2021 SEMIANNUAL REPORT ON FREEDOM OF EXPRESSION
2021 SEMIANNUAL REPORT ON FREEDOM OF EXPRESSION: GENERAL BALANCE ON THE RIGHT TO FREEDOM OF EXPRESSION IN THE FIRST SIX MONTHS OF 2021
During the first semester of 2021, the pattern of systematization and curtailment of the right to freedom of expression and access to information was repeated in Venezuela. However, there is a significant decrease compared to the data obtained in 2020. According to the NGO Espacio Público, this year there have been 74 cases that contemplate 150 violations of freedom of expression in Venezuela so far, which represents a 54% decrease in cases and 66% in violations accounted during this same period in 2020, among which the arbitrary arrests against journalists and citizens in their exercise of disseminating information stand out.

The 2021 Semiannual Report on Freedom of Expression addresses three (03) specific objectives: (i) document the violations concerning the obligation to respect the right to Freedom of Expression by the State for the first semester of the year 2021; (ii) analyze the policies used by the State to determine compliance with the obligation to guarantee the right to Freedom of Expression; and (iii) evaluate the procedures for compliance with the obligation to promote the right in question.

In this sense, this report is based on a study of the results of quantitative and qualitative indicators, which were to specify the general obligations of the States in the field of human rights. Regarding the obligation of respect, an analysis was developed on the incidences of arrests, harassment, intimidation and threats, classic means of censorship, electricity failures, and internet censorship. In that matter, the obligation to protect was studied through the analysis of the regulations and policies developed by the public administration regarding the activities related to the right to Freedom of Expression and Access to Information; and finally, the obligation of promotion, which was examined under the practices of the State in the acquisition and disclosure of knowledge of Human Rights to the civil society.

At the same time, the research carried out in the report was done through a mixed, documentary and field methodology, the first being based on the collection of data provided by various bibliographic sources, press articles, and reports from other organizations that document the situation of this right in Venezuela; and the second based on the practice of interviews on the most emblematic cases of violations of the right to Freedom of Expression that occurred in the first half of 2021. Regarding the documentary investigation, an analysis of international criteria and jurisprudence emanating from the inter-American system and the universal human rights system, in which the necessary information was obtained to carry out a detailed study regarding the compliance of the obligations of the States about Freedom of Expression.

During the first semester of 2021, UMSM documented 22 incidents between arbitrary retentions and detentions of both journalists and individuals in the exercise of dissemination and free access to information, divided into 12 journalists and 10 civilians victims of these violations. A total of 35 acts of threat, harassment, or aggression between civilians and press workers were registered, these acts consisted of threatening on social networks by public officials, persecution, confiscation of equipment and work material, intimidation, threats, physical, moral, and psychological aggression.

Regarding the traditional media, 22 cases were registered, aimed towards TV channels and radio stations, where 50% of them were censored through administrative or judicial sanctions. On the other hand, regarding the printed media, although they only represented 14.3% of the cases
of violations of freedom of expression, the incident that caused the most stir was the sentence and executive embargo issued to the detriment of the newspaper El Nacional.

In this sense, eight (08) cases of blocking web pages and social networks were registered in digital media. Five (05) cases occurred in two (02) attacks on television media were registered in the violation of property rights; one of them took place at the headquarters of the Venevisión canal in Puerto Ordaz and the other at the headquarters of VPi in Caracas. Two (02) cases regarding radio stations, one to the Radio Rumbos 670 AM station after a judicial sanction and another to the radio Selecta 102.7 FM, which was attacked by sympathizers of officialism sent by public officials.

We are grateful to all those organizations for documenting the violations of the right to Freedom of Expression and Access to Information in Venezuela, which were essential for this report, including Espacio Público, El Nacional, the Sindicato Nacional de Trabajadores de Prensa, the Colegio Nacional de Periodistas, among others.
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<thead>
<tr>
<th>Abbreviation</th>
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<td>ACHR</td>
<td>American Convention on Human Rights</td>
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<td>CANTV</td>
<td>National Anonymous Telephone Company of Venezuela</td>
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<td>HRC UN</td>
<td>Human Rights Council of the UN</td>
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<td>Corte IDH</td>
<td>Corte Interamericana de Derechos Humanos</td>
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<td>Court HR</td>
<td>Inter-American Court of Human Rights</td>
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<td>CICPC</td>
<td>Body of Scientific, Penal and Criminal Investigations</td>
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<td>CONATEL</td>
<td>National Commission of Telecommunications</td>
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<td>COPP</td>
<td>Organic Code of Criminal Procedure</td>
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<td>FAES</td>
<td>Special Actions Forces of the Bolivarian National Police of Venezuela</td>
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<td>GNB</td>
<td>Bolivarian National Guard</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>WHO</td>
<td>World Health Organization</td>
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<td>ISHR</td>
<td>Inter-American Human Rights System</td>
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<td>ZODI</td>
<td>Comprehensive Defense Zone</td>
</tr>
</tbody>
</table>
# Table of Contents

2021 Semiannual Report on Freedom of Expression 1

Executive Summary 2

List of abbreviations 4

Table of Contents 5

Conceptual and Regulatory Framework 7

I. Basic notions and concepts 7

  Freedom of expression 7

    A. Scope 7

    B. Limitations 9

  Access to information 10

    A. Scope 10

    B. Limitations 12

Freedom of the Press 12

Prior Censorship 13

Net Neutrality 14

2. States Obligations regarding Civil and Political Rights 14

General obligations of States in matters of Human Rights 14

Specific obligations of the States to guarantee the Freedom of Expression 17

Pluralism: 17

Protection of Journalists 18

  Prevent 18

  Protecting 19

  Seeking justice 19

  Duty to prevent stigmatizing statements 20

  Adoption of domestic provisions 20

Context and Background: 21

Methodological Framework: 21

Results: 23

On the fulfillment of the general obligation of respect of the right to freedom of expression. 24

  Journalists detentions and retentions 25

Persecutions, threats, and harassment of journalists and civilians who exercise their right to free expression 28

Impact on the classic means of communication 32

Social media and websites blockade 33

Violation of the property rights of the communication media 34

Case of the newspaper El Nacional 34
On the status of compliance with the obligations of Guarantee of the right to Freedom of Expression 36
Affection of the right due to failures in the internet and public services in Venezuela 36
Use of force in peaceful protests and its effect on freedom of expression 37
Investigation, prosecution, punishment and disqualification of officials who violate Human Rights 38

On obligations to cooperate, promote and adopt measures in national law on Freedom of Expression 39
Ranking and status of Venezuela in terms of freedom of expression and free access to the internet 41
Venezuela Participation in international cooperation programs on Freedom of Expression 42
Due follow-up and adoption of the new measures on Freedom of Expression in the country 43

Conclusions and Recommendations:
I. CONCEPTUAL AND REGULATORY FRAMEWORK.

I. BASIC NOTIONS AND CONCEPTS

1. FREEDOM OF EXPRESSION

A. SCOPE

Freedom of expression is a human right that can be classified as the right that protects rights. The role it represents in the formation of a democratic state is crucial for the full development of personality and the transformations of social structures. Thanks to this, international organizations continually emphasize the connection between rule of law, democracy, and freedom of expression; this allows demanding principles of transparency, promotion, and protection of human rights.

Freedom of Expression is defined in Article 19 of the United Nations Universal Declaration of Human Rights (UDHR), which states:

“Everyone has the right to freedom of opinion and expression; This right includes the right not to be disturbed because of their opinions, to investigate and receive information and opinions, and to disseminate them, without limitation of borders, by any means of expression”.

Within the international regulation, the International Covenant on Civil and Political Rights (ICCPR) is one of the fundamental regulations on this subject, in its articles 18, 19, 25 and 27 it states the freedom of expression and freedom of opinion, as well as access to information.

General Comment No. 34 of the Human Rights Committee of the United Nations (OHCHR) analyzes article 19 of the ICCPR, demanding in its second paragraph that freedom of expression is guaranteed in States parties. In addition to developing an analysis of how the right to seek, receive and impart information and ideas of all kinds should be protected.

Following what was previously established by the observation, it is important to highlight:

“Paragraph 3 expressly states that the exercise of the right to freedom of expression entails special duties and responsibilities. For this reason, two types of restrictions are envisaged, which may refer to respect for the rights or reputation of other people or to the protection of national security and public order, or of public health and morals.”

These special duties and responsibilities imply guaranteeing the independence of all public broadcasting services, as well as publishing activities. These guarantees translate into the existence of the

4 Ibidem, par.11
5 Ibidem, par.21
free press and other media.

The Office of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression refers to article 19 of the ICCPR:

“(…) Article 19, paragraph 2, clearly establishes that freedom of expression is multidirectional (“seek, receive and disseminate”), encompasses unlimited points of view (“information and ideas of all kinds”), and has no borders (“regardless of borders”) nor does it adopt a defined form (“or by any other process”)(…).” 6

By conducting a detailed study of the Inter-American Human Rights System behavior, it becomes easy to position it as one of the systems that have developed the most guarantees regarding human rights. This is due to the progress in defining the criteria established in matters such as prior censorship, the prohibition of administrative censorship, and other issues related to freedom of expression and access to information established by the ICCPR.

The Inter-American Court of Human Rights (Inter-American Court) has established that Article 13 of the American Convention on Human Rights (ACHR) has two dimensions: (i) the collective dimension, which inseparably includes the right to use different appropriate means to spread thoughts and opinions, in order to get the message to the largest possible audience; and (ii) the individual dimension, which comprises the right of each individual to try to communicate their own points of view to others, also including the right of everyone to know opinions and news.

The Inter-American Commission on Human Rights in the case of Tulio Alberto Álvarez v. Venezuela established that, according to Article 13 of the ACHR, the right to freedom of expression is universal. In addition to this, the assumption of law was made, it considers that any means can be used to exercise the freedom of expression, whether oral, written, in print, by artistic expression, or in any other way, so it cannot be subject to prior censorship or other indirect attacks to freedom of expression.

Likewise, the IACHR’s Special Rapporteur for Freedom of Expression (IACHR) states that this right has a triple function from which its scope can be understood as follows: 9:

1. Protect the individual right of each person to share information and own thoughts and others.

2. Consolidate the functioning and preservation of democratic regimes.

3. Facilitate the exercise of other fundamental rights.

Indeed, this triple function seeks to satisfy the different needs that this right fulfills as part of a democratic society 10.

B. LIMITATIONS

Expressions must be protected within the framework of the human right to free expression and opinion, regardless of the content of said expressions or their forms. Based on the foregoing, States in exceptional situations decide to limit freedom of expression to guarantee the protection of certain interests and legal rights. The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has marked its position, stating that these limitations must be established and have as their purpose the protection of individuals 11.

In the same vein, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has ratified the principles that every State must comply with when setting the limits for the exercise of the right in question for each of the rights and obligations contemplated in article 19, paragraph 3, of the Covenant, which is:

“(i) ensure respect for the rights or reputation of others, or (ii) protect national security, public order or public health or morals (principle of legitimacy); and (iii) it must be revealed as necessary and be the least restrictive means required to achieve the intended objective (principles of necessity and proportionality); they must be established in law in a clear and accessible way for all (principle of transparency and predictability) 12.”

Understanding in this way that the limitations on the right to Freedom of Expression must be based on the international principles sustained by democratic States, seeking that they reaffirm the guiding principles of the ACHR.

Likewise, the criteria of the IACHR, the Inter-American Court, and other international instruments and covenants on human rights have considered that certain expressions are inadmissible and that the limitations on certain types of speeches or means used for their dissemination must be strictly evaluated. A clear example of this is in cases where violence is incited towards a group of people or when a person with certain media power makes statements with the sole purpose of promoting public scandal or social rejection towards a specific subject or person. For example, the cases generated by the separation of the former Yugoslavia are known.

Finally, it is important to note that not all limitations to the right in question can be classified as censorship. In this regard, the States must consider four conditions, respecting the principle of necessity in a democratic society and strict proportionality to legitimate these limitations: (i) the restrictions must be established through subsequent responsibilities for the exercise of the right; (ii) they cannot be discriminatory or produce discriminatory effects; (iii) they cannot be imposed

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12 bidem, par. 24.
through indirect means as prohibited by article 13, numeral 3; and (iv) measures to restrict freedom of expression must be exceptional.

2. ACCESS TO INFORMATION

A. SCOPE

Access to information is defined as the general right of the public to obtain information of general interest. This is contemplated in article 19 of the ICCPR, second paragraph, which establishes the right to seek and receive information of any kind, including public interest. The RELAYS UN in its report in 2013 following Resolution 16/4 of the UNHRC, more broadly defined access to information in the following:

“The right of access to information (...) includes both the general right of the public to have access to information of general interest from various sources and the rights of the media to access information, and also the rights of people to collect and receive information of public interest.”

The report highlights several principles that represent transparency in activities and decisions of public bodies in their laws, which are: maximum disclosure (obligation to publish all documents of public interest); promotion of transparency in public administration; clarity in the causes of denial of access to information; fast and efficient procedure to access information, open meetings; protection for those who disclose information of public interest.

The SIDH has set precedents in defining the right of access to information. The Inter-American Court in Claude Reyes et al vs. Chile became the first international court to recognize access to information as a human right, which implies that it is the duty of any State to take any action that tends to guarantee and promote this right.

In its report “The right of access to information in the Inter-American Legal Framework” it has presented and identified the obligations States have to guarantee to protect the right of access to information.
to produce or obtain information; 6) the obligation to create a culture of transparency; 7) the obligation to adequately implement the rules on access to information; 8) the obligation to adopt the legal system to the requirements of this right”.

**B. LIMITATIONS**

Access to information cannot be considered an absolute right. It will be subject to restrictions in specific cases to safeguard individual and collective legal interests. Said limitations must be conditioned on the principle of necessity and proportionality, always in respect of human dignity as a superior value, and this entails not violating other human rights.

The UN Special Rapporteur for Freedom of Opinion and Expression ratifies the principles that every State must comply with when setting the limits for the exercise of freedom of expression: it must follow each of the purposes established in paragraph 3 of Article 19 of the Covenant, which is:

“(1) ensure respect for the rights or reputation of others, or (2) protect national security, public order or public health or morals (principle of legitimacy); and (3) it must be revealed as necessary and be the least restrictive means required to achieve the intended objective (principles of necessity and proportionality); they must be established in a law in a clear and accessible way for all (principle of transparency and predictability)”.

**3. FREEDOM OF THE PRESS**

On the other hand, freedom of the press encompasses directly journalistic activity, which is defined as “The right of the media to investigate and report without any type of limitations or coercion, such as prior censorship or harassment”.

In this way, it understands freedom of the press as a subtype of the right to free expression and information. A right based on the task of the media to obtain truthful and necessary information for its correct dissemination, without suffering from setbacks or obstacles imposed by governments, State institutions and other actors.

The exercise of journalism is marked by its profound impact on society through being the primary source of information to satisfy access to information and also, they are the main means of complaints for the exercise of social control over Public Administration. The media have an important role in the task of preventing, avoiding and punishing violence against journalists.

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22 Ibidem, par.35
23 Ibidem, par.38
24 Ibidem, par.39
25 Ibidem, par.43
4. PRIOR CENSORSHIP

As highlighted in article 13 of the ACHR, every person has the right to free expression without delay, and specifically in number 2, it establishes that:

"The exercise of the right provided in the preceding paragraph cannot be subject to prior censorship but to subsequent responsibilities, which must be expressly established by law and be necessary to ensure: a. respect for the rights or reputations of others, or b. the protection of national security, public order or public health or morals." 29

Due to the debates that have been generated around prior censorship as a blurring element of expression and access to information by individuals, the concept of prior censorship was developed, understood as:

- **Administrative Censorship:** it was the most used in the period of the Latin American dictatorships, where it was understood as that emanated from bodies dependent on the Executive Power and where they used it regularly. About this kind of censorship, the Inter-American Court maintains “that any form of preventive measure that prevents the exercise of said freedom constitutes prior censorship.” 31

- **Judicial censorship:** "judicial prohibitions of expressions, once such expressions have already begun to be disseminated", which is why it tends to be erroneously confused at certain times with the subsequent responsibilities allowed by the ACHR.

It can be inferred that freedom of expression cannot be obstructed by prior censorship, neither administrative nor judicial, only acts or opinions that affect reputation, endanger the security of the nation, public order should be established by law, health or morals.

5. NET NEUTRALITY

The Special Rapporteur for Freedom of Opinion and Expression IACHR, in its joint declaration on freedom of expression and the internet, indicates that net neutrality is a principle according to which “[t]he treatment of data and Internet traffic should not be subject to any type of discrimination based on factors such as devices, content, author, origin and/or destination of the material,

29 American Convention on Human Rights. Article 13.2
31 Ibídem. pag 190
32 Ibídem. pag 242
service or application”. Therefore, all content on the internet must available so that every user can access without any type of restrictions.

The objective pursued by this principle is that users have the freedom of access and choice to be able to use, send, receive or offer any content, application or legal service through the Internet and that it is not conditioned, directed or restricted, through blocking, filtering, or interference. The Inter-American Court emphasizes that the State, in addition to minimizing the restrictions on the circulation of information, must balance the participation of the different currents in the public debate, where equity in the flow of information should govern.

2. STATES OBLIGATIONS REGARDING CIVIL AND POLITICAL RIGHTS

A. GENERAL OBLIGATIONS OF STATES IN MATTERS OF HUMAN RIGHTS 36

The United Nations has managed to identify key obligations, the first understood as the obligation to promote “universal respect for human rights, fundamental freedoms of all, without making a distinction on grounds of race, sex, language or religion, and the effectiveness of such rights and freedoms “, stated in Article 55 of the United Nations Charter. A duty is created in the States to positively carry out all necessary action within their territories, as well as with neighboring States, so that full knowledge of Human Rights is fostered and there is knowledge of the ways in which they should be enjoyed and guaranteed.

We can also find a second obligation on this topic, which is the obligation to cooperate, where the aforementioned normative instrument in Article 56 establishes a general and tacit obligation for the States “... to take measures jointly or separately, in cooperation with the Organization.” Therefore, despite the fact that the matter of Human Rights is not specified in this duty, the organization has made various considerations in the tacit fulfillment of the need for cooperation to consolidate the duty of promotion outlined above, as was the case of the Resolution 2625 of the General Assembly of 1970, which stated that:

“... b) States must cooperate to promote universal respect for Human Rights and fundamental freedoms of all and the effectiveness of such rights and freedoms, and to eliminate all forms of racial discrimination and all forms of religious intolerance “. 41.

37 Charter of the United Nations, Art 55, subsection c).
38 Ut Supra, Note N°12
39 Ibid, Art 56.
40 Ut Supra, Note N° 13
The obligation to ensure compliance with Human Rights is outlined in paragraph 6 of the preamble of the UDHR, which establishes that: “Considering that the Member States have undertaken to ensure, in cooperation with the UN, universal respect and effective to the fundamental rights and freedoms of man”. In this way, the SIDH makes a citation to the obligations contracted by the States in the Charter of the United Nations and this time uses the term “ensure” because of its terminological importance for the fulfillment of Human Rights.

On the other hand, the obligations of respect and guarantee are found in Article 2 of the ICCPR, which establishes that:

> "Each of the States Parties to this Pact undertakes to respect and guarantee all individuals who are in its territory and the rights recognized in this Pact are subject to its jurisdiction, without any distinction of race, color, sex, language, religion, political or another opinion, national or social origin, economic position, birth or any other social condition." 43.

The obligations of respect and guarantee described in said article should be interpreted as different obligations. The UN HRC in its General Comment No. 31, refers to the fact that regarding the obligation of respect that “States Parties must refrain from violating the rights recognized by the Covenant and any restrictions on any of those rights must be permissible in accordance with the pertinent provisions of the Pact” by which he understands the obligation in a negative sense, meaning a duty to abstain from the perpetration of actions that may violate Human Rights.

While in terms of the obligation of guarantee, the Committee stipulates it in its observation as:

> “... the States Parties to guarantee the rights recognized in the Covenant if the State protects individuals, not only against violations of rights recognized in the Covenant committed by its agents, but also against acts committed by individuals or entities that undermine the enjoyment of the rights recognized in the Covenant ...”. 46

In this matters, the obligation to guarantee is understood as an obligation of a positive nature for the State, which has the duty to carry out sufficient actions so that the rights can develop correctly and without any problem.

Finally, the obligation to adopt internal measures is specified in Article 2, numeral 2 of the ICCPR, which establishes the duty to “adopt the appropriate measures to enact the legislative or other provisions that are necessary to make effective the rights recognized in the Pact and that were not already guaranteed by legislative or other provisions”. However, the Human Rights Committee in its General Comment No. 31 reinforces the understanding of this obligation by highlighting that:

> "... the States Parties, when they ratify the Covenant, must introduce the necessary changes in legislation or practice, internal to bring them into harmony with the Covenant. In the event of incompatibility between domestic law and the Covenant, article 2 provides that

42 UDHR. Preamble, para. 6.
43 ICCPR, Art. 2.
46 Ibid, para. 8.
47 PIDCP. Art. 2.2.
On the other hand, the Committee continues to extend the scope of this obligation in the subsequent paragraph in which it establishes that it “... does not admit reservations and is immediate. Failure to comply with this obligation cannot be justified by referring to political, social, cultural or economic considerations within the State” 49.

Following the same idea, the United Nations divides these general obligations into three groups. The first group refers to the obligation of respect, which is directed at the duty to refrain from doing something that may go against the enjoyment of human rights.

Regarding the second group, related to the obligation to protect, the State’s duty to guarantee that private agents or third parties are prevented from violating human rights stands out. Finally, the group of the obligation to enforce, which refers to the adoption of positive measures, in order to ensure compliance with human rights 50.

B. SPECIFIC OBLIGATIONS OF THE STATES TO GUARANTEE THE FREEDOM OF EXPRESSION

PLURALISM:

In principle, the States are obliged to promote the plurality of ideas, opinions, and even the multiplicity of ways and means to obtain information. So the Court, in various decisions, stipulated that

“...the plurality of media or information constitutes an effective guarantee of freedom of speech, being a State duty to protect and guarantee this assumption, by virtue of Article 1.1 of the Convention, both by minimizing restrictions to information, and by promoting a balance in participation, allowing the media to be open without discrimination” (Our highlight).

In this way, the Court continues to establish that:

“in this sense and in relation to pluralism media, the Court recalls that the citizens of a country have the right to access information and ideas from a diversity of positions, it must be guaranteed at various levels, such as types of media, sources and content”. (Emphasis ours)
PROTECTION OF JOURNALISTS

A. PREVENT

It should not be limited to the adoption of measures after the events occurred. On the contrary, actions must be taken so that violence against journalists and impunity can be prevented. The duties are 53:

- To adopt a public discourse that can help prevent some type of violence against journalists. It is the obligation of the State to condemn any aggression, as well as to recognize the importance of journalistic work, “even when the information disseminated may be critical, inconvenient and untimely for the interests of the government” 54.

- Instruct the security forces about respecting the work of journalists and adopt adequate prevention mechanisms to avoid violence against those who work in the media, where public officials and police forces are trained to “adopt guidelines on conduct or guidelines on respect for freedom of expression” 55.

- Respect the right of journalists to reserve their sources of information, personal notes and professional files. Thus preventing them from being victims of acts of violence. “Likewise, the absence of such protection could discourage sources from collaborating with the press to inform the public about matters of public interest” 56.

- Criminally prosecution and punishment of violence against journalists and media workers 57.

- Produce quality data, compile and maintain accurate statistics on violence against journalists to design, implement and evaluate effective public policies for the prevention, protection and criminal prosecution of violence against journalists 58.

B. PROTECTING 59

The Special Rapporteur for Freedom of Expression recommends States to take protective measures for those journalists whose lives or physical integrity are threatened by the type of activity in which they operate.

C. SEEKING JUSTICE

54 Ibid, para. 8
55 Ibid, para. 9
56 Ibid, para. 10
57 Ibid, para. 11
58 Ibid, para. 12
59 Ibid, para. 15
It is the duty of the States to investigate, prosecute and punish the perpetrators who commit crimes against journalists. This obligation implies:

- **Adopting an adequate institutional framework that assigns the responsibility of investigating and judging said crimes** to the authorities that are in the best conditions to solve them, with sufficient human, economic, logistical and scientific resources, and that have autonomy and independence to act. Thus, in “contexts in which there is a continuous risk of acts of violence against journalists and where impunity prevails, the States have been recommended to create specialized investigation units in crimes against freedom of expression.”

- **Act with due diligence and exhaust the lines of investigation related to the victim’s journalistic practice** it must be taken into consideration how complex the facts were, their context and the crime patterns.

- **Carry out investigations within a reasonable period of time, avoiding unjustified delays** “that lead to impunity. An excessive delay in the investigation of acts of violence may in itself constitute a violation of judicial guarantees.”

- **Remove legal obstacles to the investigation and proportionate an effective punishment for the most serious crimes against journalists.** “The IACHR has drawn special attention to the use of general amnesty laws to obstruct the investigation of serious human rights violations committed against journalists.”

- **Facilitate the participation of the victims or victims’ family** in all stages and instances of the investigation and in the corresponding trial.

**D. DUTY TO PREVENT STIGMATIZING STATEMENTS**

As the authorities represent all matters concerning the State, the IACHR has ruled on their duty to guarantee due diligence in their public expressions, in order not to carry out acts of abuse of the right that may incur consequences contrary to the principles of the Convention and other coexisting rights.

In particular, in the case of Perozo et al. V. Venezuela, where the international responsibility of the State for the aggression and harassment was determined through the statements of public officials against 44 journalists attached to the Globovisión media, the Court argued that:

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59 Ibid, para. 15  
60 Ibid, para. 20  
61 Ibid, para. 21  
62 Ibid, para. 22  
63 Ibid, para. 23  
“said pronouncements by senior public officials created, or at least contributed to, to accentuate or exacerbate, situations of hostility, intolerance or animosity on the part of sectors of the population towards the people associated with this communication media. The content of some speeches, due to the high investiture of those who pronounce them and their reiteration, implies an omission of the state authorities in their duty to prevent the events, since it could be interpreted by individuals and groups of individuals in such a way that they resulted in acts of violence against the alleged victims, as well as obstacles to their journalistic work”. (Highlighted our)

E. ADOPTION OF DOMESTIC PROVISIONS

Inter-American’s jurisprudence has specified a general obligation for the States regarding the adoption of the provisions ratified in the IHRS treaties within the domestic law of each member, establishing that:

“When a State is part of an international treaty such as the American Convention, said treaty obliges all its organs, including its judges, who must ensure that the effects of the provisions of the Convention are not diminished by the application of norms or interpretations contrary to its object and purpose 67.

II. CONTEXT AND BACKGROUND:

1. METHODOLOGICAL FRAMEWORK:

For the development of this report, Un Mundo Sin Mordaza analyzed on the basis of the Right to Freedom of Expression and Access to Information determined the level of compliance with the obligations the Venezuelan State must comply with in the matter of these rights.

For its effective development, we proceeded to comply with the general objective of analyzing the respect, guarantee, assurance, cooperation, promotion and adoption of measures in domestic law of the right to freedom of expression and access to information in Venezuela in the period described, as well as the specific objectives of: (i) documenting the violations concerning the State's obligation to respect the right to Freedom of Expression; (ii) analyze the policies used by the State to determine compliance with the obligation to guarantee the right to Freedom of Expression; and (iii) evaluate the procedures for compliance with the obligation to promote the right in question.

In this way, it was carried out a study of results through indicators based on general obligations of States in the field of human rights. Indicators in this context are defined as the information that indicates the state or level of freedom of expression in Venezuela during the first semester of 2021. They seek to generate uniformity in the value of a variable or an indicator communicated by the different primary and secondary sources analyzed in the research.

When analyzing the obligations on which the indicators were based, a definition was made of the

66 Ibid. pag. 46, para. 160.
attributes that each obligation has, generated by the information from the pertinent international instruments. This facilitated the process of selecting and developing appropriate indicators for a clear, concrete and objective categorization. On one hand, by knowing the attributes of an obligation, it collaborates to specify that the content of that obligation the State may or may not be fulfilling is concrete. On the other hand, it generates a nexus between the indicators of an obligation and the rules relating to that right. To achieve this, three types of indicators were used: 68:

- **Structural indicators**: to capture the intention, acceptance and commitment of the State to implement measures that are in line with its human rights obligations.

- **Process indicators**: actions that are doing duty bearers to transform their commitments in this area.

- **Results indicators**: assimilate individual and collective achievements that reflect the state of enjoyment of human rights in a given context.

Being these obligations on which the indicators were based: respect, guarantee, promotion, cooperation and adoption of provisions in domestic law. Regarding the duty of respect, an analysis was carried out on the incidences of arrests, harassment, intimidation and threats, classic means of censorship, electricity failures and internet censorship. Then the obligation of guarantee was studied through the analysis of regulations and policies developed by the public administration around the prevention, investigation, punishment and reparation related to the right to Freedom of Expression and Access to Information.

On this matter, the obligation of promotion, cooperation and adoption of internal measures were analyzed; the first was examined under the State practices in training and dissemination of necessary knowledge of human rights to civil society. Likewise, understanding that the obligations in terms of cooperation and adoption of provisions in domestic law, both refer to an international practice for the adaptation and promulgation of the principles embraced by the other duties mentioned above, these have been included throughout the analysis of the facts referred to in the violations of respect, guarantee and promotion.

At the same time, the research was carried out through a mixed documentary and field methodology; the first being based on the collection of data provided by various bibliographic sources, press articles and reports from other organizations, and the second based on the practice of interviews on the most emblematic cases of violations of the right to Freedom of Expression that occurred in the first semester of 2021. In order to obtain a more comprehensive process in the context of the aforementioned right to national level, it analyzed the information provided

by different primary and secondary sources.

For this reason, with regard to the documentary investigation, an analysis of international criteria and jurisprudence emanating from the inter-American system and the universal human rights system was carried out, in which the necessary information was obtained for a detailed study about compliance of the obligations of the States in Freedom of Expression. Likewise, a database was developed, in order to have updated information compatible with the Venezuelan context in the year 2021, based on the investigations of the organizations’ reporting platforms and endorsed by Sin Mordaza as a Espacio Público, the Sindicato Nacional de Trabajadores de Prensa, the Colegio Nacional de Periodistas, as well as various communication and information media.

Finally, on the qualitative investigation based on the complaints collected from the different media and NGOs, interviews were conducted with open questions and narration of situations to various victims of violations of the right to freedom of expression, with the aim of confirm the information resulting from the aforementioned documentary investigation, generating concrete examples of the information obtained.

III. RESULTS:

During the first semester of the year 2021, there were evidenced continued and systematized violations and attacks on the right to freedom of expression in the country. According to the NGO Espacio Público, so far this year there have been 74 cases that contemplate 150 violations of freedom of expression in Venezuela, which represents a decrease of 54% of cases and 66% of violations recorded during this same period of the year 2020.

Said decrease should be understood as a consequence of the quarantine due to the pandemic of COVID-19 in the country, but this does not exclude the fact that the right continues to be violated in a systematic, generalized and continuous manner, as a result of the fact that the violations carried out an effect to a certain group of people or territory, where there is no discrimination in the choice of victims, in a continuous period of time.

On this matter, the main patterns of attacks on freedom of expression did not vary from the figures obtained last year. Thus, there is a preponderance of arbitrary detentions, harassment, threats and attacks on journalists and civilians. As well as patterns of violation of freedom of expression due to the lack of basic services to disseminate and access information in a timely manner, so it is difficult to have knowledge of the events that take place in the country, which makes it difficult to exercise freedom of expression.

1. ON THE FULFILLMENT OF THE GENERAL OBLIGATION OF RESPECT OF THE RIGHT TO FREEDOM OF EXPRESSION.

It is imperative to analyze this point starting from the legal regulations that establish the conditions regarding the respect of journalists and civilians in the right to exercise their freedom of expression. Taking this into consideration, Venezuela has 14 regulations that directly or indirectly regulate the work of the media, telecommunications, social networks and web spaces. In addition, 35
regulations and 35 administrative orders in this matter. This causes an imbalance in legal security and the rule of law, since it increases the power of control over the aspect of which they are legislating, leaving the citizen defenseless.

Likewise, special reference should be made to the Constitutional Law Against Hate, for Peaceful Coexistence and Tolerance (Ley Constitucional Contra el Odio, por la Convivencia Pacífica y Tolerancia, Law Against Hate for now on) emanating from the illegitimate National Constituent Assembly (ANC). This law is flawed since its origin because it is not ANC duty to issue constitutional laws. In addition, through this law are conferred powers that limit freedom of expression, such as applying restrictions, blocking websites, arbitrary detentions, and revoking media licenses for issuing speeches or opinions that, at the discretion of the regime, incite hatred.

This law sets up a dangerous mechanism of censorship, created despite the provisions of Article 57 of the constitution, which specifies that “everyone has the right to freely express their thoughts, ideas or opinions out loud”. This limits the type of speech that journalists and civilians can emit, with the concept of hatred being a more than subjective consideration.

It is worth noting that the Commission expressed concern as regards the Law Against Hate and states as “such restrictions could severely impede the exercise of the right to freedom of expression in Venezuela and generate an intimidating strong effect incompatible with a democratic society”. Within this regulation, hate speech is penalized, but no specific limits are set to achieve categorization, this indeterminacy of legal concepts ends up manifesting in arbitrariness.

Now, having already defined the basis of regulations that regulate freedom of expression, this will lead us to question the credibility generated by the forces of the State and public officials. When analyzing the statements of different journalists, it was possible to denote a pattern in the lack of credibility generated by the State security forces, one of the journalists who were interviewed, Rafael Hernandez gave his perspective as a communicator affected by authoritarianism, he stated “In 90% of the situations that we report, we receive attacks by officials”.

One thing that can be emphasized about this pattern is that communicators and press workers do not feel safe when exercising their work to inform citizens about citizen realities. Orlando Montlouis on the credibility and trust in the State security forces, he highlighted:

“I never feel safe, because I am aware of the risk that I personally run and my family due to the work that I carry out. I have witnessed how public officials raid colleagues’ homes, trying to intimidate and censure their work. However, I will not give up and will move on.”

In the framework of these experiences and the prior information retrieved by organized civil society groups, it can be determined that there is no credibility or trust in the State security officials and the way they carry out the norms that regulate freedom of expression.

Next, there would be mention of the effects on the obligation of respect, understanding said incidents in murders, arrests and detentions.

**A. JOURNALISTS DETENTIONS AND RETENTIONS**

In first place, it is necessary to clarify that the difference between a detention and a retention is that the latter, despite being a deprivation of liberty, is temporary and does not lead to the initiation of further procedural steps, while detentions are understood in this way when they imminently lead to the opening of a judicial process. Taking into account the above, the arbitrariness in the detentions, consistent with the temporary deprivation of liberty, and detentions carried out for a short period of time in order to threaten, intimidate and erase the content documented by journalists, press workers and private individuals by state officials has been a primary characteristic of the Nicolás Maduro regime, as has been verified in the Annual Report on Freedom of Expression 2020 and earlier, in which the curtailment of human rights such as personal freedom was analyzed, due process and freedom of expression. Arbitrary detentions against journalists and civilians, as well as retentions, in addition to being used as means of political persecution, are also used as tools to commit acts of intimidation and generate disinformation in civil society.

During the first half of 2021, UMSM documented 29 incidents between arbitrary retentions and detentions of both journalists and individuals in the exercise of dissemination and free access to information, leaving a balance of 15 journalists and 14 civilians victims of these violations. Thus, of the 29 cases studied, 55.2% were detentions and 44.5% were retentions.

![Detentions, Retentions and Murders](image-url)

The previous graph represents that 24.1% of the detentions and retentions were carried out by the Bolivarian National Guard (GNB); the police state carried out 31%; between the Body of Scientific Criminal and Criminal Investigations (CICPC), where 13.8% have arrest warrants; 6.9% were carried out by the National Anti-Extortion and Kidnapping Command (CONAS), 6.9% were carried out by the militia, 10.3% were arrest warrants issued by the Public Ministry and between the Bolivarian Service of National Intelligence (SEBIN) and escorts of public officials made up 3.4%.

It is important to note that these retentions had the same pattern of conduct on the part of the officials of the security forces, where the recording or information devices are stripped through intimidation of the citizens, eliminating or forcing them to destroy everything the content registered in these to later be released hours later.

A particular case analyzed in an interview with UMSM was the journalist Rafael Hernandez, who reported that in a hedge with teammate Luis Gonzalo Pérez on the armed conflict in the Apure state between the Venezuelan military and the FARC. Hernandez comments that upon arriving at the place, both he and his partner were detained and stripped of their belongings and reporting machinery, to later be transferred to a detention center (whose whereabouts were unknown), where several hours later they were granted their freedom. The journalist affirmed that they had all the permissions to do the report.

"... It was a great disappointment because all the necessary procedures were carried out to allow us to do the reporting and clinical analysis of what is happening in that town, this is how the Venezuelan military forces approach and treat citizens and journalists".

On the other hand, this semester also saw the use of detentions of civilians for disseminating content on social networks that does not follow or contradict the narrative of the regime, or in some way offends people related to it. Regarding this pattern, the following cases were recorded:

1. José Perez, published a video on the social network Tik tok, where he questioned the lifestyle of Omar Enrique's daughter and her relationship with the regime. Later, Perez was threatened with death by relatives of the singer. Despite the fact that José Pérez apologized and deleted the content, a CICPC computer crime commission detained him without a court
order for 20 days, he was verbally and psychologically mistreated by the officials while he was
detained, since his detention there have been an innumerable amount of irregularities of the
judicial due process 74.

2. Citizen Luis Morales uploaded a video on the social network TikTok about the vaccine de-
developed by China. Morales, showed in the audiovisual material a comedy clip about the side
effects that could develop by applying said vaccine to prevent the spread of the coronavirus,
due to this SEBIN officials detained him, interrogated him and after 20 days they released him
with precautionary measures 75.

Consequently, it is observed how the arrests continue to be used as a mechanism to silence and
censor journalistic activity and the free opinion of citizens who maintain positions away from the
principles of the established regime, violating the right in question.

In the following paragraph it is going to be explained how the obligation to respect is affected in
terms of persecution, threats and harassment suffered by journalists and civilians.

B. PERSECUTIONS, THREATS, AND HARASSMENT OF JOURNA-
LISTS AND CIVILIANS WHO EXERCISE THEIR RIGHT TO FREE EX-
PRESSION

During the first half of this year, a total of 63 acts of threat, harassment or attacks were recorded
between civilians and press workers, attitudes which consisted of threatening in social networks
by public officials, persecution, confiscation of equipment and work material, intimidation, threats,
physical, moral and psychological attacks, among others.

Many cases occurred during the normal work of journalists, reporters or photographers, which is
to report and document what is happening in the country. Among the cases studied, the following
may be mentioned:

1. Kevin Arteaga, journalist for the newspaper El Carabobeño:

On January 19, the process of persecution against
journalist Kevin Arteaga began when a CICPC com-
mando went to the editorial offices of El Carabo-
beño requesting his personal information at the re-
quest of the prosecutor María Alejandra Macualo,
being delivered by those present despite the fact
that Arteaga was not present at the time. Due to this
situation, it was decided to request the pertinent in-
formation at the prosecutor’s office and the cour-
thouse, without any success.
Ten days later, a formal summons was delivered to journalist Kevin Arteaga as a person under investigation, which lacked a file number and the cause of investigation, and he was requested to appear before the prosecutor’s office on February 4. Thus, after having been advised by his lawyer and other international organizations, Arteaga decided to appear before the prosecutor’s office on the day imposed, but not before making the situation public on February 3, generating great support from the journalistic profession and civil society organizations who spoke out on the matter. Within the facilities of the Public Prosecutor’s Office, it was revealed to him that his case was initiated by a complaint made against him due to a previous report in which a case of corruption in the Mision Vivienda was reported, due to the non-awarding of houses processed in payments by the beneficiaries. In spite of having included the textual statements of the protesters, Kevin Arteaga and the representative of the protest were victims of the beginning of these investigations.

Some time later, while he was conducting interviews at the Santa Ana gas station, located on Universidad Avenue in Valencia, Carabobo, he was intercepted by a motorized unit with two uniformed members of the PNB. At that moment, he was taken out of the vehicle that was transporting him in a hostile and intimidating manner, and his cell phone was requested in order to delete the recorded material. After this, on April 2, when he was gathering information through testimonies in places where oxygen tanks are loaded, the journalist identified a possible collective or informal official in charge of intimidating members of the press in relation to the regime, who began to harass him and take photographs of him without identifying himself as an official.

Kevin declares that all these events developed in him a post-traumatic stress syndrome, depression and anxiety, being forced to go to the psychiatrist. Although it is considered to be isolated events, they must be considered part of the system of oppression against the freedom of expression. It is part of the apparatus that the government deploys against the journalist union, “this type of situation is not normal and we must stop normalizing it.” He is currently out of the country as a security measure and in response to the fact that “in Carabobo it is much more difficult to do journalism due to the lack of access to universal statements even on such basic issues as vaccination, fuel or the situation of the pandemic.”

Arteaga regrets that there is no credibility with regard to the work and communications carried out by both the National Executive and the regional bodies. It states that NGOs do an even better job of communicating the reality of the country before public officials. There is no free access to information for both the journalist and the citizen who does not exercise this profession, declares that he has begun to censor himself for fear of being persecuted.

2. Orlando Montlouis, Journalist for “El Tequeño”.

Orlando was with his father on a vaccination session in the Carrizal sector of Miranda state. In the middle of the morning, public officials at the vaccination center reported that they had no more vaccines, so the rest of the people could not be vaccinated. Once the official finished speaking, the Councilman of Carrizal arrived to give a counter-information. He commented that there were vaccines, but that the mass vaccination days would only be on weekends.
Given this information, Orlando began to record, the moment the Councilman realized these events, he ordered the municipal police to remove the journalist from the line, who was taken to a nearby police station, where he was stripped of his credentials. He was detained and interrogated. Orlando stated: “They told me that I could not be covering what was happening because the idea was not to show that it was a disaster. After 30 minutes they released me, because I had previously sent my location to fellow journalists and they put pressure on social media. “

Regarding the attitude of the State towards journalistic activity, Orlando declared:

“Obviously they have an authoritarian attitude because it is the order they give to the officials. The government of Nicolas Maduro is uncomfortable that we reflect the reality of the difficulties that the Venezuelans are experiencing because of their biased media. They paint a Venezuela that is not the reality. As a journalist, we try to dismantle that unreal Venezuela and demonstrate the reality of what happens every day in the streets. ”

Similarly, it was established that the media and social networks managed by the State perpetrated a total of 11.1% of verbal threats through social networks, which were only surpassed as perpetrators of these attacks by public officials with 22.2% and doubling the attacks with 44.4% by the state security forces.

Likewise, it has been recorded that in 12.7% of the complaints the perpetrator or perpetrators of these acts are unknown subjects. On the other hand, the other 7.9% of the attacks and harassment were generated by armed civilian groups, the so-called “colectivos”, among others unidentified, and finally, 1.6% of the harassments, attacks and threats were carried out by followers of the Nicolás Maduro regime. The following cases can be use as an example:

1. The website of Lechuguinos in his Twitter account incited and called on his followers to go against journalists and civilians on several occasions for their work of reporting on social networks. One of the most outstanding cases was the director of the Armando.info portal, Roberto Deniz, cases in which aggressive language was used against him 78.

2. The venezuelan aviation account @AmbFanb, through a video on twitter, harassed the news portal Efecto Cocuyo and its director Luzmely Reyes using a hate narrative, stating that the portal is not accurate in terms of the information it disseminates, and that also manipulates them 79.

These examples are a clear demonstration of the arbitrary interpretation that the Public Ministry makes of the Law Against Hate when opening an investigation against the people who incur the assumptions of that norm. A clear example of this behavior has been the detention of Javier Tarazona, Omar García and José Rafael Tarazona by the State security forces, accused of inciting hatred, treason and terrorism, criminal offenses of the Law Against Hate and that they have been denounced on several occasions as mechanisms of political persecution against members of civil society, human rights activists and political leaders.

78 Website Lechuguinos. @lechuguinos_com MEDIA TERRORISM! Far-right portal Armando Info and its owner Roberto Deniz are financed by the NED and USAID #FacebookCensura”. Retrieved from: https://bit.ly/3iEvsCe
79 AMB FANB. @AmbFanb. “#Data In the war against #Venezuela, the use of communication media is appealed to, which in reality are only screens at the service of foreign interests. An example of this is @EfectoCocuyo (With data from @latablablog) #AviacionMilitarBolivariana-Centenaria #FANB #Venezuela”. Recovered from: https://bit.ly/3kQJeoh
C. IMPACT ON THE CLASSIC MEANS OF COMMUNICATION

Through the analysis of the different administrative and judicial means that the State has to repress the illicit assumptions contained in the Law of Social Responsibility in Radio, Television and Electronic Media, which contains at an administrative level sanctioning procedures that confer the power to block websites, impose fines, confiscating equipment, temporarily or permanently close any media and judicial processes that are specifically linked to cases committed “crimes” that are linked to the Law against Hate and the penal code.

Among the 22 cases registered 22.7% went to TV channels of which 60% applied some form of administrative sanction. On the other hand, 63.9% of these affectations to classic media were towards radio stations, where 46.1% of the violations of freedom of expression were carried out against them using administrative or judicial sanctions, one of which was the radio Rumbos 670 AM station, since by means of a ruling by the Supreme Court of Justice (TSJ) the station was forced to suspend its programming and vacate its headquarters.

Finally, with regard to the printed media, although they only represented 13.6% of the cases of violations of freedom of expression, the incident that caused the most stir was the sentence and executive embargo issued to the detriment of the newspaper El Nacional, after Diosdado Cabello sued it for moral damages as a result of the reproduction of an article in the Spanish newspaper ABC that related him allegedly to drug trafficking. The Supreme Court ruled in favor of Cabello, attributing to him a sum of 30.05 million dollars as compensation, as said sum of money was not paid, so they proceeded to seize the assets of the communication medium 82.

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D. SOCIAL MEDIA AND WEBSITES BLOCKADE

During the first semester of 2021, 13 cases of blockades to website and social media were registered, where the State has used both direct means and administrative sanctions that cause HTTP or DNS blocks by CANTV, or indirect through cyber attacks or false reports on social media such as Twitter that cause the closure of the accounts of related users, where it is only possible to access them through the use of VPN; Such is the case of Access to Justice, where on April 9 it denounced the blocking of its page by CANTV, seeing the need to broadcast information through its Telegram channel.

One thing they have in common is that hours before the attacks, they publish information that runs counter to the narrative of the regime. Likewise, since Venezuela does not have the traditional means to access information, citizens must go to digital media, where the State uses the blocking of websites as a control mechanism, causing citizens not to be able to access the information.

E. VIOLATION OF THE PROPERTY RIGHTS OF THE COMMUNICATION MEDIA

In the violation of the property rights, there were six (06) cases, classified into two (02) attacks on television media, one on Venevisión channel headquarters in Puerto Ordaz and the other on the based VPI in Caracas, three (03) to radio stations, first the radio Rumbos 670 AM after a judicial sanction, another to the Colegio Nacional de Periodistas, as a fire caused by human factor, and finally, radio Selecta 102.7 FM which was attacked by supporters of the oficialismo sent by public officials.

CASE OF THE NEWSPAPER EL NACIONAL

El Nacional received an executive embargo on the newspaper due to the impossibility of satisfying the compensation imposed by the Supreme Court of Justice (TSJ) to the main headquarters of

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this communication medium and stripping it of all the assets that were in the place.

This is not the first time that the newspaper El Nacional has been affected by the systematic policies of violation of freedom of expression that the Venezuelan regime manages; Through prior censorship, they suffered a shortage of newsprint, which forces them to report only through their digital platforms. Regarding this event, Miguel Henrique Otero commented for an interview with Sin Mordaza that:

“Due to the monopoly of the paper, El Nacional had to become a web platform, despite the fact that in Venezuela these portals are blocked whenever they feel like it, and Venezuela has many internet problems. Access to independent journalism goes through the internet and bypassing the blocks, it can be avoided by changing the VPN, but if you are a normal user it is not so easy or known ”. 85.

In this way, the embargo on the headquarters of El Nacional is the concretization of retaliation policies towards one of the most important newspapers in Venezuelan history. In this way, the beginning of this event arises in 2015 with the publication of a note in said newspaper that reproduced an article published by the ABC Spain portal where it is described that Diosdado Cabello, then president of the National Assembly, was being investigated for drug trafficking.

According to what was reported by the director of the newspaper El Nacional Miguel Henrique Otero, the then deputy made two lawsuits, one criminal and, later, one civil. The criminal complaint was against the members of the board of the media that reproduced the news in addition to El Nacional, from which came a series of decisions influenced by the lack of independence of the Judicial Power where precautionary measures were issued to prevent the media involved report on the issue in question, which represented a risk for the course of the trial. One of the experts interviewed by Un Mundo Sin Mordaza, Gabriel Ortiz, defined this as “a clear example of how ulterior liability is being used as means to hide prior institutionalized censorship”. 86.

With Diosdado Cabello’s referral of the case to the Supreme Court of Justice, he made the decision to order the newspaper to pay the equivalent of 13 million dollars for damages to the honor of the deputy. The same day that sentence was handed down, the order was given to seize the headquarters without any type of legal procedure to execute the seizure; This represents a clear breach of the effectiveness and validity requirements established in the Venezuelan regulatory framework. Among the main unfulfilled requirements are the absence of notification of the embargo by cartels, the execution carried out by a security body other than the Bolivarian National Guard, the lack of a fair price process carried out by three experts and the lack of a depositary previously designated by Judge. The owner of the newspaper Miguel Henrique Otero declared “There was no time for the deadlines and measures to be given for the payment.”

II. ON THE STATUS OF COMPLIANCE WITH THE OBLIGATIONS OF GUARANTEE OF THE RIGHT TO FREEDOM OF EXPRESSION

State officials must follow the procedures stipulated in the constitutional, legal and sub-legal norms, they must be respected and fulfilled at all times so that the right to freedom of expression and

85 Interview with Miguel Henrique Otero, president of the newspaper El Nacional.
86 Interview with expert lawyer Gabriel Ortiz.
other human rights is guaranteed in a certain way, as well as the current regulations for the protection and guarantee of freedom of expression, in which the provisions of article 58 of the CRBV are established, where prohibits censorship; as well as article 337 which recognizes the freedom of expression as one of the intangible rights that can not be restricted even in states of emergency; and article 3 of the Law of Social Responsibility in Radio and Television on the respect of the guarantee of the right by the democratic State.

On the other hand, it is the duty of the State to protect citizens against officials who, using their authority figure, seek to undermine the rights of citizens through the use of force.

A. AFFECTION OF THE RIGHT DUE TO FAILURES IN THE INTERNET AND PUBLIC SERVICES IN VENEZUELA

In the current context, failures in the internet are more and more frequent, service outages can last days, even some users report that to date they do not have a connection to Internet, which significantly affects freedom of expression and access to information, impeding certain people or communities the freedom to obtain and share information by any means.

It has been mentioned that one of the causes that aggravates the failures in the internet service is the vandalism suffered by the stations to steal the copper from the transmission cables, which significantly affects the internet connection. In the first trimester of the year there have been 38,004 power failures in the country according the Committee of Affected by Power Outages, which prevents people to communicate properly and preventing them access to information, especially in the situation with the pandemic of COVID-19, affecting the day to day of the venezuelan people since they cannot carry out their activities regularly.

In addition to the failures of the electricity service, the OVSP in its report on citizen perception of public services recorded the terrible internet connectivity in Venezuela where it reported that 65% of respondents from 12 cities do not have fixed internet service in their homes. Due to failures of the companies that provide the service, these two limitations mentioned above make it difficult and almost impossible to develop freedom of expression.

B. USE OF FORCE IN PEACEFUL PROTESTS AND ITS EFFECT ON FREEDOM OF EXPRESSION

The use of force in peaceful protests is an obvious violation of the right to freedom of expression, which is enshrined and protected in the laws in force in the country and that allow exercising control over the violations committed in peaceful protests, as well as indicating the mechanisms to which citizens can resort.

At the same time, they have developed mechanisms to impede access to information and freedom of expression in the protests, according to the Observatorio Venezolano de Conflictividad Social during the first semester of the year there have been at least 3,393 manifestations, despite of the state of alarm and repression. Also, 59 were repressed in 13 states of the country leaving a balance of 25 detainees, seven wounded and one death, which shows clear violations of the State guarantee of the right to free expression by using undue force towards the citizens who are protesting.

Furthermore, in an interview conducted by UMSM with the General Coordinator of the Observatorio de Conflictividad Social, Marco Antonio Ponce, regarding his considerations of human rights violations in peaceful demonstrations, he mentions that:

“The politics of fear is a characteristic of the Nicolás Maduro regime. There is a violation of freedom of expression through multiple forms: pressure on digital and radio media, persecuting protesters and arbitrary detentions. Many journalists do not report situations that occur in the protests on the portals where they work because of that fear, but they do it directly individually. All this in order that people do not express themselves. Using the term “irregular situation” to refer to demonstrations is a form of self-censorship”

It is worth noting that Marco Antonio Ponce, highlights that the behavior of the security forces in the demonstrations is a “systematic policy of human rights violations that has left years of demonstrations with high degrees of repression, raiding and persecution”, where it not only affects politicians but also people who show to be against the regime.

Likewise, it can be concluded that using force as a way to obstruct both the right to protest peacefully and the right to freedom of expression shows that there is no effective guarantee of rights against other actors in the country.

C. INVESTIGATION, PROSECUTION, PUNISHMENT AND DISQUALIFICATION OF OFFICIALS WHO VIOLATE HUMAN RIGHTS

According to a report prepared by the Public Ministry and sent to the Prosecutor’s Office of the International Criminal Court (ICC), 716 State security officials and 40 civilians have been charged with alleged violations to human rights. On the other hand, 540 officials from other organizations were apprehended, 1,064 officials have been charged along with 136 civilians. Officials who carry out this type of behavior should be given their due investigation.

Notwithstanding the reports presented to these instances, it is imperative that the importance of an impartial and accurate investigation be taken into account regarding the cases, since many of the detentions carried out have been without a pertinent judicial order, and with excessive use of
force, therefore can not have confidence in the procedure conducted by the Public Ministry due to irregularities presented from the beginning of the procedure. It has been denounced in the reports submitted by the OAS, OHCHR, and the Independent Fact-Finding Mission in Venezuela.

This is a measure of guarantee of freedom of expression, for effective compliance with current regulations related to freedom of expression, it is also pertinent to emphasize the importance of the impartiality of the investigations carried out regarding the violations of freedom of expression, as well as harassment and threats carried out by state officials against journalists and civilians.

III. ON OBLIGATIONS TO COOPERATE, PROMOTE AND ADOPT MEASURES IN NATIONAL LAW ON FREEDOM OF EXPRESSION

Venezuela has signed the Universal Declaration of Human Rights, in addition to signing and ratifying various treaties on freedom of expression, among which are the International Covenant on Civil and Political Rights, American Convention on Human Rights, which denounced in 2013, Convention on the Rights of the Child, International Convention on the Elimination of all Forms of Racial Discrimination, American Declaration of the Rights and Duties of the Man, among others. Likewise, article 23 of the CRBV establishes the following:

Treaties, pacts and conventions related to human rights, signed and ratified by Venezuela, have constitutional hierarchy and prevail in the internal order, to the extent that they contain norms on their enjoyment and exercise more favorable to those established in this Constitution and in the laws of the Republic, and are of immediate and direct application by the courts and other organs of the Public Power.

As human rights treaties have constitutional rank and are mandatory, that is why they prevail over the rest of the constitutional rank norms or rights, as long as it is more favorable, making it always necessary to ensure the guarantee of the duties received in those normative instruments.

Multiple international bodies have issued recommendations, considerations and decisions on the situation of human rights in Venezuela through the years; an example of this may be the Report of the Commission of 2019, which issued six (06) recommendations on freedom of expression, highlighting the call for the cessation of the limitation on websites, blogs and other media to information 96.

On the other hand, the IACHR mission In Loco was able to verify the persistence of violations of freedom of expression in the country, as well as the constant blockades of journalistic media websites, social media and streaming services. Finally, the OHCHR participated by providing technical assistance, in the Universal Periodic Review of 2016, carried out by the UN HRC, highlighted that the AN all legal provisions that may go against the international standards established on freedom of expression. However, to date none of these recommendations has been carried out by the rele-

vant institutions of the public administration and there has been a clear impact on the practices that promote violations of the right to freedom of expression.

On this point, the expert lawyer Gabriel Ortiz has commented to Un Mundo Sin Mordaza that:

“There has been an indiscriminate and arbitrary use of the causes and that was said by the American Commission in 2017 and, recently, with a statement on the situation of El Nacional. There is talk of the use of indirect means, the use of elements of the rule of law should be evaluated as precautionary measures as institutionalized mechanisms that promote prior censorship despite having the face of internal responsibility” 99

**A. RANKING AND STATUS OF VENEZUELA IN TERMS OF FREEDOM OF EXPRESSION AND FREE ACCESS TO THE INTERNET**

As studied by Un Mundo Sin Mordaza, there has been no evidence of an interest on the part of the State in participating and supporting internationally in organizations belonging to the United Nations and the OAS for the growth and strengthening of Freedom of Expression. Regarding the latter, the Venezuelan State in 2012 denounced the Convention, taking effect in 2013, while in 2017 it made the decision to denounce the founding treaty of the OAS, in a clear example of its lack of commitment to promote dialogue and participation in international forums charged with ensuring and enforcing Human Rights. It is worth noting that in 2019 the AN ratified the Convention again and established its retroactive effects until 2013, when the complaint took effect, so the years that have elapsed since its complaint are rendered ineffective and the jurisdiction of the Inter-American Court is retaken 101

In the ranking of the 2021 world rating on press freedom carried out by Reporters Without Borders (RSF), Venezuela is ranked 148th out of 180 countries studied, being the second country in Latin America with such a low position in the ranking. On the other hand, the freedom on Internet index of Freedom on the Net 2020 scores it 28/100, which positions it globally as the country with the largest drop in Internet freedom in 5 years 103.

Likewise, when asking the expert Gabriel Ortiz about the situation of the right to free expression in Venezuela, he commented that:

“They are not valid or recognized in the country. The content of the Constitution regarding the right to freedom of expression has no practical potential. It is a nominally norm recogni-

99 Ut Supra, Nota N° 83.
This shows that the State has not tried to take measures to guarantee access to information and freedom of expression, since the country is positioned so low in the rankings.

**B. VENEZUELA PARTICIPATION IN INTERNATIONAL COOPERATION PROGRAMS ON FREEDOM OF EXPRESSION**

Nor have seen a commitment from the State on compliance with these general obligations of human rights, especially those of cooperation and promotion, this was determined based on the compliance with the 17 Sustainable Development Goals United Nations (SDG), specifically in the Goal 16 on peace, justice and strong institutions which is committed to: “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, responsible and inclusive institutions at all levels” 106.

Although in the country there are laws that guarantee the development of freedom of expression and therefore public policies must be developed to support said guarantees and satisfy the needs of the society, it is evident that the Venezuelan government has been in charge of approving laws and regulations, such as the Law Against Hate and the Law of Social Responsibility in Radio and Television, which restrict both the development of this right and the development of freedom of the press and access to information.

Likewise, the National Institute of Statistics (INE) does not keep, or at least they are not available to the public, the development indicators of the objectives of the Agenda, nor the State presents its own Report to the FPAN; impeding to verify the effective compliance or not of the aforementioned indicators. This shows that there is no interest on the part of Venezuela to release official figures on the development and guarantee of rights, as well as its effective participation in cooperation programs on freedom of expression.

On the other hand, the expert Gabriel Ortiz reflects on the fulfillment of this duty by Venezuela and comments that:

“Venezuela’s participation in international organizations is summarized in its convenience for its internal image and there is no real intention to protect human rights. The same happened in the ICC and Bachelet, they hope that the technical analyzes will do favors.” 107

104 Ut Supra, Note 83.
107 Ut Supra, Note N° 83
C. DUE FOLLOW-UP AND ADOPTION OF THE NEW MEASURES ON FREEDOM OF EXPRESSION IN THE COUNTRY

The Venezuelan State has the obligation to promote, cooperate and adopt measures in domestic law concerning compliance according to international standards. However, it has been not checking the degree of commitment that Venezuela remains regarding this aspect, an example of this is the unwillingness of the State to allow entry into the country of the Commission and its Special Rapporteurs to verify the situation of human rights in the country. The last visit they made was 18 years ago in the mandate of Hugo Chávez.

Regarding the fulfillment of this obligation, the expert Gabriel Ortiz comments that:

“In Venezuela there is no monitoring system... A monitoring mechanism is still needed. This is part of the powers of the Ombudsman's Office, but it is not exercised by impartiality, but simply according to the interests of the government. It is necessary for all NGOs to insist on the implementation of the IACHR's SIMONE system” 109

demonstrating how the State also violates its responsibilities to properly monitor the adoption of measures related to Human Rights and specifically to Freedom of Expression.

IV. CONCLUSIONS AND RECOMMENDATIONS:

In Venezuela, the right to freedom of expression has been continuously affected by the lack of compliance with the State’s obligations regarding respect, guarantee, assurance, cooperation, promotion and adoption of internal measures. This repeated restriction of the fundamental rights of freedom of expression and access to information has been recorded by Un Mundo Sin Mordaza in its 2019 and 2020 reports. For this year, 2021 has allowed us to understand the systematization of the processes that violate the right to the point of having denoted a pattern in the lack of commitment of the Venezuelan State to protect the rights of its citizens.

In this matter, in the case of the obligation to respect the aforementioned rights, it has been demonstrated the omission of the State to allow the development of freedom of expression, taking into consideration the clear limitations that this right may have as established previously in the UN RELAY in its 2011 report. Consequently with the results raised above, it can be confirmed that there was a clear breach of the obligation of respect to the incompatibility between the obligation of the State: protect this right and the issues raised by the Human Rights Committee of the UN in its General Comment No.31: refrain from violating the rights recognized by international instruments.

109 Ut Supra, Nota N° 83
110 Un Mundo Sin Mordaza, “informe anual de libertad-de expresión 2019”, 2019
111 Ut Supra, Nota N°72
112 Ut Supra, Nota N°12
On the other hand, in the obligations of guarantee and assurance of the right, as established by the UN HRC in its General Comment No. 31. The State must not only be in charge of guaranteeing that its agents do not violate freedom of expression but also third parties or individuals undermine the enjoyment of this right, translating this into a positive action by the State to generate minimum conditions. According to the results obtained, it was determined that there are not enough positive actions that generate the minimum conditions for the effective development of freedom of expression, since the State has not given the necessary certainty by securing preconditions such as good internet connectivity, as well as a quality electrical service, whose failures have violated other human rights of those affected.

In addition to these preconditions in this obligation, a clear abstention can be indicated in the actions of the State to bring before the pertinent instances the security officials who use excessive force in protests, although the Venezuelan Prosecutor’s Office has declared that they were prosecuted security officials for alleged human rights violations in the last 3 years, these data are insufficient to determine the investigations were carried out following the recommendations given by the IACHR related to procedures that meet the validity requirements that guarantee the right to defense, nor the correct prosecution of the perpetrators of crimes and violations of the right to free expression and opinion that are found within the established regime, so it can be understood that there is a clear breach of the obligations of assurance and guarantee.

Within the obligation of cooperation, promotion and adoption of internal measures, it has been verified how Venezuela has continuously positioned itself at the bottom of the RSF ranking on freedom of expression, which is a clear demonstration of the lack of will to comply with the recommendations. Likewise, regarding the participation of Venezuela in international programs on Freedom of Expression, it is reflected that there is no intention to make use of the indicators given by these programs. The State is not using a frame of reference to know the situation of this right and act in face of its violations, so it can be affirmed that there is a clear lack of participation of the State in these international programs.

Finally in this obligation, the lack of response from Venezuela in international forums is a lack in the fulfilling of this point, understanding that the State has not taken just reconcilable actions and adapted to the provisions in the cases of Article 55 of the Charter of the United Nations, referring to promotion; paragraph 6 of the preamble of the UDHR which develops the duty of cooperation and Article 2 paragraph 2 of the ICCPR which provides the domestic legal measures that must be taken to guarantee the exercise of rights.

In conclusion of this report, Un Mundo Sin Mordaza, through the study and analysis of compliance

113 Ut Supra, Nota N°45
114 Ut Supra, Nota N°46
115 Ut Supra, Nota N°80
116 Ut Supra, Nota N°37
117 Ut Supra, Nota N°39
118 Ut Supra, Nota N°47
with these three obligations, was able to determine, based on the foregoing, that there is no intention on the part of the Venezuelan State to take measures that respect, guarantee and promote the respect for freedom of expression and access to information.

In view of all this, it is recommended that the Venezuelan State:

- **Refrain** from criminalizing and committing arbitrariness in the exercise of journalists, press workers, photojournalists and the general population for the enjoyment of their rights to express themselves and freely access to information.

- **Stop** the use of persecution, threats, harassment, violence or retaliation for the expression of ideas and opinions through social networks or in the exercise of journalistic work.

- **Stop** the persecution and intimidation of citizens for the disclosure of information, opinions, positions, ideas and other methods of expression in relation to the COVID-19 pandemic.

- **Allow** more transparent access to any data through the INE or other state bodies, especially with data related to COVID-19 in Venezuela to anyone who requires it.

- **Ensure** the integrity and personal safety of any person, especially social communicators who are exercising their right to freedom of expression, through the proper investigation and punishment of any act of violence from public officials or individuals.

- **Stop** the administrative censorship imparted by public administration bodies without legal grounds and violating the principles and criteria established by the Inter-American Court of Human Rights in reference to the subject.

- **Implement** legislative modifications in order to make national legislation compatible with human rights standards, within the framework of the application of conventional controls, with special emphasis on those cases that deal with sanctions imposed by the public administration on journalists and the media, is necessary for the execution of penalties the support of a court with the guarantee of double instance and res judicata.

- **Repeal** the Constitutional Law against Hate, for Peaceful Coexistence and Tolerance, since it is an inconvenient regulatory instrument that seeks to criminalize freedom of expression.

- **Guarantee** access to the internet freely and without restrictions or blockades, in order to allow greater access to information on any subject.

- **Comply** with the general and specific obligations that arise from the ICCPR and the ACHR regarding the respect, guarantee, and adoption of provisions of domestic law.

- **Comply** with the recommendations of international organizations regarding freedom of expression and access to information.