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Совет по правам человека

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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Доклад Специального докладчика по вопросу о поощрении и защите права на свободу мнений и их свободное выражение

Добавление

Миссия в Гондурас* **

Резюме

Специальный докладчик по вопросу о поощрении и защите права на свободу мнений и их свободное выражение посетил Республику Гондурас 7–14 августа 2012 года с официальным визитом, в ходе которого он встретился с членами правительства и высокопоставленными должностными лицами, представителями законодательной и судебной ветвей власти, представителями учреждений Организации Объединенных Наций и международных доноров, а также с различными представителями гражданского общества и средств массовой информации, включая журналистов, общественных деятелей и правозащитников.

Целью визита являлись изучение и оценка положения в области осуществления права на свободу мнений и их свободное выражение в Республике Гондурас в контексте нынешнего положения в области прав человека и в период, последовавший за государственным переворотом в июне 2009 года.

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В настоящем докладе Специальный докладчик описывает политический контекст последних лет, а также нормативные и институциональные рамки, касающиеся свободы мнений и их свободного выражения. В последующих четырех главах Специальный докладчик рассмотрит наиболее серьезные вызовы, выявленные им в ходе миссии. В первой главе отражена его обеспокоенность по поводу высокого уровня насилия в отношении журналистов и общественных деятелей и подчеркивается важное значение искоренения преобладающей в стране общей безнаказанности. Далее Специальный докладчик объясняет значение права на свободу выражения мнений и принципы плюрализма и многообразия в общественных дискуссиях, а также обязанности государства в этой связи; особое внимание Специальный докладчик уделяет свободе выражения мнений коренных народов и лиц африканского происхождения, важному значению нормативных и институциональных рамок в телекоммуникационной сфере и праву на мирные демонстрации.

В главе VI Специальный докладчик делится своими наблюдениями и обеспокоенностью относительно правовых мер, ограничивающих осуществление права на свободу выражения мнений. В главе VII описываются вызовы, связанные с доступом к общественной информации и транспарентностью государственных органов.

В заключение Специальный докладчик приводит свои выводы и рекомендации. Кроме того, Специальный докладчик предлагает свою техническую помощь в связи с разработкой, введением и осуществлением рекомендованных мер.

Annex

[English and Spanish only]

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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I. Introduction

1. At the invitation of the Government of the Republic of Honduras, the Special Rapporteur paid an official visit to the country from 7 to 14 August 2012 in follow-up to the mission carried out by his predecessor, Mr. Ambeyi Ligabo, in November 2007 (see A/HRC/11/4/Add.2).

2. The purpose of his visit was to observe and investigate how the right to freedom of opinion and expression is being exercised in the Republic of Honduras within the context of the current human rights situation. The Special Rapporteur defines freedom of expression, as set forth in article 19 of the International Covenant on Civil and Political Rights, as the right to seek and receive information of all kinds and to impart information, ideas and opinions through any medium. This applies to persons involved in the distribution of information, such as journalists and social communicators, but it also applies to all persons, social groups and peoples of Honduras, who should be able to exercise this right on an equal footing and without being subject to any sort of discrimination whatsoever.

3. The Special Rapporteur is grateful for the unsolicited invitation extended by the State party and wishes to highlight the cooperation and collaboration that it demonstrated in helping to establish all the necessary conditions to enable him to conduct the visit. He wishes to thank all the government authorities, representatives of civil society organizations and journalists and social communicators with whom he met during this visit. Particular mention should be made of the work of the Ministry of Justice and Human Rights, the Office of the Resident Coordinator of the United Nations in Honduras and the Human Rights Adviser of the United Nations country team in Honduras.

4. The Special Rapporteur travelled to Tegucigalpa and San Pedro Sula. His mission included meetings with the President of Honduras, Mr. Porfirio Lobo Sosa, with a number of government ministers and senior officials of government agencies and institutions, representatives of the legislative and judicial branches of government, the United Nations Resident Coordinator and the United Nations country team, and representatives of the International Donors Group (G-16). He also met with members of various sectors within civil society and the media, including journalists, social communicators and human rights defenders.

II. Recent political and historical context

5. On 28 June 2009, Honduran military forces apprehended the then President Manuel Zelaya and forced him to leave the country, supposedly because he had planned to organize a poll on the possibility of holding a referendum on constitutional changes in conjunction with the November 2009 elections. On that same day, Congress met in an emergency session at which it declared that Zelaya was no longer the president and then swore in the Speaker of Congress, Roberto Micheletti, as the new President of Honduras. The Organization of American States (OAS), the General Assembly of the United Nations and the international community at large condemned these events as a coup d'état.

6. The de facto authorities issued a series of decrees in which they declared a state of emergency despite the fact that the situation was not serious enough to warrant the imposition of emergency measures. In addition, these measures were not in keeping with the principle of necessity or the principle of proportionality (see the report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009 (A/HRC/13/66), para. 14). Under this state of emergency, a number of provisions were put in place that limited fundamental rights

(including curfews, the suppression of demonstrations and the closure of media outlets). These measures were applied in an arbitrary and discriminatory manner and were targeted, in particular, at members of the anti-coup National Resistance Front. They were used to cover up or justify the use of excessive force, illegal and arbitrary arrests, torture, political persecution and other human rights abuses.

7. The emergency measures placed tight restrictions on freedom of expression. The media sided with one or the other end of the political spectrum, and reporting was therefore biased. Many journalists resorted to self-censorship in order to avoid restrictions or sanctions. The premises of several media outlets were occupied by military personnel, and broadcasting frequencies were often jammed or interrupted in order to prevent the media from reporting on the crisis. Opposition media, such as Radio Globo, TV Channel 36 and Radio Progreso, were specifically targeted and their programmes cancelled.

8. Some journalists were subjected to ill-treatment or were arbitrarily and illegally detained by police officers or members of the armed forces while covering demonstrations. Many journalists saw their right to freedom of opinion and expression curtailed and were victims of harassment, including harassment by the courts, and intimidation by police officers and military personnel. Most of these attacks targeted media that opposed the coup, but some media that were considered to be supporters of the de facto Government were also victims of unknown assailants.

9. The imposition of curfews, use of excessive force and arbitrary detentions also undermined the exercise of the right to peaceful assembly. Although some demonstrations did turn violent, the great majority of demonstrators were peaceful and unarmed (A/HRC/13/66, para. 30), and the use of force by government authorities was therefore unjustified in most cases.

10. Porfirio Lobo was elected President of Honduras on 29 November 2009 and took office on 27 January 2010. On 26 January 2010, Congress approved a decree establishing an amnesty with regard to the events that occurred between 1 January 2008 and 27 January 2010. The decree states that the amnesty does not apply to human rights violations, but its ambiguous wording has raised concerns in a number of human rights oversight bodies, including the Inter-American Commission on Human Rights.¹

11. In sum, the coup d'état gave rise to a series of human rights violations, most of which have gone unpunished, in many cases because the institutions that are supposed to protect human rights and ensure that the rule of law prevails did not fulfil their mandate on an independent basis but instead sided with the de facto Government. As a result, in addition to exposing and deepening existing structural problems that have an impact on the exercise of human rights, the coup d'état exacerbated what was already a difficult, tense political and social situation and heightened the polarization that already existed in most State institutions and in Honduran society at large.

¹ See the preliminary observations of the Inter-American Commission on Human Rights regarding its mission to Honduras on 15–18 May 2010 at: <http://scm.oas.org/pdfs/2010/AGSC00258S-2.pdf>.

III. The legal and institutional framework for freedom of opinion and expression

A. International obligations

12. The right to freedom of opinion and expression is enshrined in article 19 of the Universal Declaration of Human Rights and in other fundamental international human rights instruments to which Honduras is party, such as the International Covenant on Civil and Political Rights (art. 19) and the American Convention on Human Rights (arts. 13 and 14).

13. In its general comment No. 34 on article 19 of the Covenant, the Human Rights Committee states that restrictions on the exercise of the right to freedom of expression “must be ‘provided by law’; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality” (CCPR/C/GC/34, para. 22).

14. The Inter-American Court of Human Rights has said that the right to freedom of expression is not an absolute right and that it can therefore be subject to restrictions that are in proportion to the reason for their imposition and are closely aligned with that objective. The Court has also said that the right to freedom of expression has two dimensions: an individual dimension (the right to express one’s opinion and receive information) and a social dimension (the collective right to receive and seek information). The exercise of freedom of expression may also be a means of securing the enforcement of other rights (A/HRC/17/27/Add.3, para. 6).

B. National legal framework

15. At the national level, the right to freedom of expression is set forth in article 72 of the Constitution of Honduras. Article 73 of the Constitution stipulates that the media used for the expression and dissemination of thoughts may not be seized or confiscated, nor may they be closed down or have their work interrupted on the grounds that a major or minor offence has been committed in the course of the expression of thoughts or ideas.

16. The fact that freedom of expression is protected by the Constitution is of vital importance in protecting the exercise of this right. However, the Special Rapporteur feels obliged to reiterate the concern expressed by his predecessor as to the fact that, in accordance with article 75 of the Constitution, the law governing the expression of thought may provide for prior censorship; this is in direct contradiction to article 13, paragraph 2, of the American Convention on Human Rights, which states that the exercise of the right to freedom of thought and expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability”.

17. The right to freedom of association and assembly is set forth in article 78 of the Constitution, which states that these freedoms are guaranteed so long as they do not disturb the public order and do not run counter to public decency.

18. The Expression of Thought Act contains more specific provisions on freedom of opinion and expression in Honduras. Article 2 of this law establishes the inviolability of the freedoms of expression of thought and information. Article 5 states that all inhabitants of Honduras may freely express their thoughts, give and receive information and discuss their or other persons’ opinions in writing or orally or by any other graphic, oral or visual means without prior censorship.

19. The Telecommunications Framework Act, along with the amendments that have been introduced to update that law, govern the telecommunications sector in Honduras and establish the requirements for obtaining a broadcasting licence and permission to use a given radio frequency. The law authorizes the Government to revoke or cancel such licences for reasons of national security. As also noted in the report on the mission to Honduras conducted in 2007, the Special Rapporteur is concerned by the fact that this law and its accompanying regulations have limited the development of alternative media, including, in particular, the country's many community radio stations (see A/HRC/11/4/Add.2, para. 22). In the previous mission report, the Special Rapporteur went on to recommend that the legislation on telecommunications be amended in order to bring it into line with international human rights standards.

20. The Press Association Act governs the registration and work of journalists. The Special Rapporteur is concerned by the fact that, under this law, a person must become a member of the Press Association before he or she can work as a journalist. This requirement is at variance with the free exercise of the right to freedom of expression. This law's incompatibility with the international obligations of the State of Honduras was also pointed out by the preceding Special Rapporteur in his report on his 2007 mission to Honduras (*ibid.*, para. 28).

21. Civil society played an important role in winning passage of the Transparency and Access to Public Information Act, which embodies international standards regarding the right to have access to public information. According to the preceding Special Rapporteur, the passage of that law was one of the most significant social and political events of 2006 and represented a major stride forward in enabling citizens to find out what goes on inside public institutions (*ibid.*, para. 30). As will be noted later on in this report, however, the Special Rapporteur is very concerned by reports that point to a lack of impartiality and independence on the part of the Public Information Institute (IAIP) and its commissioners and to a failure to apply the Public Information Act systematically.

22. Certain provisions in the Criminal Code of Honduras (arts. 155, 157, 160 and 345) also restrict freedom of expression inasmuch as they establish slander, libel and defamation, including even the disparagement of a public authority, as criminal offences.

23. The Special Rapporteur is seriously concerned about the fact that, in contradiction to the Constitution and international human rights standards, slander, libel and defamation are criminal offences which could be used to muzzle the press and place excessive restrictions on the right to freedom of expression. Under these circumstances, criminal proceedings could be brought against anyone who voices an opinion that may be considered to disparage a public authority, which would undermine the right to freedom of opinion and expression.

24. Legal measures dealing with freedom of opinion and expression should be in place that will do away with legal obstacles to the free exercise of this fundamental right and provide for the punishment of persons who violate that right. Legal measures should not unduly restrict the exercise of the right to freedom of expression, nor should they be used to censor or punish persons who avail themselves of their right to freedom of expression. The State of Honduras is also under an obligation to take steps to prevent crimes against freedom of expression from taking place.²

² See the Joint Declaration on Crimes against Freedom of Expression of 25 June 2012.

C. Institutional framework

25. The Special Rapporteur wishes to commend the President and the State of Honduras on the creation of the Ministry of Justice and Human Rights, an important institution that is needed in this time of crisis in Honduran society that has followed in the wake of the 2009 coup d'état. It stands as a sign of the mature stage reached by the country in its political development, inasmuch as the stature of all democracies is measured by the extent of their respect for human rights. The Special Rapporteur has also witnessed with satisfaction how ably and keenly the Ministry is going about its work.

26. This initiative will only be successful if the work and the policies of the Ministry are based on a broad consensus and enjoy the full support of the President of Honduras and his entire cabinet, including the heads of the Ministry of Security and other State agencies. It is important for this Ministry to take on the task of coordinating human rights policies, together with the programme for the protection of human rights defenders, journalists and other vulnerable groups that is now being developed. This means that the Ministry will need to coordinate with the national police force, promote human rights training for its members and promote the creation of a specialized in-house protection unit.

27. There must be an independent State agency charged with receiving complaints from members of the public concerning human rights violations. This task cannot be assumed by a government ministry, since, given the very nature of these institutions, they cannot be assured of having the necessary independence to register and properly investigate human rights violations, especially in cases where such violations have allegedly been committed by government authorities.

28. The Special Rapporteur finds it regrettable that the National Commissioner for Human Rights has lost his credibility as a result of its actions during the coup d'état. In light of that situation, the Special Rapporteur proposes that, in order to restore the institution's authority, credibility and independence, the State of Honduras convert the Office of the National Commissioner into a national human rights commission in line with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles).

29. The Special Rapporteur understands that, because of the public's distrust of the national police force, the Office of the Attorney General and the National Commissioner for Human Rights, individual cases regarding violations have been taken up by the Ministry of Justice and Human Rights as a means of filling the institutional vacuum that has taken shape. However, the Special Rapporteur recommends that, rather than asking the Ministry to shoulder responsibilities that fall outside its purview, institution-building measures be adopted in order to strengthen the national police force, the Office of the Attorney General and a national human rights commission and that steps be taken to promote and reinforce inter-agency coordination under the supervision of the Ministry. The role of each of these institutions should be clearly defined in order to avert any duplication of effort and any avoidable overlapping allocations of human and/or financial resources.

IV. Violence and impunity

A. Violence directed at members of the press

30. Violence directed at journalists and social communicators was one of the first problems that the Special Rapporteur looked into during his visit, given the fact that Honduras is the country with the highest index of murders of journalists (measured as a percentage of the country's population) in the region.

31. In this connection, the Special Rapporteur wishes to underscore the fact that the profession of journalism is defined as the function of informing society, and this activity must not be limited by the establishment of requirements with respect to certification, mandatory membership in an association or government registration. The Special Rapporteur considers academic studies and the professionalization of journalism as positive developments and believes that it is important to set up professional associations that can maintain high standards and establish voluntary codes of ethics, as well as to provide the opportunity for journalists to register with government authorities and obtain accreditation to cover official events. None of these things should be established as a condition for practising the profession of journalism, however.

32. The Special Rapporteur was informed at the time of writing that seven killings connected with the exercise of the right to freedom of expression had already been committed in 2012. According to information provided to the Special Rapporteur by official and unofficial sources, between 2003 and the time of writing, at least 32 journalists and social communicators had been murdered. The Special Rapporteur would like to pay homage to those journalists and social communicators by naming them here: Germán Antonio Rivas (26 November 2003); Carlos Manuel Salgado Cruz (18 October 2007); Fernando González (1 January 2008); Bernardo Rivera Paz (14 March 2009); Santiago Rafael Munguía Ortiz (1 April 2009); Osman Rodrigo López Irías (19 April 2009); Gabriel Fino Noriega (3 July 2009); Nicolás Jesús Asfura (17 February 2010); Josep Adoni Hernández Ochoa (1 March 2010); David Enrique Meza Montesinos (11 March 2010); Nahúm Elí Palacios Arteaga (14 March 2010); José Bayardo Mairena Martínez (26 March 2010); Manuel de Jesús Juárez (26 March 2010); Luis Antonio Chévez Hernández (11 April 2010); Jorge Alberto “Georgino” Orellana (20 April 2010); Carlos Humberto Salinas Midence (8 May 2010); Luís Arturo Mondragón Morazán (14 June 2010); Israel Díaz Zelaya (24 August 2010); Henry Orlando Suazo Santos (26 December 2010); Héctor Francisco Medina Polanco (10 May 2011); Luis Ernesto Mendoza (19 May 2011); Julio Adán Benítez (5 July 2011); Nery Jeremías Orellana (14 July 2011); Medardo Flores (9 September 2011); Luz Marina Paz Villalobos (6 December 2011); Saira Fabiola Almendarez Borjas (29 February 2012); Fausto Elio Hernández Arteaga (11 March 2012); Noel Valladares Escoto (23 April 2012); Erick Alexander Martínez Ávila (7 May 2012); Ángel Alfredo Villatoro (15 May 2012); Adonis Felipe Bueso Gutiérrez (8 July 2012); José Noel Canales (10 August 2012).

33. According to the Human Rights Unit of the Ministry of Security, at the time of the Special Rapporteur’s visit, 61 journalists and/or social communicators were benefiting from protective measures. Many more journalists and social communicators were being threatened and/or attacked or being subjected to other human rights violations every day, but not all of them reported these acts either because they were afraid of the police or because they assumed that these incidents would not be investigated.

34. Violence directed at the press constitutes a limitation on freedom of expression and, hence, a limitation on public participation and an assault on democracy. This is why the Special Rapporteur feels that, rather than being seen as an attack on the rights of an individual, violence against journalists should be seen as an attack against one of the rights of society as a whole, i.e., the right to be informed and to seek information. He therefore wishes to emphasize that the State is under an obligation to provide special protection to those who work to defend and promote the rights of others, such as human rights defenders and journalists. Persons who work to protect the human rights of others deserve special protection from the State.

35. The Special Rapporteur commends the Government of Honduras on having taken the initiative to present a draft bill on the establishment of a mechanism of protection for journalists, social communicators, human rights defenders and persons responsible for the

administration of justice. It is imperative that such a mechanism be institutionalized. The Special Rapporteur would sound a note of caution, however, regarding the drawbacks of hastening the passage of a text in whose development representatives of civil society, including journalists and social communicators, have not played a significant and informed role.

36. The Special Rapporteur recommends, in particular, that this mechanism take the form of a high-level commission made up of representatives of the State (including the Ministry of the Interior and the Ministry of Defence), the different sectors of the press and civil society organizations working in the areas of human rights or freedom of expression. This commission should have direct access to the highest government authorities, including the President, and to law enforcement agencies and should have a budget of its own for the funding of effective protection measures.

37. This mechanism must be able to provide a range of practical protective measures, including peripheral protection, versatile communications devices such as radios or mobile phones, the installation of video cameras, the use of armoured vehicles to evacuate people and the capability to move persons under threat and their families to another region in the country or to another country. If this protection mechanism is to work properly, it is of paramount importance for it to have strong political support from all government ministries, the President and all the political parties of Honduras.

B. Impunity

38. In cases in which the State does not succeed in preventing acts of violence against journalists, whether in the form of threats, harassment, attacks and/or murders, the most important factor is for it to at least investigate the incident and to arrest and punish the persons who actually committed the acts in question and those who instigated or planned them. A failure to bring such people to justice gives rise to an atmosphere of impunity, which is one of the main factors that breeds continued violence.

39. The Special Rapporteur would like to express his concern about the fact that, during his visit, some of the authorities with whom he met and a number of journalists speculated as to the reasons why certain acts of violence were committed against members of the press in individual cases. This would appear to be a dangerous practice; what is important is to place emphasis on the obligation to investigate and prosecute, while refraining from prior speculation that could undermine the objectivity and effectiveness of the investigation. Government authorities should not prejudge what causal factors were involved.

40. In all cases of violence directed at journalists or human rights defenders, the initial presumption — until proven otherwise — should be that the incident occurred as a result of the person's profession or activities. Accordingly, the Special Rapporteur recommends that all cases involving violence against journalists, social communicators or human rights defenders should be immediately referred to the Office of the Special Prosecutor for Human Rights for investigation and the prompt initiation of proceedings.

41. To put an end to impunity in this regard, the Special Rapporteur recommends that the staff and budget of the Office of the Special Prosecutor for Human Rights be increased substantially and that an effort be made to provide the staff with technical training in efficient methods for investigating these types of grave human rights violations.

42. According to information provided by the Public Prosecution Service and other offices, the prosecution rate for violent offences overall is 4 per cent or less; furthermore, suspects have been brought to trial in only 6 of the 31 officially recognized cases in which journalists or social communicators have been murdered since 2003, and verdicts have been handed down in only two of those cases. This situation is unacceptable if the country is to

put a halt to impunity. One of the problems is that the Public Prosecution Service does not have detectives of its own but must instead rely on the national police force to carry out investigations.

43. Another problem is that the Office of the Prosecutor does not have an effective or appropriate witness protection system. The Special Rapporteur was told that, in most cases, all it can do is provide some measure of protection while a trial is going on, but it has neither the resources nor the means of providing witnesses with protection after the trial, if indeed there is one.

44. The Special Rapporteur also received reports about a lack of impartiality on the part of officials responsible for the administration of justice. According to these reports, murder cases are only seriously investigated and brought to trial if the victim had ties to persons in positions of power.

45. Mention was made on a number of occasions of the difference in the way the cases of Alfredo Villatoro and Nahúm Palacios were handled. Mr. Villatoro was working for HRN radio in Tegucigalpa when, on 15 May 2012, he was killed despite the fact that he had a police escort. Mr. Villatoro's death is one of the rare cases in which the police force was mobilized on a large scale, and some 10 persons were arrested. Nahúm Palacios was working for Channel 5 in Aguán when he was killed in Tocoa on 14 March 2010, even though the Inter-American Commission on Human Rights had requested that precautionary measures be taken on his behalf. The investigation has made no progress to date. All killings of journalists and social communicators should be investigated and prosecuted with the same diligence and appropriate resources as appear to have been employed in the case of the murder of Mr. Villatoro.

46. The Special Rapporteur is deeply concerned by the fact that the general public and, in particular, human rights defenders say that they do not trust the national police. This is a serious problem, since the police are responsible for carrying out investigations. Unless murders, other acts of violence and threats are properly investigated, prosecutors have no solid information that would serve as a basis for filing charges or bringing cases to trial, much less winning them.

47. Law enforcement officials with whom the Special Rapporteur met indicated that the factor that places the greatest constraint on the work of the national police force is its budget. In addition, because there is a lack of trust, many human rights defenders reject the courses of action proposed to them by the police.

48. The Minister of Security is in charge of providing protection to 388 persons for whom the Inter-American Commission on Human Rights has requested precautionary measures and over 180 persons who are entitled to national protection measures. This is a large workload to coordinate, and there is no risk assessment mechanism in place. The Special Rapporteur recommends that an inter-agency protocol based on clear, transparent rules be developed for the implementation of precautionary and protective measures.

49. The Special Rapporteur received information from a variety of sources concerning widespread corruption in State institutions in Honduras, particularly the police force. The security commission which the President created to clean up the police force on 1 June 2012, following the passage of the relevant law by Congress in January 2012, represents a step forward. However, this initiative should figure as one element in an integrated policy package focusing on combating corruption and impunity in all sectors of the State, including the highest levels of the Government. There are as yet no results to be evaluated.

50. The training customarily given to police officers does not prepare them to provide suitable protection and should therefore be supplemented with specialized training in human rights and personal protection methods.

51. The Special Rapporteur would strongly discourage the State party from choosing the option, which has recently been under discussion, of creating a paramilitary police force, since such a step would not lead to the creation of a separate, specialized police force but rather to the militarization of police functions. If the penetration of existing law enforcement agencies by illegal and corrupt elements is not stopped, then any new forces that might be created would be subject to the same sort of infiltration.

52. The Special Rapporteur regards the establishment of supposed “development” programmes that are not part of the country’s territorial system or under the jurisdiction of the courts (such as “charter cities”, which also displace population groups and are governed by a distinct institutional and legal regime that is autonomous from the State) to be in violation of national sovereignty and the right to access to justice and in breach of the State’s guarantees that, within its territory, its population’s human rights will be respected, promoted and protected. The Special Rapporteur takes note with satisfaction that on 18 October 2012 the Supreme Court ruled that Legislative Decree No. 283-2010, under which the charter cities were created, is unconstitutional and that it is in violation of the country’s sovereignty, territory and form of government.

53. The Special Rapporteur urges the Government of Honduras to strengthen its existing institutions, furnish them with appropriate budgets, provide human rights training and combat rampant corruption. This should be accomplished by means of coordinated measures and policies, rather than by simply renouncing its sovereignty and thereby failing to fulfil its obligations to the people living in these territories.

V. Freedom, pluralism and diversity in the democratic debate

54. A truly democratic, pluralistic society must have freedom of the press so that journalists will be free to keep the public informed while upholding the fundamental principle of diversity and pluralism, which calls for the presence of a range of different media and different perspectives and ways of thought. This gives the members of the different sectors of society and of society as a whole the information that they need to form their own opinions and to play an active role at all levels, thereby strengthening the democracy.

55. During the Special Rapporteur’s visit, he heard the press being severely criticized not only by public officials but also by journalists and press associations. In that regard, the Special Rapporteur would like to make it clear that protecting freedom of the press and expression does not imply being in agreement with the content of a message; what is involved is simply the ability to practise the profession freely. It is also important to emphasize that under no circumstances should any State authority be the one to define the professional quality or objectivity of journalists’ work or to restrict the exercise of the profession in any way other than as provided for by law. It is the prerogative of the public at large to analyse the professionalism and ethical conduct of the press and social media and to make them aware of its views. In addition, each medium or association of journalists, as well as each individual journalist, should voluntarily and actively use a code of professional ethics as a frame of reference for self-assessment.

56. Political means of protecting freedom of opinion and expression are essentially based on the adoption by government officials, especially senior ones, of an attitude that reflects respect for the role of a free press and freedom of expression in a democratic society and their recognition of this role when they speak publicly. This does not mean that they cannot give their own version of events or respond to statements made by others.

57. By the same token, public officials should be more tolerant of public criticism.

58. The Special Rapporteur also observed that much of the media is concentrated in the hands of economic interests. The corporate press is owned by powerful economic groups and, as a result, the journalists in this sector of the press can be “modulated” by the media owners who employ them. This situation can undermine freedom of expression, since the economic power wielded by media owners can easily be used to convince journalists to practise self-censorship, to corrupt them or to punish those who do not follow the editorial line laid down by their employers. These economic interests have also penetrated political circles, where they have given rise to even more corruption and used their economic power to co-opt political interests.

59. The Special Rapporteur was also told that government procurement of advertising services is not conducted on a transparent or equitable basis, with the result being that government money is concentrated in just a few media channels which, because it is in their economic interests, never criticize the Government’s actions for fear of losing revenue. As a result, government advertising has become a readily available means of censorship. The Special Rapporteur recommends that regulations be developed that will help to ensure that government spending on advertising is allocated in a transparent, equitable manner so that it cannot be used by any given department or official to favour like-minded journalists or to punish those who are critical of the Government. These regulations should be such as to prevent government advertising from leading to self-censorship and from being used to corrupt officials and media employees.

60. It is also important to exercise caution and good judgement when making use of nationwide simultaneous (or “chain”) broadcasts, which should be reserved for national emergencies or events of crucial importance for the country or a region within it. They should not be systematically misused as a form of government control or be abused by any government official to boost his or her image or political campaign. These simultaneous broadcasts have been misused as a form of government control in violation of the articles of the Constitution concerning freedom of expression. The new regulations on such broadcasts are apparently designed with the sole aim of defining offences that would carry such heavy fines that independent media, which do not have the same economic backing as major broadcasters do, would be forced to close down.

A. Peoples, ethnic groups and freedom of expression

61. Freedom of expression can be exercised by individuals, groups or peoples, since distinct peoples have the right to possess and to publicly express their own culture, language, history, traditions and values and to reproduce them for coming generations. The State must defend the right of the Afro-Honduran people, the Mayan-Honduran people, the Miskito people and any other ethnic group to publicly express their culture and values freely and, in particular, without being subject to discrimination of any sort.

62. The United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to establish their own media. The Special Rapporteur therefore recommends that the State guarantee freedom of expression, promote bilingual education in each of these areas and grant licences for the use of radio frequency bands to organizations and communities in these regions. In order for this to be done, as noted later on in this report, the Telecommunications Act will have to be amended.

63. To this end the Special Rapporteur proposes that a national language institute be established for the study, preservation and protection of all the languages spoken by the different ethnic groups and peoples in the country.

B. Telecommunications

64. Since the frequencies in the electromagnetic spectrum that are used for telecommunications are the property of the State, and it is the duty of the State to seek the common good for all, the Special Rapporteur recommends that regulations be developed to ensure that the use of these frequencies is distributed equitably. These regulations should be designed to ensure that all sectors of the population have access to transmission bandwidths, rather than having them concentrated in the hands of a few or monopolized, in violation of the principle of diversity and plurality that should underpin freedom of expression and the media.

65. The Special Rapporteur also recommends that the Government of Honduras urge Congress to amend the Telecommunications Framework Act with a view to redefining society's use of bandwidths and the way in which they are distributed and affording recognition to community telecommunications networks. The practice of auctioning off bandwidths is an essentially discriminatory procedure that favours sectors that wield economic power; therefore, auctions should be used only for the allocation of commercial frequencies, not for the bandwidths used for community or public non-profit purposes, including those used by different peoples and ethnic groups in the country. Commercial uses should not prevail over public service applications.

66. The Special Rapporteur proposes that the Government of Honduras look at the model laws recently passed in Argentina and Uruguay that divide up the spectrum into commercial, community and public basic-service frequencies. It is important to give recognition to the category of community media and to grant bandwidth permits using non-economic criteria. Community or public frequency permits should confer the same rights and obligations as commercial permits do, and it should therefore not be presumed that the frequencies assigned for these purposes should necessarily be weaker or have a shorter range.

67. According to statements made by a number of sources, many of the bandwidths that have been allocated are going unused and the persons who have the permits for those bandwidths are holding them in reserve. The Special Rapporteur recommends that the Government of Honduras make the issuance of a permit conditional upon the immediate and ongoing use of the bandwidth in question. In addition, it would be useful for the National Telecommunications Commission (CONATEL), which is authorized by law to coordinate and implement telecommunications policies, to draw up an inventory and map of bandwidths throughout the country so that those that are not in use can be identified and the corresponding permits can be withdrawn.

68. The digitization of analogue communications services would increase the number of usable frequencies in each band. This would provide the State with an opportunity to create a strategic reserve of radio frequencies.

69. The Internet has become the most user-friendly medium for seeking and receiving information and for imparting information and ideas. The Internet is a technology that plays a vital role not only in connection with freedom of expression (including access to information, especially public information) but also in the exercise of the right to education, the right to freedom of association and assembly, the right to cultural diversity and the right to development. This is why the proposal is made in the Special Rapporteur's 2011 report to the General Assembly (A/66/290) that all States should undertake to guarantee access to the Internet for all sectors of the population, particularly the poorest of its members and those living in rural and/or remote locations.

70. The Internet should be freely available to the whole of the population as a medium of communication that serves as an open forum for dialogue and interaction with the entire

world. The Government of Honduras should guarantee two-fold access to the Internet: access to pluralistic, diverse, uncensored content; and access to connections and infrastructure, including the appropriate hardware. This can be accomplished by setting up community centres that are equipped with Internet connections and computers and by providing wifi in public areas. This also means that the State should guarantee access to quality equipment at a reasonable price, even if it has to subsidize some services or equipment in order to do so. The One Laptop Per Child project, which is backed by the United Nations Development Programme, is one example of this type of initiative.

C. Peaceful protests

71. Freedom of expression can be exercised through any sort of medium. This includes the right to participate in demonstrations and peaceful protests staged by social sectors or organizations that wish to show their discontent with public policies, natural resource development contracts, the attitudes adopted by civil servants or some other situation.

72. The right to engage in peaceful protests is guaranteed by the Constitution. It is not necessary to obtain a permit or prior authorization to exercise this right; the only requirements are that the protest must be peaceful and that the rights of others must be protected. Article 78 of the Constitution, which guarantees freedom of association and assembly, is unclearly worded and could be used to place arbitrary restrictions on the right to assemble and protest, depending on how the authorities interpret the words “public order” and “public decency”.

73. In times of crisis, State authorities should first make every effort to engage in dialogue and should resort to force — while observing the principle of proportionality — only if the situation turns violent. According to this principle, the minimum level of force required to re-establish order is to be used and no one is to be detained arbitrarily simply because he or she is a protester. Nor is it acceptable for government agents to confiscate, damage or destroy photographic or audiovisual equipment being used by the press or members of civil society organizations or to confiscate their contents, as this material is also protected under the right to freedom of expression as historical, documentary or press material; it may also be useful in any criminal investigations that may be undertaken.

74. The Special Rapporteur was told about a number of instances in which, although a person’s right to engage in peaceful protests had been violated, no investigation was undertaken and the perpetrators of those violations, whose identities were known, were not punished.

75. Police officers or members of the armed forces performing police work who use excessive force should be punished. Members of security forces should also be trained to take appropriate action in crisis situations rather than resorting to a disproportionate use of force.

76. The use of private security agents in demonstrations and legal evictions in which the police are called upon to play a part is unacceptable, since this would shift the State’s responsibilities on to third parties and put the State in a position where it could not protect people’s human rights.

VI. Legal actions relating to the exercise of the right to freedom of expression

77. Certain restrictions may legitimately be placed on freedom of expression in accordance with the principles set forth in articles 19 and 20 of the International Covenant

on Civil and Political Rights. Such restrictions should be established by law prior to their introduction, should have as their purpose the protection of the human rights of others and should be both necessary and proportional to the protection to be afforded to those rights.

78. Some restrictions are also set forth in international human rights instruments. For example, article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination prohibits the use of language which propounds the superiority of one race or ethnic group over others; the Convention for the Prevention and Punishment of the Crime of Genocide prohibits incitement to hate and incitement to commit genocide for reasons of race, nationality or religion; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography explicitly provides that States parties must prohibit the production, distribution, dissemination and marketing of child pornography and punish those responsible for such acts; the Convention on the Elimination of All Forms of Discrimination against Women includes a series of recommendations concerning the elimination of language that could lead to gender discrimination or violence against women.

79. There are also provisions that prohibit the use of language to promote organized crime or to instigate violence or terrorism. All hate speech that incites or justifies violence against given sectors of the population, including the LGBT population, should be eradicated. The State should not, however, place restrictions on freedom of expression that are not based on human rights standards or principles, since such restrictions will inevitably become tools of political censorship.

80. The Special Rapporteur wishes to underscore the need to decriminalize defamation, slander and libel and to convert them into matters regulated by civil law. This would be a more effective way to protect people's honour and reputations without resorting to intimidation through the use of force or imprisonment, which could undermine freedom of expression, especially when used by public officials to muzzle criticism. The Special Rapporteur regards the statements on this subject made by President Porfirio Lobo Sosa to be signs of progress in this respect.

81. Nor is it acceptable to intimidate members of the press by inundating them with unfounded suits that are tantamount to judicial harassment.

VII. Access to public information and transparency

82. Access to information, especially to State or public information, is a right that is inherent in the right to freedom of expression and should be safeguarded by all States. In accordance with the principle associated with this right, elected public officials, and even public appointees, represent the people and exercise sovereignty in their name, yet this also means that they are accountable to the people. This principle applies not only to the material and financial resources of the State, but also to decision-making and policymaking. If government officials are under an obligation to work for the common good, then there is no reason why information about what they are doing and the decisions that they are taking should not be public (with a very few exceptions when national security is involved, during the time-bound and brief investigative stage of criminal proceedings or in the case of diplomatic negotiations).

83. Public officials are called upon to renounce their right to privacy, to a great extent, owing to the type of position they hold, and the more senior they are, the more they must be open to scrutiny and to the public's critical eye. The people have the right to seek information and receive it from any public office or civil servant.

84. The passage of the Transparency and Access to Public Information Act and the establishment of the Public Information Institute (IAIP) are steps forward. The Special Rapporteur has received numerous complaints from members of civil society, however, who assert that the three IAIP commissioners were simply designated, rather than being selected in an open, transparent manner in consultation with the various sectors of civil society; this works to the detriment of that institution's independence and credibility.

85. The Special Rapporteur recommends that the Government of Honduras set up a transparent procedure for the selection of the three IAIP commissioners that will allow the populace to have confidence in their independence and professionalism. In addition, having 10 years of experience in the civil service should not be one of the eligibility requirements for these posts. That requirement is not relevant to this kind of position and would appear to lend itself to conflicts of interest and vision.

86. The Special Rapporteur also received reports concerning discrimination and a failure to enforce the Transparency and Access to Public Information Act, especially in rural areas. He has therefore expressed a desire to return to the country in order to learn more about the practices of the Public Information Institute and its new commissioners.

VIII. Conclusions

87. The 2009 coup d'état seriously exacerbated the polarization of Honduran society and its political parties. The institutional shortcomings that were already in evidence grew worse as well. This led the people of Honduras to lose much of their trust in the State and its representatives, including the institutions responsible for upholding human rights, such as the national police force, the Office of the Attorney General and the National Commissioner for Human Rights.

88. The Government of Honduras has taken the initiative in promoting and protecting human rights by, for example, establishing the Ministry of Justice and Human Rights. These kinds of initiatives have thus far not received the full support of the Government and institutions of Honduras, however, and the country therefore continues to suffer from an unpardonable degree of impunity.

89. Widespread impunity and a failure to investigate human rights violations effectively continue to stymie any initiative undertaken or any effort made to protect human rights, uphold the rule of law, establish the truth or provide redress.

90. The Special Rapporteur observed with great concern that the exercise of the right to freedom of opinion and expression continues to be misinterpreted by certain State institutions and authorities. The Special Rapporteur was informed of daily violations of the right to freedom of expression in different regions of the country. These violations include, but are not limited to, attacks on journalists and/or the media, the excessive use of force against peaceful protestors, judicial harassment, and the prosecution of people on charges of libel, slander or defamation. The Special Rapporteur is deeply concerned about the fact that, in most cases in which violence is committed, the perpetrators go unpunished owing to a lack of political will, human and financial resources, and training for the persons responsible for investigating such incidents and prosecuting and punishing the perpetrators.

91. Finally, the Special Rapporteur wishes to underscore the need to give serious consideration to the recommendations presented in the report of the Truth and Reconciliation Commission and to put them into actual practice, with the recommendations concerning human rights violations and impunity in such cases being given first priority.

IX. Recommendations

92. The Special Rapporteur has drawn up the following recommendations based on the above conclusions and the recommendations put forward in his predecessor's report on the visit paid to Honduras in 2007. He would like to remind the State party that he stands ready to provide any assistance it may need in order to put these recommendations into practice.

A. Violence and impunity

93. The Special Rapporteur recommends the following:

(a) The importance of journalists' work should be recognized and attacks on journalists and social communicators should be condemned by senior government authorities, including the Ministry of Defence and the officials who direct the security forces;

(b) A mechanism should be created for the protection of journalists, social communicators, human rights defenders and people responsible for the administration of justice. The Special Rapporteur recommends, in particular, that this mechanism should take the form of a high-level committee composed of representatives of the State — including representatives of the Ministry of the Interior and the Ministry of Defence — and representatives of the various sectors of the press and civil society organizations working in the areas of human rights or freedom of expression. This committee should have direct access to the most senior government authorities, including the Office of the President and the agencies responsible for the country's security forces, and should have a budget of its own for the implementation of protective measures;

(c) This protection mechanism should have two subcommittees: one to assess risks and the other to determine what protective measures should be taken;

(d) The range of protective measures should include peripheral protection, versatile communications devices such as radios or mobile phones, the installation of video cameras, the use of armoured vehicles to evacuate people and the capability to move persons under threat and their families to another region in the country or to another country;

(e) This mechanism should be sited in the coordinating office of the Ministry of Justice and Human Rights;

(f) A personal protection bureau should be established within the national police force and staffed with police officers who have been especially trained for the job;

(g) All cases involving violence directed at journalists, social communicators or human rights defenders should immediately be referred to the Office of the Special Prosecutor for Human Rights;

(h) The staffing table and budget of the Office of the Special Prosecutor for Human Rights should be increased substantially, and the staff members responsible for conducting investigations and court proceedings should be provided with appropriate technical training;

(i) The penalties for people who commit crimes against members of the press and freedom of expression should be increased, especially in cases in which the offenders are agents of the State.

B. Freedom, pluralism and diversity in democratic debate

94. The Special Rapporteur recommends the following:

(a) Each organ of the media and association of journalists should actively embrace a professional code of ethics that can provide a frame of reference for self-assessments;

(b) Regulations should be developed that will help to ensure that government spending on advertising is allocated in a transparent, equitable manner so that it cannot be used by any given department or official to favour like-minded journalists or to punish those who are critical of the Government;

(c) Nationwide simultaneous (“chain”) broadcasts should not be systematically misused as a form of government control or be abused by any government official to boost his or her image or political campaign;

(d) The Government should amend the Telecommunications Framework Act, in line with international human rights standards, to ensure that permits for the use of telecommunications frequencies are awarded on an equitable basis to organizations and communities of indigenous peoples, persons of African descent and others;

(e) A national institute should be established for the furtherance of the languages of the different ethnic groups and peoples in Honduras;

(f) Legal and political recognition should be given to community-based media and to the principle that users of community frequencies should have the same rights and obligations as users of commercial frequencies;

(g) An inventory and a map of bandwidths throughout the country should be drawn up so that those that are not in use can be identified and the corresponding permits can be withdrawn;

(h) Analogue communications services in the country should be digitized so that the State can create a strategic reserve of radio frequencies;

(i) The State should guarantee access to the Internet for all sectors of the population, particularly the poorest of its members and those living in rural and/or remote locations;

(j) Human rights training should be provided to all national police forces, together with training in the use of proportionate levels of force during peaceful demonstrations;

(k) Members of the Armed Forces should be educated about the role played by journalists and human rights defenders in monitoring the situation during demonstrations;

(l) Units of the Armed Forces (Navy, Air Force or Army) should not be used to provide protection services or to perform police functions, especially the policing of public demonstrations or evictions. All police functions should be performed by civilian forces only.

C. Legal actions relating to the exercise of the right to freedom of expression

95. The Special Rapporteur recommends the following:

- (a) Defamation, slander and libel should be decriminalized and converted into matters regulated by civil law;
- (b) Journalists and social communicators should be protected from frivolous litigation.

D. Access to public information and transparency

96. The Special Rapporteur recommends the following:

- (a) The Transparency and Access to Public Information Act should be applied on a non-discriminatory basis by all State institutions without exception, including the department responsible for investigations and police oversight;
- (b) An independent assessment should be made of the work of the Public Information Institute (IAIP) and its application of the Transparency and Access to Public Information Act;
- (c) A transparent procedure should be established for the selection of the three IAIP commissioners which will ensure their independence and professionalism;
- (d) The eligibility requirement for the IAIP commissioners' posts of 10 years of experience in the civil service should be dropped.

E. Final recommendations

97. The Special Rapporteur recommends the following:

- (a) The Government of Honduras should invite the Special Rapporteur on the independence of judges and lawyers to undertake a country mission designed to contribute to the effort to put an end to impunity and to strengthen the justice system;
 - (b) International cooperation agencies and United Nations bodies should provide financial and especially technical support for initiatives to reinforce freedom of opinion and expression and for the establishment of a mechanism for providing protection for journalists, social communicators, human rights defenders and persons responsible for the administration of justice;
 - (c) Consideration should be given to the possibility of signing an agreement with the Office of the United Nations High Commissioner for Human Rights for the establishment of a country office that could provide assistance in bringing about legal and public policy changes relating to human rights.
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