, nearly a third of Mexican states criminalize it, most notably Baja California and Yucatán.[541] These laws allow judges to administer fines and criminal imprisonment on a case-by-case basis.[542] Meanwhile, Mexican President Andrés Manuel López Obrador has tried to discredit the media and use his platform to

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[537] *Mexico's Constitution of 1917 with Amendments through 2015*. Available at: https://www.constituteproject.org/constitution/Mexico_2015.pdf?lang=en (accessed on 4/5/2020)
[538] *Id*.
[539] Jan-Albert Hootsen, *Mexico's special prosecutor says FEADLE is improving, but impunity continues* (Jan. 29, 2018). Available at: https://cpj.org/blog/2018/01/mexicos-special-prosecutor-says-feadle-is-improvin.php (accessed on 4/5/2020)
[540] *Id*.
[541] Committee to Protect Journalists, *Critics Are Not Criminals: Comparative Study of Criminal Defamation Laws in the Americas* p. 23 (Mar. 2, 2016). Available at: https://cpj.org/reports/critics_are_not_criminals-english.pdf (accessed on 4/5/2020)
[542] *Id*.

cast doubt on their reporting. He often does this by criticizing their reporting and by questioning their motives.[543]

In Tabasco public demonstrations can be criminalized for lengthy prison terms for actions opposing any public or private project.[544] Erika Guevara-Rosas, Americas director at Amnesty International, states that "[t]he reform in Tabasco would allow the government and the private sector to impose megaprojects and deprive local people of a voice to oppose them."[545] Despite concerns, this became law on July 29, 2019.[546] This is not unique to Tabasco. Several states, including Quintana Roo, have anti-protesting laws.[547] These laws would seemingly violate the right to freedom of expression by criminalizing protest.

Violence Against Journalists

In Mexico, the greatest threat against the freedom of expression is violence against journalists. Mexico is the world's deadliest country for the media.[548] This is mainly a result of a strong drug cartel presence mixed with a corrupt political system. According to Reporters

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[543] Carrie Kahn, *12 Journalists Have Been Killed In Mexico This Year, The World's Highest Toll* (Sept. 12, 2019). Available at: https://www.npr.org/2019/09/12/759882660/12-journalists-have-been-killed-in-mexico-this-year-the-worlds-highest-toll (accessed on 4/5/2020)
[544] Amnesty International, *Mexico: Freedom of expression and defence of human rights at risk* (July 29, 2019). Available at: https://www.amnesty.org/en/latest/news/2019/07/mexico-en-riesgo-libertad-expresion-defensa-derechos-humanos/ (accessed on 4/5/2020)
[545] *Id*.
[546] Mexico News Daily, *Tabasco law prohibits protests that block businesses, public works projects* (Jul. 30, 2019). Available at: https://mexiconewsdaily.com/news/tabasco-law-prohibits-protests/ (accessed on 4/5/2020)
[547] David Agren, *Mexico president accused of hypocrisy for backing tough anti-protest laws* (Jul. 30, 2019). Available at: https://www.theguardian.com/world/2019/jul/30/mexico-president-andres-manuel-lopez-obrador-accused-of-hypocrisy-after-supporting-anti-protest-laws (accessed on 4/5/2020)
[548] Reporters Without Borders, *Mexican authorities powerless as murders of journalists continue* (Aug. 27, 2019). Available at: https://rsf.org/en/news/mexican-authorities-powerless-murders-journalists-continue (accessed on 4/5/2020)

Without Borders, the Mexican government fails to solve more than 99 percent of journalist murders and disappearances.[549]

According to reports received by the Inter-American Special Rapporteur for Freedom of Expression there were more than 55 journalists killed in Mexico between 2010 and 2015.[550] One of the 2018 victims was Jorge Celestino Ruíz Vazquez. "Ruíz was murdered on 2 August in the town of Actopan (in the east coast state of Veracruz), where he was the correspondent of the newspaper El Gráfico de Xalapa. He had been threatened and attacked several times in 2018 for covering Actopan mayor José Paulino Domínguez Sánchez's alleged involvement in corruption, including the embezzlement of public funds. Ruíz has been given protection after filing a complaint with the local judicial authorities but the protection was withdrawn without explanation on orders from the Veracruz police. A few days before his murder, a messenger from the mayor went to El Gráfico de Xalapa's headquarters and offered the newspaper money not to publish compromising information about the mayor's activities. The newspaper refused."[551]

In June 2019, Norma Sarabia, a 46-year-old journalist, was murdered after receiving threats for denouncing police corruption.[552] In December of the same year, journalist Paul

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[549] Reporters Without Borders, *Mexican government declines to recognize freedom of expression crisis* (Nov. 6, 2019). Available at: https://rsf.org/en/news/mexican-government-declines-recognize-freedom-expression-crisis (accessed on 4/5/2020).
[550] *Situation of Human Rights in Mexico*, pg.163. Available at: https://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf (accessed on 4/5/2020)
[551] Reporters Without Borders, *Mexican authorities powerless as murders of journalists continue* (Aug. 27, 2019). Available at: https://rsf.org/en/news/mexican-authorities-powerless-murders-journalists-continue (accessed on 4/5/2020)
[552] Tom Phillips, *Mexico: seventh journalist murdered in just six months* (Jun. 13, 2019). Available at: https://www.theguardian.com/world/2019/jun/13/mexico-norma-sarabia-death-seventh-journalist-murdered (accessed on 4/5/2020)

Velazquez was shot in the face because of his outspoken views of the local Sinaloan government and for accusing Mayor Manuel Guillermo Chapman Moreno of corruption.[553]

Cartels have in effect corrupted the judiciary, so that violence and impunity render Mexico an almost impossible place to practice journalism.[554] Because cartel activity is so pervasive, the media cannot anticipate what activities will bring a violent backlash.[555] The situation has not improved under the administration of President Andrés Manuel López Obrador, who took office in December 2018. Yet his top human rights official questioned whether journalists actually had been murdered during López Obrador's administration.[556]

Violence Against Politicians

Politicians also are being targeted and killed. Reports declare: "Within the context of elections in Mexico during the first quarter of 2015 there were 10 candidates murdered according to the information supplied by the State, 557 and information was received regarding different violent acts on journalists and communicators. Recorded attacks include physical assaults, equipment theft, deleting journalist material, cyber threats and attacks (blocking pages, hacking,

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[553] Anthony Esposito & Raul Cortes Fernandez, *'They're Killing Us!' Attacked Mexican Journalist Asks President for Justice* (Feb. 5, 2020). Available at: https://www.usnews.com/news/world/articles/2020-02-05/theyre-killing-us-attacked-mexican-journalist-asks-president-for-justice (accessed on 4/5/2020)

[554] *See* Reporters Without Borders, *Mexico* (2020). Available at: https://rsf.org/en/mexico (accessed on 4/5/2020)

[555] *Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico, 27 November – 4 December 2017*, ¶ 10. Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22484&LangID=E (accessed on 4/5/2020)

[556] David Agren, *Mexico's human rights chief draws fury for asking if journalists have been killed* (Nov. 14, 2019). Available at: https://www.theguardian.com/world/2019/nov/14/mexico-rosario-piedra-ibarra-journalists-killed (accessed on 4/5/2020)

denial of service –DDoS-). Guerrero was one of the states where the context of the election was the most adverse to communicators and protesters."[557]

[557] Centro de investigación y Capacitación Propuesta Cívica. Elecciones y Agresiones, Monitoreo de agresiones contra periodistas en contexto electoral, July 7, 2015; Reporters Without Borders (RSF), Attacks On Journalists Mar Mexico's Elections, June 10, 2015; Article 19, Más Violencia, más silencio, July 2, 2015; Article 19, Temporada electoral, una agresión contra la prensa cada 10.6 horas, May 19, 2015; Imagen Siglo XXI, Hackean AVC Noticias, June 7, 2015.