

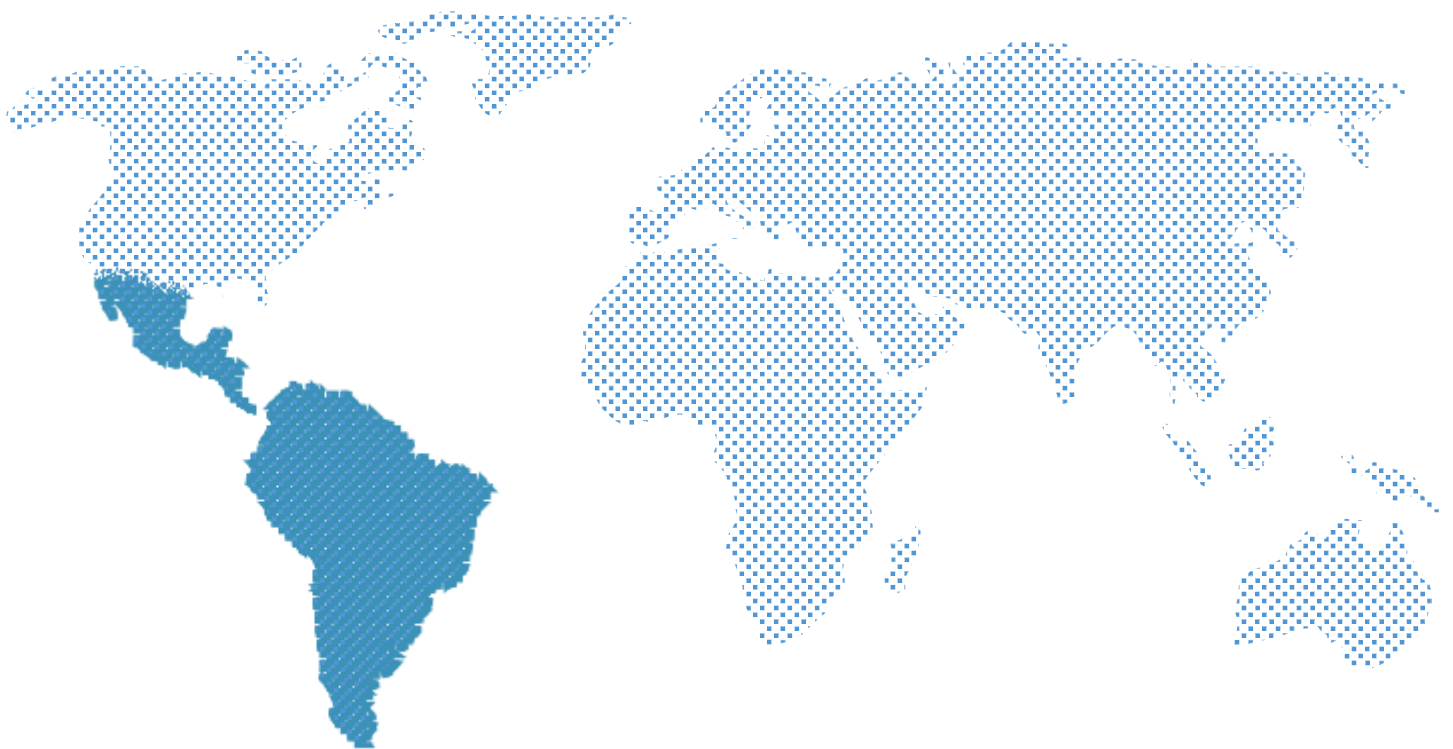


**CENTRE FOR LAW
AND DEMOCRACY**

**Restrictions on Civic Space Globally:
Law and Policy Mapping Series**

Volume 3: Latin America

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Restrictions on Civic Space Globally: Law and Policy Mapping Series

This Report is part of a five-part Series. Each Report maps the legal restrictions on civic society in selected countries in five geographic regions, as of 2019. The five volumes are as follows:

Volume 1: Asia Pacific Region

Volume 2: Europe and Central Asia Region

Volume 3: Latin America Region

Volume 4: Middle East and North Africa Region

Volume 5: Sub-Saharan Africa Region

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Executive Summary

This Report reviews the legal environment for civic space in nine countries in Latin America as of November 2019, with a focus on identifying laws and policies that represent the most serious threats to civic space. The focus countries are: Brazil, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Peru and Venezuela. Some key trends across the nine countries include:

- **Criminal Penalties for Reputational and Other Content Offences:** States still have “desacato” laws prohibiting the insult of public officials and criminal rules on defamation and insult, some of which protect values, such as offending to civic ideas or national symbols, which do not align with human rights norms. A few problematic “fake news” laws have been proposed in recent years.
- **Strong Securitisation:** Public policy is heavily securitised, particularly in countries with experiences of armed conflict or gang violence. This results in ambiguous emergency, national security or anti-terrorism rules which do not adequately distinguish between peaceful and aggressive behaviour. Broad powers for security institutions, without adequate oversight, has led to overly restrictive responses to peaceful civil society activity.
- **Criminalisation of Protest:** Several countries have introduced laws which increase the risk of protesters attracting criminal liability, including for non-violent behaviour. Laws which allow police to provide security to private companies, expand the definition of terrorism to cover protest-related activity or criminalise obstruction of roads have led to increased use of force against protestors or to halt demonstrations.
- **Threats to Media Independence and Diversity:** Most of the nine countries do not provide sufficient protection for the independence of media regulatory bodies from political or commercial influence. Stronger rules preventing concentration of media ownership and promoting media diversity are also needed.
- **Weak Oversight of Surveillance and Lack of Data Protection:** The digital environment is relatively free in most countries but rules governing data retention and use of personal data fail to conform to international standards in some countries. More rigorous oversight of surveillance powers and bodies is also needed to prevent arbitrary surveillance, including of civil society organisations and representatives.
- **Secrecy Laws Typically Override the Right to Information:** Officials in some countries have too much discretion in determining what information qualifies as secret and most right to information laws do not trump conflicting provisions in secrecy laws.
- **Lack of Whistleblower Protection and Challenges with Other Protective Regimes:** Eight of the nine countries lack comprehensive whistleblower protection legislation. More positively, the region has shown some leadership in efforts to establish protective safety mechanisms for human rights defenders, journalists and other individuals who are at-risk. However, these mechanisms face practical challenges, sometimes resulting from legal frameworks which fail to ensure that they are adequately resourced.

Approach and International Standards

Laws which regulate civil society are numerous and often complex. Rather than provide a comprehensive review, this Mapping focuses on more problematic provisions in each country with the goal of identifying areas in need of reform. For example, it documents legal provisions which have been used to bring criminal charges against journalists and activists. The result is that the overall description for each country may skew towards the negative, as even countries which generally have an enabling environment for civil society often still have problematic laws in some areas.

The assessment of laws and policies is organised into nine categories. For each category, domestic laws are assessed against international human rights standards. The nine categories are presented here, along with the key international standards for each area.

Category 1. Freedom of association: non-profit registration requirements and restrictions on advocacy: Are civil society organisations required to register? Are features of the registration process burdensome? Do authorities have discretion to deny registration? What limitations are placed on the ability of civil society organisations to operate and advocate?

The right freely to associate with others is guaranteed by Article 22 of the International Covenant on Civil and Political Rights (ICCPR),¹ among other international treaties. States should create an enabling environment in which organisations can be established and operate freely.² Any restrictions on the right to association must be prescribed by law and be necessary to protect national security, public safety, public order, public health or public morals, or the rights or freedoms of others.³

Civil society organisations should not be required to register as a legal entity; the right to form informal associations is protected under human rights law. Should an organisation choose to be formally legally registered, the procedures for this should be simple, accessible, non-discriminatory and not overly burdensome.⁴ If officials can deny registration, it should be on narrow, objective grounds, with the opportunity to appeal to an independent oversight body, such as a court.

Once registered, States should not impose highly burdensome reporting obligations on organisations or intrude on their internal operations. Laws should not prevent organisations from engaging in advocacy activities on matters of public interest. Dissolution of an organisation should be permitted only where there has been a very serious breach of the law, based upon narrow

¹ Adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

² UN Human Rights Council Resolution 24/5, 8 October 2013, p. 2. Available at: <https://undocs.org/A/HRC/RES/24/5>.

³ ICCPR, Article 22(2).

⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 95. Available at: <https://undocs.org/A/HRC/20/27>.

grounds which are clearly articulated in the law, as decided by an independent authority, preferably a court.⁵

Category 2. Funding restrictions, financial reporting requirements and special tax requirements:
Are limits placed on the ability of civil society organisations to obtain foreign funding? Are there burdensome financial reporting or tax requirements?

The right to freedom of association protects the right of organisations to seek, receive and use funding. This includes the ability to access foreign funding, meaning that prohibitions on accessing foreign funding or onerous requirements for organisations receiving foreign funding are not legitimate. States may screen for fraud, money laundering or terrorist financing activities, and promote transparency in the use of funds. However, financial reporting requirements should be tailored to the operating realities of non-profit organisations, and not inhibit their ability to engage in legitimate operations.⁶

States should also not indirectly limit the work of civil society via tax laws. Rather, better practice is to create an enabling environment for civil society, including mechanisms such as allowing tax exempt status for non-profit organisations and tax deduction options for donors.⁷

Category 3. Media regulation: Are there registration or licensing requirements for print media or journalists? Are any bodies which are responsible for regulating the media independent?

Regulation of the media must respect the right to freedom of expression, meaning it should respect media independence and should not become a means of government control. On the other hand, intervention may be necessary to promote media diversity and to prevent the emergence of media monopolies.

States should not require journalists to obtain licences or register in order to engage in journalistic activities.⁸ Print media should also not be subject to a licensing regime, although merely technical registration requirements may be permissible if they are not overly complex and do not grant authorities discretion to deny registration.⁹ In the broadcasting sector, licensing requirements may be appropriate to ensure diversity when allocating broadcasting frequencies, but the process should be fair and transparent, and be overseen by an independent authority.¹⁰

⁵ See Report of the Special Rapporteur, note 4, paras. 75-76 and 100; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 24 April 2013, UN Doc. A/HRC/23/39, para. 38. Available at: <https://undocs.org/A/HRC/23/39>.

⁶ Report of the Special Rapporteur, note 4, paras. 67-72.

⁷ Report of the Special Rapporteur, note 4, para. 72.

⁸ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/G/GC/34, para. 44, available at: <http://undocs.org/ccpr/c/gc/34>; and International Mandates for Promoting Freedom of Expression, 2003 Joint Declaration, available at: <https://www.osce.org/fom/28235?download=true>.

⁹ International Mandates for Promoting Freedom of Expression, 2003 Joint Declaration, *ibid.*

¹⁰ General Comment No. 34, note 8, para. 39.

Bodies that regulate the media should be independent from political or private sector actors. Such regulatory bodies should be accountable and have a clear mandate and structure. The appointment process for members and manner of allocating funding should protect their independence.¹¹

Category 4. Content restrictions: Are there undue restrictions on the content that the media or civil society may disseminate? Is defamation criminalised? Are there other overbroad or vague restrictions on speech?

The right to freedom of expression, guaranteed by Article 19 of the ICCPR, may only be subject to restrictions which: 1) are provided by law; 2) aim to protect the rights or reputations of others, public order, national security, or public health or morals; and 3) be necessary to protect that interest. Several types of content restrictions commonly found in the Asia Pacific region frequently fail to meet this test:

- Defamation laws: While it is legitimate to protect the reputation of others, special or heightened protections for the reputations of heroes or public figures are inappropriate, since the public has a greater interest in their actions. Criminal penalties for defamation are almost always disproportionate and, as such, do not pass the “necessity” part of the test; defamation should therefore be decriminalised. National symbols, institutions or icons should not be protected by defamation or libel rules, as they cannot be said to have reputations of their own.¹²
- Hate speech: Hate speech is prohibited by Article 20(2) of the ICCPR, which provides: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. States should, therefore, prohibit such speech. However, hate speech laws should not be crafted in vague terms or go beyond the narrow scope of hate speech as recognised under international law. They should also require hateful intent and a sufficiently close nexus to an act of discrimination, violence or hostility. Without these elements, hate speech laws are easily abused to target non-hateful speech.¹³ Laws prohibit the expression of opinions about historical facts (genocide denial laws) or impose certain interpretations of history are also not legitimate.¹⁴
- Religious offence: Speech which incites hatred of certain religious groups may properly be restricted as a form of hate speech. However, other speech criticising religious views or practices should be protected rather than criminalised via blasphemy laws, which often

¹¹ African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa, Adopted at the 65th Ordinary Session, 21 October to 10 November 2019, Principles 17(1)-(2), available at: <https://www.achpr.org/legalinstruments/detail?id=69>; and Council of Europe, Recommendation (2000) 23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, 20 December 2000, available at: [https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20-%20Media%20Freedom%20and%20Pluralism/REF%20COE-CM-Rec\(2000\)23.pdf](https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20-%20Media%20Freedom%20and%20Pluralism/REF%20COE-CM-Rec(2000)23.pdf).

¹² General Comment No. 34, note 8, paras. 38 and 47.

¹³ *Jersild v. Denmark*, 23 September 1994, Application No. 15890/89 (European Court of Human Rights), paras. 24 and 35-36, available at: <http://hudoc.echr.coe.int/eng?i=001-57891>; and Article 19, Camden Principles on Freedom of Expression and Equality, April 2009, available at: <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>.

¹⁴ General Comment No. 34, note 8, para. 49.

allow for the suppression of minority religious views or inappropriately limit public discourse on religious matters.¹⁵

- Disinformation: Laws generally prohibiting the dissemination of “fake news” or the sharing of false information are too vague to meet the Article 19 test for restrictions on freedom of expression.¹⁶ Instead, States should only prohibit false statements linked to particular harmful results, such as defamation or fraud, subject to them being made with malicious intent.
- Contempt of court: Contempt of court laws can be legitimate as a means of maintaining order in a courtroom and the fair administration of justice, but laws which prohibit criticism of the judiciary, such as so-called “scandalising the judiciary” offences, improperly restrict public scrutiny of the judiciary.¹⁷
- Other overly vague offences: The Article 19 test requires restrictions on freedom of expression to be “provided by law”, meaning that they should be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.”¹⁸ Prohibitions on obscenity, for example, may be subject to abuse if not clearly defined.

Category 5. Internet and digital rights: Is online speech subject to more burdensome restrictions than offline speech? Do data retention laws raise privacy concerns? Are intermediaries responsible for content posted by users?

International law clearly establishes that the “rights that people have offline must also be protected online.”¹⁹ Although the digital era brings some new challenges that require novel regulation, States should not generally create special content restrictions or impose harsher penalties for Internet speech.²⁰ Blocking of certain websites or requiring the takedown of specific content should only apply to clearly illegal content, following a court order or order from another independent oversight body.

Intermediaries which provide merely technical Internet services, such as Internet service providers, should not be liable for content posted by others. The question of intermediary liability is more complex for intermediaries which play a more proactive role in supporting and interacting with user content. However, at a minimum, such intermediaries should not be directly liable for user

¹⁵ Rabat Plan of Action, 11 January 2013, para. 25. Available at:

https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

¹⁶ International Mandates for Promoting Freedom of Expression, Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, 3 March 2017. Available at: https://www.law-democracy.org/live/wp-content/uploads/2017/03/mandates.decl_.2017.fake-news.pdf.

¹⁷ International Mandates for Promoting Freedom of Expression, 2002 Joint Declaration. Available at: <https://www.osce.org/fom/39838?download=true>.

¹⁸ General Comment No. 34, note 8, para. 25.

¹⁹ UN Human Rights Council Resolution 32/13, 18 July 2016, para. 1, available at: <https://undocs.org/A/HRC/RES/32/13>; and UN General Assembly Resolution 68/167, 21 January 2014, para. 3, available at: <https://undocs.org/A/RES/68/167>.

²⁰ International Mandates for Promoting Freedom of Expression, 2018 Joint Declaration on Media Independence and Diversity in the Digital Age, para. 3. Available at: <https://www.osce.org/representative-on-freedom-of-media/379351?download=true>.

content and should not be required to monitor user content proactively. Overreaching takedown requirements for intermediaries incentivise them to over-police user speech.²¹

Category 6. Right to information and secrecy laws: Are public authorities required to provide access to the information they hold? What rules, including secrecy laws, are in place which limit public access to information and/or penalise civil society for disseminating it?

The right to seek and receive information held by public authorities (the right to information or RTI) is a crucial component of freedom of expression. It should be given effect through comprehensive legislation which enables persons to request information from their governments. Such legislation should establish a presumption in favour of public access to information, subject only to a narrow regime of exceptions.²² The strength of legal frameworks for RTI is assessed based on CLD and Access Info Europe's RTI Rating (rti-rating.org). This uses 61 indicators to assess the strength of the legal framework for RTI in seven categories: (1) the extent to which the law supports a fundamental right to access information; (2) the scope of the law; (3) the procedures for requesting information; (4) what exceptions justify denying requests for information and the process for such denials; (5) appeals; (6) sanctions for misconduct and protections for those who disclose public interest information; and (7) measures to promote the right to information.

This category also assesses what secrecy laws prohibit the disclosure of information and what penalties are imposed by those laws. Overly broad secrecy laws undermine transparency and public access to information. Of particular concern are provisions which penalise third parties, such as civil society or journalists, for sharing or re-sharing information which has been disclosed to them.²³

Category 7. Restrictions on freedom of assembly: Must organisers obtain prior permission before holding an assembly? Are there other restrictions on or criminal sanctions for participating in an assembly?

The right to assembly, guaranteed by Article 21 of the ICCPR, protects the right to organise and participate in non-violent gatherings, subject to restrictions which meet a test which is similar to the one which applies to freedom of expression and association. States must therefore allow assemblies and protests to occur without unwarranted interference. They may require advance notice of an assembly but laws which require organisers to obtain permission for an assembly are not appropriate.²⁴ In the interests of public order, some limited requirements regarding the time,

²¹ International Mandates for Promoting Freedom of Expression, 2011 Joint Declaration on Freedom of Expression and the Internet. Available at: <https://www.osce.org/fom/78309?download=true>.

²² International Mandates for Promoting Freedom of Expression, 2004 Joint Declaration on Access to Information and on Secrecy Legislation. Available at: <https://www.osce.org/fom/38632?download=true>.

²³ General Comment No. 34, note 8, para. 30; and 2004 Joint Declaration on Access to Information and on Secrecy Legislation, note 22.

²⁴ Report of the Special Rapporteur, note 4, para. 28; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 7 August 2013, U.N. Doc. A/68/299, para. 24, available at: <https://undocs.org/A/68/299>; and African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 10 November 2017, para. 71, available at: <https://www.icnl.org/post/tools/guidelines-on-freedom-of-association-and-assembly-in-africa>.

location or manner of assemblies may be legitimate, subject to the Article 21 test, and participants must be able to assemble “within sight and sound” of their audience and with enough time to express their views.²⁵

Law enforcement actions should respect and protect the exercise of the fundamental rights of the participants and the public. Policing should aim to enable an assembly to take place as planned and minimise the potential for injury to persons or damage to property.²⁶ Force should be used only when necessary and should be proportionate; lethal force is only permissible “as a last resort to protect against an imminent threat to life and that it may not be used merely to disperse a gathering.”²⁷ States should also avoid bringing disproportionate penalties against protestors. Laws which criminalise mere participation in a protest or impose criminal penalties on protest organisers for acts committed by other participants are particularly problematic.²⁸

Category 8. National security: Are crimes based on national security concerns, such as terrorism, defined in such a way as to include peaceful civil society activity? What surveillance powers do authorities have? What powers do governments have to suspend human rights obligations during states of emergency?

Where there is a “public emergency which threatens the life of the nation”, States may announce states of emergency and derogate from certain of their human rights obligations. However, derogations are allowed only insofar as they are strictly required by the exigencies of the situation.²⁹ States of emergency are exceptional circumstances; unrest or internal conflict that does not gravely and imminently threaten the life of the nation, or economic difficulties, are not sufficient to meet this standard.³⁰ Furthermore, certain rights cannot be derogated from even in emergencies, such as the right to life and the right to be free from torture or slavery.³¹

Where a legitimate state of emergency is not in place, any restrictions on national security grounds must meet the standard tests for restrictions on human rights. States often problematically rely on national security to justify overbroad criminal restrictions on expression, such as in anti-terrorism or treason laws. Such laws should not rely on vague terms like “glorification” of terrorism or

²⁵ See, for example, Human Rights Committee, *Denis Turchenyak et al. v. Belarus*, Communication No. 1948/2010, 10 September 2013, available at: <https://juris.ohchr.org/Search/Details/1672>; and Organization for Security and Co-operation in Europe, *Guidelines on Freedom of Peaceful Assembly: Second Edition*, 25 October 2010, paras. 99-100, available at: <https://www.osce.org/odihr/73405>.

²⁶ UN Human Rights Council Resolution 38/11, 18 July 2016, para. 10, available at: <https://undocs.org/A/HRC/RES/38/11>; and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 6 April 2018, UN Doc. A/HRC/26/36, para. 51, available at: <https://undocs.org/A/HRC/26/36>.

²⁷ UN Human Rights Council Resolution 38/11, note 26, para. 11.

²⁸ See, for example, Inter-American Commission on Human Rights, *Criminalization of Human Rights Defenders*, Chapter 3(B)(2), 31 December 2015. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

²⁹ ICCPR, note 3, Article 4.

³⁰ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1 July 1984, Principles 40 and 41. Available at: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

³¹ ICCPR, note 3, Article 4.

“extremism”. Instead, they should only punish behaviour which specifically intends to promote violence and is directly linked to an actual increased risk of a violent or terrorist attack.³²

Laws should also protect against arbitrary surveillance of civil society actors by the State. Legal frameworks often fail to provide adequate procedural protections to ensure surveillance is not conducted arbitrarily. Surveillance regimes should be clearly established in law and be subject to precise limits on their scope and duration. Monitoring of private communications should be subject to oversight by an independent body, subject to judicial review and should incorporate adequate due process protections.³³

Category 9. Whistleblower, witness and other protection systems for those at risk: Are any such systems in place and, if so, are they sufficiently robust?

Whistleblowers play an essential role in exposing institutional corruption, fraud and human rights violations. Due to the high personal risk assumed and the public’s interest in the disclosure of this information, States should enact whistleblower protection laws which prohibit retaliatory actions taken by the State or private actors. Strong whistleblower protections laws will also establish accessible channels for reporting wrongdoing, provide whistleblowers with access to remedies and create enforcement mechanisms which enable follow-up and reform following a disclosure. For standards on international better practice in this area, see Transparency International’s *International Principles for Whistleblower Protection Legislation*.³⁴

Country Analysis

Brazil

Freedom of association: non-profit registration requirements and restrictions on advocacy

Brazilian law permits the formation and operation of “unregistered” groups.³⁵ However, groups may choose to be recognised as either foundations or associations to obtain legal personality.³⁶ Associations can acquire legal personality by: 1) registering their articles of incorporation and

³² International Mandates for Promoting Freedom of Expression, 2008 Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, available at: <https://www.osce.org/fom/99558?download=true>; and The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995, Principle 6(c), available at: <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

³³ UN and OAS Special Rapporteurs on freedom of expression, Joint Declaration on Surveillance Programs and their Impact on Freedom of Exchange, 21 June 2013, paras. 7-10, available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=927&>; and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 17 April 2013, para. 3, available at: undocs.org/A/HRC/23/40.

³⁴ 5 November 2013. Available at: https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation.

³⁵ As summarised by ICNL, Civic Freedom Monitor: Brazil, 5 February 2019. Available at: <http://www.icnl.org/research/monitor/Brazil.html>.

³⁶ Civil Code, Law 10.406, Article 44. Available in Portuguese at: <https://wipolex.wipo.int/en/text/226198>.

statutes with a notary at the public registrar's office; and 2) paying a small fee.³⁷ They must also register with the Department of Federal Revenue.³⁸ Generally, the process appears relatively straightforward. In addition, Article 5 of the Constitution protects associations from arbitrary dissolution, specifying that they may only be dissolved or have their activities suspended by a court order.³⁹

On his inauguration day, 1 January 2019, President Jair Bolsonaro issued a provisional measure which gave the Government Secretariat the ability to supervise, coordinate, monitor and accompany the activities of non-governmental organisations.⁴⁰ While this would have permitted broad interference in NGO activities, such provisional measures must be adopted by Congress and when Congress adopted a law based on this particular provisional measure the NGO provision was excluded.⁴¹ However, concerns remain about attempts to restrict civil society under the Bolsonaro administration, given Bolsonaro's rhetoric and other actions, such as a decree eliminating administrative councils which served as key forum for civil society engagement with government.⁴²

Funding restriction, financial report requirements and special tax requirements for non-profit organisations

Some elements of the tax regime are not favourable to civil society. For example, some state level legislation imposes a 4% tax on donations. While organisations can obtain a tax exemption, this is based on their activities. Obtaining the tax exemption itself is not necessarily burdensome but if an organisation is subject to an audit the process of proving that its activities qualify for the tax exemption in administrative proceedings can be complex. In practice, the government has reportedly used the tax exemption regime as a means of harassing civil society via what is called "bureaucratic criminalisation".⁴³

Media regulation

The Constitution provides that publication of print materials shall not be subject to a licensing regime.⁴⁴ In the broadcasting realm, the primary regulatory body is the Brazilian National

³⁷ *Ibid.*, Article 45; Law 6.015, Article 120, available in Portuguese at:

http://www.planalto.gov.br/ccivil_03/LEIS/L6015original.htm; and ICNL, Civic Freedom Monitor: Brazil, note 35.

³⁸ ICNL, Civic Freedom Monitor: Brazil, note 35.

³⁹ Brazilian Constitution, Article 5(XIX). English translation available at:

https://www.constituteproject.org/constitution/Brazil_2014.pdf.

⁴⁰ Provisional Measure 870, 1 January 2019, Article 5(II), as translated by ICNL, Civic Freedom Monitor: Brazil, note 35.

⁴¹ Law 13.844 of 2019. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Lei/L13844.htm.

⁴² Decree 9.759 of 2019, available in Portuguese at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9759.htm; discussed in English in Joint Letter from Various UN Mandates, 7 June 2019, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24621&fbclid=IwAR0NhQCuQQMrxPNXVE-txeVkXXi1MUP8C2OZBgF6DxPMhU9P9ki2EwsOe2E>.

⁴³ ICNL, Civic Freedom Monitor: Brazil, note 35.

⁴⁴ Brazilian Constitution, note 39, Article 220(6).

Telecommunications Agency (Anatel).⁴⁵ Anatel is formally (administratively and financially) independent and is not subordinate to other government agencies but it is not structurally independent. Anatel's Board of Directors are appointed by the President upon approval, after a public hearing, by the Federal Senate. The terms are five years (one year longer than a presidential term) and staggered, and removal requires administrative disciplinary hearings or a court order.⁴⁶ However, in accordance with the Constitution, actual licences are issued by Congress.

While Brazil has a vibrant media sector, concentration of media ownership is a serious concern, partly due to a lack of an appropriate regulatory framework to ensure against media monopolies and promote media diversity.⁴⁷

Content restrictions

The Criminal Code contains several articles that criminalise some forms of speech, including slander (up to two years imprisonment), defamation (up to one year imprisonment) and insult (up to six months imprisonment).⁴⁸ There are some limitations on these crimes, such as a defense of truth for calumny and defamation and the exclusion of some critical literary, artistic and scientific opinions for injuria and defamation. On the other hand, if any of these three crimes are committed against the President, head of a foreign government or civil servant, or in the presence of other persons or by means which facilitate the distribution of the statement, the penalty is increased by one-third.⁴⁹ Another concern is the “desacato” or “contempt of authority” crime, which imposes a penalty of up to two years in prison persons who insult civil servants engaged in the performance of their duties.⁵⁰

Controversies over the spread of disinformation during the 2018 elections resulted in a range of so-called “fake news” bills in the Brazilian National Congress. Some of these proposals, if enacted, would raise freedom of expression concerns by criminalising actions such as disclosing or sharing false news that may misrepresent the truth about a person.⁵¹

Internet and digital rights

The Brazilian Constitution protects freedom of expression but explicitly prohibits anonymous speech.⁵² This has been somewhat constrained by the courts, which have ruled that anonymous

⁴⁵ Freedom House, *Freedom on the Net 2018: Brazil*, 1 November 2018. Available at: https://www.refworld.org/docid/5be16b2311.html#_ftn44.

⁴⁶ Decree 2.338, Article 20. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/decreto/D2338.htm.

⁴⁷ Media Ownership Monitor Brazil, *The World of Globo*. Available at: <https://brazil.mom-rsf.org/en/findings/concentration/>.

⁴⁸ Penal Code, Articles 138-140. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm.

⁴⁹ Penal Code, note 48, Articles 141 and 142.

⁵⁰ Penal Code, note 48, Article 331.

⁵¹ Veridiana Alimonti, *Fake News and Elections in Brazil*, Electronic Frontier Foundation, 2 October 2018. Available at: <https://www.eff.org/deeplinks/2018/09/fake-news-and-elections-brazil-several-initiatives-no-easy-answer>.

⁵² Brazilian Constitution, note 39, Article 5(IV).

speech online is protected if it is possible to trace the speech through IP addresses, but in other instances judicial decisions have limited anonymous speech based on this provision.⁵³

In other areas, Brazil has a relatively protective digital rights framework. The Civil Rights Framework for the Internet (Marco Civil da Internet) establishes a fundamental right to privacy and data protection and requires judicial authorisation for user data to be shared with third parties.⁵⁴ On the other hand, digital rights activists have raised concerns about the Framework's data retention rules.⁵⁵ One concern is that the law imposes an obligation on service providers to keep records of access for up to six months.⁵⁶

The Framework has also been used to justify blockings of WhatsApp. While the Framework protects user data from disclosure without a judicial order, Article 12 provides that failing to comply with a judicial order may result in sanctions such as the temporary suspension of certain activities.⁵⁷ There is disagreement about the scope of activities which may be suspended. However, the Supreme Court has relied upon Article 12 to justify blocking WhatsApp when it failed to comply with a judicial order to provide data. WhatsApp argued that it was not possible to comply with the order because of the end-to-end encryption system it used.⁵⁸

Right to information and secrecy laws

Brazil's Law on the Right to Information is reasonably strong, ranking 28th out of the 128 countries assessed by the RTI Rating. It has a broad scope, strong recognition of the right to information and a tightly structured exceptions regime.⁵⁹ However, the law is also vague in certain areas, including around the appeals process, and the main oversight body is not independent of government.⁶⁰

A decree modifying Brazil's Freedom of Information Act was proposed in January 2019 but was ultimately rejected. The decree would have broadened the range of public officials with the authority to classify information as top secret. In practice, this would have led to more than 1200 officials being able to classify information as secret, including those without proper training on access to information.⁶¹

Brazil's RTI Rating Scores:

⁵³ Freedom House, Freedom on the Net: Brazil, note 45.

⁵⁴ Law 12.965, Article 10. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112965.htm.

⁵⁵ Freedom House, Freedom on the Net: Brazil, 2018, note 45.

⁵⁶ Law 12.965, note 54, Article 15.

⁵⁷ *Ibid.*, Article 12.

⁵⁸ Freedom House, Freedom on the Net: Brazil, 2018, note 45.

⁵⁹ RTI Rating, Brazil. Available at: <https://www.rti-rating.org/country-data/Brazil/>.

⁶⁰ *Ibid.*

⁶¹ Decree 9.690, available in Portuguese at: http://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/60344275/do1-2019-01-24-decreto-n-9-690-de-23-de-janeiro-de-2019-60344059; and Article 19, *Brazil: New Access to Information Decree Undermines Government Transparency*, available at: <https://www.article19.org/resources/brazil-new-access-to-information-decree-undermines-government-transparency>.

Category	Max Points	Score	Percentage
1. Right of Access	6	6	100%
2. Scope	30	29	97%
3. Requesting Procedures	30	19	63%
4. Exceptions and Refusals	30	16	53%
5. Appeals	30	22	73%
6. Sanctions and Protections	8	3	38%
7. Promotional Measures	16	13	81%
Total score	150	108	72%

Restrictions on freedom of assembly

The Brazilian Constitution guarantees the right to associate for lawful purposes, with the exception that paramilitary associations are forbidden.⁶² Public assembly without arms does not require prior authorisation as long as prior notice is given to the competent authority and the assembly does not frustrate another meeting which has already been scheduled for the same place.⁶³ Precise rules are generally developed at the state or local level but, for the most part, appear to be reasonable.

In recent years, there has been a trend towards bills or laws which critics describe as an effort to criminalise protest. At the federal level, existing definitions of terrorism and draft bills seeking to expand the definition of terrorism have raised concerns about applying terrorism charges to protestors. The latest iteration of an anti-terrorism law was enacted in 2016 and was widely seen as an attempt to limit protests around Brazil's hosting of the Olympics. Some state level laws have also introduced restrictive rules on demonstrations and prohibitions, such as on the use of face masks.⁶⁴

National security laws

Brazil has, at times, used an overly militaristic approach to address security threats, in some instances granting problematically broad authority to armed forces to respond to protests and/or assume basic policing functions. A notable example of this is Decree 9288 of 2018, which empowered the military to assume policing functions in the state of Rio de Janeiro. Rules of Engagement developed by the army under the Decree included inappropriately broad powers, particularly regarding the use of lethal force.⁶⁵

The legal framework governing surveillance in Brazil generally requires judicial authorisation and several aspects of the framework are rights protective, especially in the online context. In addition

⁶² Brazilian Constitution, note 39, Article 5(XVII).

⁶³ Brazilian Constitution, note 39, Article 5(XVI).

⁶⁴ ICNL, Civic Freedom Monitor: Brazil, note 35.

⁶⁵ OHCHR and IACHR Express Concern over Federal Intervention in Rio de Janeiro, 13 March 2018, available at: https://www.oas.org/en/iachr/media_center/PReleases/2018/047.asp; and Alonso Gurmendi, *The Military Intervention in Rio de Janeiro an Human Rights*, *Opinio Juris*, 22 October 2018, available at: <http://opiniojuris.org/2018/10/22/the-military-intervention-in-rio-de-janeiro-and-human-rights/>.

to data retention obligations, described in the section on digital rights, other weaknesses in the framework include a lack of transparency about government surveillance, government authority over interception of telephone communications (which are not covered by recently enacted protections for Internet communications) and the lack of rules limiting monitoring and infiltration activities by law enforcement on social media platforms.⁶⁶

Whistleblower protection and other protection systems for threatened activists

In 2018, Brazil introduced Federal Law 13,608, which creates a telephone hotline to receive corruption complaints, provides confidentiality guarantees and provides for rewards for information that assists in police investigations.⁶⁷ Some other legal provisions provide *ad hoc* whistleblower protection but Brazil lacks a comprehensive protection regime.⁶⁸

In 2004, Brazil created a human rights defenders protection programme. However, legislation has not yet been enacted for the programme so that it relies upon presidential decrees. This leaves the programme vulnerable. For example, the 2016 Decree excluded civil society, which had formally been involved in the Council overseeing the programme, from the new Deliberative Council.⁶⁹

Colombia

Freedom of association: non-profit registration requirements and restrictions on advocacy

Registration of civil society organisations, which is voluntary, occurs at the state or district level. While the Colombian legal framework for regulating non-profits is somewhat unclear in places, overall the registration process is relatively straightforward and in practice can be completed in a few days or less.⁷⁰ The procedure for dissolving an organisation, while it does not require a judicial order, does contain other procedural protections. However, authorities do have somewhat broad discretion in registering and supervising civil society and, while the legal framework is generally enabling, there are some reports that organisations working on sensitive issues have had difficulty obtaining or retaining their legal status.⁷¹

⁶⁶ Privacy International, *State of Privacy Brazil*, January 2019, available at: <https://privacyinternational.org/state-privacy/42/state-privacy-brazil>; and Necessary and Proportionate, “State Surveillance of Communications in Brazil”, March 2016, available at: <https://necessaryandproportionate.org/country-reports/brazil>.

⁶⁷ Law 13.608, Article 1. Available in Portuguese at: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Lei/L13608.htm.

⁶⁸ Guilherme France, *Brazil: Overview of Corruption and Anti-Corruption*, Transparency International Helpdesk, 29 January 2019, available at: https://knowledgehub.transparency.org/assets/uploads/helpdesk/Brazil-Country-Profile-2019_PR.pdf; and OECD, *Brazil Policy Brief: Public Governance*, November 2015, available at: <https://www.oecd.org/policy-briefs/brazil-strengthening-integrity-for-sustainable-growth.pdf>.

⁶⁹ As described by Alejandra Leyva Hernandez, *et al.*, *Emerging Practices of States Regarding the Protection of Environmental Defenders*, 2016, p. 16. Available at: <https://www.cemda.org.mx/wp-content/uploads/2011/12/PRACTICA-EMERGENTESeng1.pdf>.

⁷⁰ ICNL, Civic Freedom Monitor: Colombia, 5 June 2019. Available at: <http://www.icnl.org/research/monitor/colombia.html>.

⁷¹ Civicus, Civic Space Monitor: Colombia, 25 September 2019, available at: <https://monitor.civicus.org/country/colombia/>; and ICNL, Civic Freedom Monitor: Colombia, note 70.

Funding restrictions, financial report requirements and special tax requirements for non-profit organisations

Generally, organisations do not have notable restrictions on their access to funding. Due to a 2016 tax reform, the tax environment and financial reporting requirements are more rigorous than they were previously. Some civil society groups have expressed concerns that the new requirements, while designed to promote transparency, treat civil society in the same way as the for-profit sector and fail to account for the capacities of smaller organisations.⁷²

Media regulation

In July 2019, the President signed Law 1978 of 2019, a package of amendments with the purpose of modernising the ICT sector in Colombia. The law abolishes the National Television Authority and consolidates media regulation in the Communications Regulatory Commission, which is made up of two sub-commissions.⁷³ Some civil society groups focusing on promoting freedom of expression have brought a constitutional challenge to this law. One of their concerns is the role of the executive in appointing commissioners, as a majority of commissioners on both sub-commissions are appointed directly by the executive or indirectly through a process run by an institution selected by the executive.⁷⁴ Other concerns relate to the scope of authority given to the Communications Regulatory Commission and the fact that the ICT Ministry will now control funds formerly managed by the autonomous National Television Authority.⁷⁵

Content restrictions

Colombia's Penal Code criminalises some reputation based offences, with the crimes of insult and slander subject to up to 72 months' imprisonment. Problematically, the Code also includes the crime of "indirect slander and libel", which means that the criminal penalties extend to those who publish, reproduce or repeat slander or libel. Penalties are also increased where the content in question is shared via social media.⁷⁶

Internet and digital rights

Overall, Internet users can operate relatively freely. The primary digital rights concerns relate to surveillance (discussed below in the national security section) and access to user data and data

⁷² UNDP, *Philanthropy Ecosystem in Colombia*, November 2017, available at: https://www.sdphilanthropy.org/system/files/2017-12/COLOMBIA%20HANDBOOK_FINAL%20VERSION.pdf; and Civicus, *Civicus and Colombian Confederation of NGOs Concerned about Aggressions and Impending Restrictions on Civil Society*, 20 December 2016, available at: <https://www.civicus.org/index.php/media-resources/media-releases/2684-civicus-and-colombian-confederation-of-ngos-concerned-about-aggressions-and-impending-restrictions-on-civil-society>.

⁷³ Law 1978 of 2019. Available in Spanish at: <https://dapre.presidencia.gov.co/normativa/normativa/LEY%201978%20DEL%2025%20DE%20JULIO%20DE%202019.pdf>.

⁷⁴ *Ibid.*, Article 20.

⁷⁵ Fundación para la Libertad de Prensa, *Demanda Inconstitucionalidad de la Ley TIC*, 22 August 2019. Available in Spanish at: <https://flip.org.co/index.php/es/informacion/pronunciamientos/item/2381-demanda-inconstitucionalidad-de-la-ley-tic>.

⁷⁶ Penal Code, Articles 220-223. Available in Spanish at: https://leyes.co/codigo_penal.htm.

privacy. In addition, the 2016 Police Code defines privacy in such a way as to potentially exclude online activity, possibly limiting privacy protections.⁷⁷ Another potential concern is Decree 1704, which requires Internet service providers to create a “back door” access to their services for criminal investigations. Police may use this backdoor with approval from the Prosecutor General. The Decree also includes a data retention requirement and an obligation to provide such data to the Prosecutor when requested.⁷⁸

Right to information and secrecy laws

Colombia has had a right to information law since 1985, which was updated in 2014. While the law, on its own, is of middling quality, Constitutional Court decisions have significantly strengthened it, resulting in a rank of 37th out of the 128 countries assessed by the RTI Rating.⁷⁹ Key remaining weaknesses include the fact that it does not override secrecy laws and the lack of a “public interest override” which would require the disclosure of public interest information that would otherwise fall within the scope of the regime of exceptions to the law.

Colombia’s RTI Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	6	100%
2. Scope	30	29	97%
3. Requesting Procedures	30	16	53%
4. Exceptions and Refusals	30	23	77%
5. Appeals	30	15	50%
6. Sanctions and Protections	8	4	50%
7. Promotional Measures	16	9	56%
Total score	150	102	68%

Restrictions on freedom of assembly

Colombia enacted a new Police Code in 2016. Although an updated Code was needed, some aspects of the Code raise human rights concerns. Notably, Article 53 required 48 hours written notice, signed by three people, before a public meeting or assembly may be held and permitted assemblies to be dissolved on the highly unclear ground of disturbing coexistence (“alteraciones a la convivencia”).⁸⁰ The Constitutional Court has since found this provision to be

⁷⁷ Law 1801 of 2016, Article 32. Available in Spanish at: http://legal.legis.com.co/document/Index?obra=legcol&document=legcol_5a02c43c4f6f4829947fe86fb5f72470.

⁷⁸ Decree 1704 of 2012, Articles 2 and 4. Available in Spanish at: https://www.mintic.gov.co/portal/604/articles-3559_documento.pdf.

⁷⁹ For a discussion of these decisions, see the Colombia RTI Rating. Available at: <https://www.rti-rating.org/country-data/Colombia/>.

⁸⁰ Law 1801 of 2016, note 77, Article 53.

unconstitutional.⁸¹ Congress is discussing a replacement law which would reflect the Court's decisions. However, the primary proposed assembly law appears to be draft law 281 of 2018, which would introduce additional criminal provisions for vandalism during social protests or incitement or promotion of vandalism or blocking roads during protests.⁸²

This reflects a trend towards criminalisation of protest in recent years, dating from a set of 2011 amendments. One of these introduced a new provision to the Penal Code which criminalises obstructing public roads or transportation infrastructure.⁸³ This amendment was introduced in response to a series of protests, with the Attorney General threatening to prosecute protestors who blocked roads. Unlike the provisions of the new Police Code, it has already survived a constitutional challenge.⁸⁴ Given the context in which the amendment was introduced, and the fact that some of the wording is vague, this provision represents a restriction on freedom of assembly and in practice has frequently been used to criminally charge protestors.⁸⁵

National security laws

The legacy of armed conflict and criminal violence in Colombia means that the State still employs heavily securitised responses when dealing with perceived threats. For example, a number of human rights defenders remain imprisoned on charges of rebellion, terrorism, conspiracy to commit crime and so on after being linked to guerrilla groups on highly questionable evidentiary grounds.⁸⁶ Some of these challenges are more in practice than in the law. For example, the definition of “rebellion” in the criminal code is reasonably constrained, only applying to those who use weapons.⁸⁷

The legal framework governing surveillance also has key weaknesses. Colombia's Law 1621 of 2013, which regulates intelligence activities, contains a vague definition of communications surveillance which the Constitutional Court has interpreted as granting intelligence agencies the ability to *monitor* the entire electromagnetic spectrum via any technological means. However, *interception* is permitted only as part of a criminal investigation and with a judicial order. This

⁸¹ See Constitutional Court, Sentencia C-223/17 and Sentencia C-009/18. Available in Spanish at <http://www.corteconstitucional.gov.co/relatoria/2018/C-009-18.htm> and <http://www.corteconstitucional.gov.co/relatoria/2017/C-223-17.htm>.

⁸² Draft Law 281 of 2018. Available in Spanish at: https://www.redjurista.com/appfolders/images/news/GC_1080_2018.pdf.

⁸³ Penal Code, Article 353A. Available in Spanish at: https://leyes.co/codigo_penal/353A.htm.

⁸⁴ For an English language description of the case, see Global Freedom of Expression, Challenge to the Constitutionality of Obstructing Public Streets. Available at: <https://globalfreedomofexpression.columbia.edu/cases/constitucionalidad-de-obstruccion-de-vias-publicas-que-afecten-el-orden-publico/>.

⁸⁵ CELS, *Latin American State Responses to Social Protest*, 2016. Available at: https://www.cels.org.ar/protestasocial_AL/en.html.

⁸⁶ Michel Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders, Visit to Colombia, 2018, End of Mission Statement, available at: https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf; and LAWG, *Corruption, Human Rights Scandal Rocks the Colombian Armed Forces*, available at: <https://www.lawg.org/corruption-human-rights-scandal-rocks-the-colombian-armed-forces/>.

⁸⁷ Penal Code, Article 467. Available in Spanish at: https://leyes.co/codigo_penal/467.htm.

distinction is not very clear and in practice may facilitate mass surveillance given that Colombia has engaged in multiple mass surveillance programmes at least since the early 2000s.⁸⁸

Whistleblower protection and other protection systems for threatened activists

Colombia has a well established protection mechanism which has historically protected various at-risk professions. Decree 4912 of 2012 consolidated these protection programmes under the National Protection Unit, which is now responsible for protecting 19 classes of people, including opposition politicians, leaders or representatives of human rights, civic, social, communal or other organisations, journalists, victims of human rights violations, civil servants responsible for human rights and peace policies and attorneys who participate in human rights cases.⁸⁹ At-risk individuals may request protection, which includes a range of measures such as the provision of an armoured car or guards, installation of security systems, relocation and others.⁹⁰

While this protection mechanism has provided important protection over the years, it has also been criticised for taking an overly bureaucratic approach.⁹¹

The protection mechanism does not, however, directly protect whistleblowers and Colombia does not currently have a whistleblower protection law.

Dominican Republic

Freedom of association: non-profit registration requirements and restrictions on advocacy

The government is required to ensure that non-profit associations are granted the same powers and privileges that are granted to other legal entities and that no restrictions are introduced that may be discriminatory or establish additional requirements than for other associations.⁹² The registration procedure for non-profit associations is fairly standard and registration may only be denied for lack of compliance with the legal requirements governing NGOs, after they have been given an opportunity to correct errors in the application.⁹³

Funding restrictions, financial report requirements and special tax requirements for non-profit organisations

⁸⁸ Necessary and Proportionate, *Comparative Analysis of Surveillance Laws and Practices in Latin America*, 2016. Available at: <https://necessaryandproportionate.org/comparative-analysis-surveillance-laws-and-practices-latin-america>.

⁸⁹ Decree 4912 of 2011, Article 6. Available in Spanish at: <https://www.acnur.org/fileadmin/Documentos/BDL/2014/9983.pdf?file=fileadmin/Documentos/BDL/2014/9983>.

⁹⁰ Decree 4912 of 2011, note 89, Article 11.

⁹¹ International Media Support, *Defending Journalism*, 2017, available at: <https://www.mediasupport.org/publication/defending-journalism/>; and Michel Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders, note 86.

⁹² Law 122-05, Article 20(b). Available in Spanish at: <https://gm-consult.com/images/pdf/ley-de-regulacion-y-fomento-de-las-asociaciones-sin-fines-de-lucro.pdf>.

⁹³ *Ibid.*, Articles 3 and 5; and Regulations 40-08, available in Spanish at: <http://economia.gob.do/mepyd/wp-content/uploads/archivos/asfl/marco-legal/decreto-0840-reglamento-ley-122-05.pdf>.

Non-profit associations that are legally incorporated in the Dominican Republic may benefit from a tax exemption.⁹⁴ However, one source indicates that many NGOs in the Dominican Republic do not take advantage of this, possibly because of ambiguity in the legal framework about obtaining tax benefits.

While there are no restrictions on international funding, annual reporting obligations for NGOs require a report on international donations, including information on the donor, the amount of money donated and the names of the programmes or projects that the funds supported.⁹⁵

Media regulation

INDOTEL is the Dominican Republic's regulatory agency for telecommunications.⁹⁶ Its Board of Directors consists of five persons appointed by the Executive. Three of these five are chosen from a list prepared by the major telecommunications companies. They may be removed by the President or the Supreme Court in specified instances.⁹⁷ This means that INDOTEL is not well protected from influence from the executive or from the private sector. In addition, none of INDOTEL's objectives explicitly include promoting community broadcasting or media diversity.⁹⁸ This may be one reason why, in practice, media ownership remains highly concentrated.⁹⁹

Content restrictions

The Constitution guarantees the right to free expression.¹⁰⁰ The Law on Expression and Dissemination of Thought, enacted in 1962 before the current Constitution, contains some outdated language on restrictions on freedom of expression, such as that it is not protected when it contradicts the honour of persons, social order or public peace.¹⁰¹

Defaming or insulting the country's president or certain civil service agents (including diplomats) could result in three months' imprisonment.¹⁰² Defaming individuals is also punishable by up to three months' imprisonment.¹⁰³ Defamation of government bodies and public officials was

⁹⁴ Law 122-05, note 92, Article 50.

⁹⁵ *Ibid.*, Article 51(b).

⁹⁶ Law 153-98, Article 76(2). Available in Spanish at: <https://indotel.gob.do/media/5132/ley-no-153-98.pdf>.

⁹⁷ *Ibid.*, Articles 81 and 89.

⁹⁸ *Ibid.*, Article 77.

⁹⁹ As discussed by UNESCO, *Análisis del Desarrollo Mediático en República Dominicana*, 2017, p. 84. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000252827>.

¹⁰⁰ Constitution, 2015, Article 49. Available in Spanish at: <https://observatorioplanificacion.cepal.org/sites/default/files/instrument/files/Rep%C3%BAblica%20Dominicana%202015.pdf>.

¹⁰¹ Law 6132. Available in Spanish at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83343/91947/F1965099340/DOM83343.pdf>.

¹⁰² Penal Code, Articles 368 and 369. Available in Spanish at:

https://www.oas.org/juridico/spanish/mesicic2_repdom_sc_anexo_21_sp.pdf.

¹⁰³ *Ibid.*, Article 371.

formerly prohibited by the Law on Expression and Dissemination of Thought¹⁰⁴ but the Constitutional Court invalidated those provisions in 2016.¹⁰⁵

In 2019, a proposed law to create an Electoral Observatory of Social Networks to identify “fake news” created controversy due to concern about its impact on freedom of expression. As of today, the proposal appears not to have moved forward.¹⁰⁶

Internet and digital rights

The Internet regulatory framework is generally enabling. There are no apparent instances of the government blocking Internet access or censoring online content without appropriate legal authority.¹⁰⁷ However, there have been recent allegations that the government has monitored private online communications.¹⁰⁸

Right to information and secrecy laws

The Constitution guarantees the right to information.¹⁰⁹ Access to information is governed by the General Law of Free Access to Public Information, which is not a particularly strong law, ranking 116th out of the 128 laws assessed by the RTI Rating.¹¹⁰ A key weakness in the law is the lack of an administrative oversight body. The legal framework also lacks a strong public interest override and the law does not override inconsistent State secrets legislation.¹¹¹

Dominican Republic’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	5	83%
2. Scope	30	21	70%
3. Requesting Procedures	30	14	47%
4. Exceptions and Refusals	30	11	37%
5. Appeals	30	3	10%
6. Sanctions and Protections	8	2	25%
7. Promotional Measures	16	3	19%
Total score	150	59	39%

¹⁰⁴ Law 6132, note 101, Article 29.

¹⁰⁵ International Press Institute, “Dominican Republic Partially Tosses Criminal Defamation Law”, 23 February 2016. Available at: <https://ipi.media/dominican-republic-partially-tosses-criminal-defamation-law-2>.

¹⁰⁶ Civicus, *Legislation Threatens Freedom of Speech*, 23 May 2019. Available at:

<https://monitor.civicus.org/newsfeed/2019/05/23/legislation-threaten-freedom-expression/>.

¹⁰⁷ U.S. Department of State, 2018 Country Reports on Human Rights Practices: Dominican Republic. Available at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/dominican-republic>.

¹⁰⁸ *Ibid.*

¹⁰⁹ Constitution 2015, note 100, Article 49.

¹¹⁰ Law 200-04. Available in Spanish at: https://www.oas.org/juridico/spanish/mesicic3_repdom_ley200.pdf.

¹¹¹ RTI Rating, Dominican Republic. Available at: <https://www.rti-rating.org/country-data/Dominican%20Republic>.

Restrictions on freedom of assembly

The Constitution guarantees the right to association and assembly without the need to request permission.¹¹² However, a 1962 law requires prior notice of at least 48 hours for an assembly.¹¹³

Reforms in the 2016 Organic Act on the National Police made significant progress towards alignment with international standards on police use of force and firearms.¹¹⁴ The law states that the use of force will only be lawful as a last resort and in compliance with the criteria of opportunity, coherence and proportionality, in accordance with the Constitution of the Republic, laws and regulations.¹¹⁵ In practice, however, police harassment of peaceful protestors and use of excessive force has remained a challenge, possibly due to a lack of effective monitoring mechanisms.¹¹⁶

National security laws

No notable concerns in the legal framework were identified.

Whistleblower protection and other protection systems for threatened activists

The Dominican Republic does not have a comprehensive whistleblower protection framework.

El Salvador

Freedom of association: non-profit registration requirements and restrictions on advocacy

Domestic and international non-profits can register as associations or foundations under the Law for Not-for-Profit Associations and Foundations¹¹⁷ or at the local level under the Municipal Code if they wish to be attached to a municipality.¹¹⁸ Domestic and international associations may obtain legal personality by registering with the Ministry of the Interior.¹¹⁹

To register with the Ministry of the Interior, an organisation must submit the appropriate documents to the Registry of Not-for-Profit Associations and Foundations, which is supposed to

¹¹² Constitution 2015, note 100, Articles 47 and 48.

¹¹³ A copy of this law could not be located. But it was described in Yildalina Tatem Braohe, *La Cuestión del Permiso Previo para las Manifestaciones*, 26 May 2018. Available at: <https://acento.com.do/2018/opinion/8569172-la-cuestion-del-permiso-previo-las-manifestaciones/>.

¹¹⁴ The Law on Police Use of Force Worldwide, Dominican Republic. Available at: <https://www.policinglaw.info/country/dominican-republic>.

¹¹⁵ Law 590-16, Article 14(10). Available in Spanish at: https://www.poderjudicial.gob.do/documentos/PDF/leyes/LEY_ley__organica_de_la__policia__nacional_no._590_16.pdf.

¹¹⁶ Human Rights Council, “Summary of Stakeholders Submissions on Dominican Republic”, para. 18. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/333/18/PDF/G1833318.pdf?OpenElement>.

¹¹⁷ Law on Non-Profit Associations and Foundations. Available in Spanish at: http://www.oas.org/juridico/spanish/mesicic3_slv_funciones.pdf.

¹¹⁸ Decree 274, Article 12. Available in Spanish at: https://tramites.gob.sv/media/Codigo_municipal.pdf.

¹¹⁹ Law on Non-Profit Associations and Foundations, note 117, Article 26.

respond within 90 days noting any deficiencies in the application. The Registry has problematically broad discretion to deny registration, including if the organisation is found to contravene public order, morals or good customs.¹²⁰ In practice, registration costs can be high (between 500 and 800 USD), the 90 day timeframe is not always respected and there are challenges with the Registry exceeding its authority by permitting other ministries to object to an organisation's by-laws.¹²¹

While there are challenges with registration, civil society is generally able to operate and engage in advocacy freely. A judicial order is required to dissolve an organisation.¹²²

Since 2016, El Salvador has been engaged in a process of developing a new non-profit law.¹²³

Funding restrictions, financial report requirements and special tax requirements for non-profit organisations

There are no special rules that restrict the ability of organisations to obtain or manage foreign funds.¹²⁴ Organisations are also able to obtain tax-exempt status if they are recognised as public interest entities.¹²⁵ Such status must be renewed annually and may be revoked at any time if the grounds on which it was granted cease to exist.¹²⁶ Procedures for this have not been defined, although in practice there are no apparent instances where this status has been revoked.¹²⁷

Media regulation

The media regulatory body is the General Superintendence of Electricity and Telecommunications (SIGET), an autonomous public entity responsible for licensing broadcasters.¹²⁸ SIGET has some protections for its independence although the executive has a strong influence on management. SIGET's board of directors is made up of one director nominated by the President, one nominated by the President from a list generated by certain private and public entities and one named by the Supreme Court of Justice. SIGET managers are appointed by the Director who was selected directly by the President.¹²⁹

¹²⁰ *Ibid.*, Article 65.

¹²¹ ICNL, Civic Freedom Monitor: El Salvador, 10 November 2018. Available at: <http://www.icnl.org/research/monitor/elsalvador.html>.

¹²² Law on Non-Profit Associations and Foundations, note 117, Article 65.

¹²³ Civicus and FESPAD, "El Salvador: Presentación conjunta al Examen Periódico Universal de las Naciones Unidas", p. 5. Available at: <https://civicus.org/documents/ComunicadoConjuntoEPUElSalvador.SP.pdf>.

¹²⁴ ICNL, Civic Freedom Monitor: El Salvador, note 121.

¹²⁵ Income Tax Law, Article 6(c), available in Spanish at: <http://pdba.georgetown.edu/Parties/ElSalvador/Leyes/LeyRenta.pdf>; Law on Non-Profit Associations and Foundations, note 117, Article 7.

¹²⁶ Law on Non-Profit Associations and Foundations, note 117, Article 7.

¹²⁷ ICNL, Civic Freedom Monitor: El Salvador, note 121.

¹²⁸ Law Creating SIGET, Article 1. Available in Spanish at: <https://www.siget.gob.sv/normativa/>.

¹²⁹ *Ibid.*, Articles 6, 7 and 13.

Broadcast media are highly concentrated among a small group of business elite.¹³⁰ Spurred by a 2016 Constitutional Court decision, a 2016 amendment to the Telecommunications Act reformed the licence allocation process and recognised community radio stations.¹³¹ This amendment could encourage greater media diversity if it is fully implemented, which has so far been a challenge.¹³²

The press generally operates freely. However, one potentially troubling issue is a 2013 law which imposes obligations on the press to publish verbatim responses from any person who believes that reporting referring to them was offensive or inaccurate. Penalties for failing to do this may include prison sentences.¹³³ In practice, use of the law appears to be rare.¹³⁴

Content restrictions

The Constitution protects every person's right to freely express and disseminate his or her thoughts provided that they do not subvert public order or injure the morals, honour or private lives of others.¹³⁵

The criminal code of El Salvador includes a desacato provision under which offending the honour of a public official could lead to a prison sentence of six months to three years.¹³⁶ Slander, libel and defamation are also criminal offences, although only punishable by fines.¹³⁷ However, when combined with the 2013 law regarding right of response (described above), criminal penalties could conceivably be imposed where a journalist or media entity charged with defamation does not publish a response from the aggrieved person.

In 2018, a law was proposed in the Legislative Assembly to regulate broadcast content with the goal of protecting various sectors of the population. The proposal was controversial due to the scope of powers given to the regulatory authority and fears that it would permit censorship instead of creating an appropriately tailored framework for child protection. The proposal appears to remain pending.¹³⁸

¹³⁰ BBC, El Salvador Profile: Media, 6 March 2018. Available at: <https://www.bbc.com/news/world-latin-america-19401935>.

¹³¹ Decree 373. Available in Spanish at: <https://www.siget.gob.sv/normativa/>. For an English summary of the relevant Constitutional Court case, see <https://globalfreedomofexpression.columbia.edu/cases/action-challenging-constitutionality-el-salvador-telecommunications-act/>.

¹³² European Union Election Observation Mission, El Salvador 2019: Final Report, 3 February 2019. Available at: https://eeas.europa.eu/sites/eeas/files/eu_eom_el_salvador_2019_final_report_eng.pdf.

¹³³ Special Law on the Exercise of the Right to Correction or Reply, 2013. Available in Spanish at: https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117_073354051_archivo_documento_legislativo.pdf.

¹³⁴ Freedom House, Freedom of the Press: El Salvador, 2015. Available at: <https://freedomhouse.org/report/freedom-press/2015/el-salvador>.

¹³⁵ Constitution, Article 6. Available at:

http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/salvador/salvdr-s.htm.

¹³⁶ Penal Code, Article 339. Available in Spanish at:

<https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf>.

¹³⁷ *Ibid.*, Articles 177, 178 and 179.

¹³⁸ Civicus and FESPAD, note 123, p. 12. For the proposed text, see:

<https://www.asamblea.gob.sv/sites/default/files/documents/correspondencia/63F8C903-4CF1-49E6-BB24-E4AD46A8E840.pdf>.

Internet and digital rights

Access to the Internet is generally unrestricted and there is no censorship of online content.¹³⁹ One potential area of concern regarding digital rights is government surveillance powers, discussed below in the national security section. Another troublesome area is Article 42-D of the Telecommunications Law, which requires telecommunications network operators to allow authorities to access encrypted communications. The provision does not clearly articulate penalties and introduces some confusion as to the legality of certain encryption technologies which the telecommunications providers cannot decrypt.¹⁴⁰

Right to information and secrecy laws

El Salvador's Law on Access to Public Information is a strong law, ranking in tenth place out of 128 countries globally. Key strengths include the scope of information it covers and the fact that it establishes clear procedures for requesting information. A key weakness is that law does not override inconsistent secrecy laws.¹⁴¹ Furthermore, a 2017 Supreme Court decision widened authorities' discretion to deny a request if they deem that releasing the information is not in the public interest or if the request deliberately restricts the institution's work.¹⁴²

El Salvador's RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	6	100%
2. Scope	30	30	100%
3. Requesting Procedures	30	24	80%
4. Exceptions and Refusals	30	22	73%
5. Appeals	30	23	76%
6. Sanctions and Protections	8	1	13%
7. Promotional Measures	16	16	100%
Total score	150	122	81%

Restrictions on freedom of assembly

¹³⁹ U.S. Embassy in El Salvador, Human Rights Report 2016, available at: https://sv.usembassy.gov/our-relationship/official-reports/hrr_2016/; and Freedom House, Freedom in the World: El Salvador, 2019, available at: <https://freedomhouse.org/report/freedom-world/2019/el-salvador>.

¹⁴⁰ Telecommunications Law, Article 42-D. Available in Spanish at: <https://www.siget.gob.sv/normativa/> and discussed in English at: <https://necessaryandproportionate.org/comparative-analysis-surveillance-laws-and-practices-latin-america>.

¹⁴¹ RTI Rating, El Salvador. Available at: <https://www.rti-rating.org/country-data/El%20Salvador/>.

¹⁴² Civicus, "Supreme Court Ruling Strikes a Blow to the Right to Access Public Information", 20 December 2017. Available at: <https://monitor.civicus.org/newsfeed/2017/12/20/supreme-court-ruling-strikes-blow-right-access-information/>.

Article 7 of the Constitution confirms that the “People of El Salvador have the right to freely associate and to assemble peacefully without weapons for any lawful purpose.”¹⁴³ The Constitutional Court has affirmed that this right cannot be subject to prior approval from the State.¹⁴⁴ Despite this general protection against prior approval for demonstrations, under the Electoral Code, demonstrations or meetings with “electoral propaganda purposes” require organisers to apply in writing to the Mayor or the City Clerk at least one day in advance of the meeting or demonstration. Requests can be denied if another political party or coalition has made a request for the same day.¹⁴⁵

El Salvador’s anti-terrorism law could permit terrorism charges to be brought against protestors. One provision, in particular, prohibits participating in the occupation of public places using weapons or similar articles. This covers conduct that certainly does not rise to the level of terrorism and could possibly cover even a peaceful assembly, depending how “similar articles” is understood.¹⁴⁶

National security laws

The anti-terrorism law does not clearly define terrorism or terrorist acts. The law sets as its general objective the prevention and sanctioning of acts which intend to create alarm or fear in the population by endangering persons, important material goods, the democratic system or international peace. However, even this objective, which is anyway not very precise, is not tied to specific acts.¹⁴⁷ In addition, certain provisions are problematic, such as Article 8, which provides for four to eight years’ imprisonment for publicly apologising for or inciting others to commit terrorism.¹⁴⁸ Without a clear definition of terrorism this creates a chilling effect on free speech. Similarly, the anti-terrorism law defines terrorism in a way that could potentially include peaceful human rights activities in regions controlled by gangs (defined as terrorists under the law).¹⁴⁹

In terms of surveillance, the Constitution prohibits telecommunications interference except for temporary interventions that are judicially authorised.¹⁵⁰ Reasonably strong privacy protections against government surveillance are also in place via laws such as the Law on Telecommunications Intervention, which provides for a proportionality test and defines surveillance as an exceptional measure.¹⁵¹ However, Article 31 of this Law permits the Office of the Prosecutor to develop regulations for police surveillance. In practice, these regulations have been classified as

¹⁴³ Constitution, Article 7. Available at: <http://pdba.georgetown.edu/Constitutions/ElSal/constitucion.pdf>.

¹⁴⁴ As summarized by ICNL, Civic Freedom Monitor: El Salvador, note 121.

¹⁴⁵ Electoral Code, Articles 234, 235 and 236. Available in Spanish at: <http://pdba.georgetown.edu/Parties/ElSalvador/Leyes/codigoelectoral.pdf>.

¹⁴⁶ Special Law against Terrorist Acts, Article 6. Available in Spanish at: <https://www.acnur.org/fileadmin/Documentos/BDL/2016/10430.pdf>.

¹⁴⁷ *Ibid.*, Article 1.

¹⁴⁸ *Ibid.*, Article 8.

¹⁴⁹ Frontline Defenders, UPR Submission: El Salvador 2019, 28 March 2019. Available at: <https://www.frontlinedefenders.org/en/statement-report/upr-submission-el-salvador-2019>.

¹⁵⁰ Constitution, Article 24. Available at: <http://pdba.georgetown.edu/Constitutions/ElSal/constitucion.pdf>.

¹⁵¹ Special Law on Telecommunications Intervention, Article 2. Available in Spanish at: http://www.oas.org/juridico/PDFs/mesicic4_slv_telecom.pdf.

confidential, so that Salvadorans do not know which procedures and mechanisms may be used to subject them to surveillance.¹⁵²

Whistleblower protection and other protection systems for threatened activists

The Special Law for the Protection of Victims and Witnesses offers three types of protection measures: ordinary measures to protect the identity and location of a victim or witness; extraordinary measures that provide for temporary or permanent protection in light of conditions of extreme danger; and, urgent measures that require immediate attention. Notably, the Law applies not only to victims or witnesses but also to any other person who is in a situation of risk or danger as a consequence of his or her involvement in the investigation of a crime or a judicial process.¹⁵³

A law for the protection of human rights defenders was proposed by members of the Legislative Assembly on 6 September 2018. The law would create a protection system (including a registry of violations) and recognise rights in a system that envisaged the equal involvement of State institutions and civil society representatives and a commitment of State resources.¹⁵⁴

El Salvador does not have a comprehensive whistleblower protection law.

Guatemala

Freedom of association: non-profit registration requirements and restrictions on advocacy

There are three organisational forms for civil society organisations in Guatemala: associations, foundations, and non-governmental organisations (NGOs). Currently, registration procedures for all three are relatively straightforward, there are no major legal restrictions on the ability of organisations to engage in advocacy and organisations may only be dissolved by a court on limited grounds.¹⁵⁵

A controversial draft law proposed in 2018 seeks to amend the law which regulates NGOs. The bill places additional and potentially burdensome requirements on NGO registration. NGOs would be required to register with the National Registry of Persons in addition to securing licences from the government entities responsible for their type of activity. This includes registering with the Superintendence of Tax Administration, the Secretariat for Planning and Programming, and the General Comptroller's Office.¹⁵⁶ The bill also would impose foreign funding restrictions,

¹⁵² Fundación Acceso, ¿Privacidad digital para defensores y defensoras de derechos humanos?, 16 May 2016, p. 102. Available at: <https://necessaryandproportionate.org/files/2016/05/16/investigacion-privacidad-digital-fa.pdf>.

¹⁵³ Special Law for the Protection of Victims and Witnesses, Articles 1 and 4(b). Available in Spanish at: <http://www.ute.gob.sv/phocadownload/Documentos/Ley%20Especial%20para%20la%20Proteccion%20de%20Victimas%20y%20Testigos.pdf>.

¹⁵⁴ Frontline Defenders, note 149.

¹⁵⁵ The procedures are outlined in the Civil Code and the Law of Non-Governmental Organisations for Development. For a summary in English, see ICNL, Research Monitor: Guatemala, 22 July 2019. Available at: <http://www.icnl.org/research/monitor/Guatemala.html>.

¹⁵⁶ Law Initiative 5257, Article 3. Available in Spanish at: <https://leyes.infile.com/idl/2017/registro5257.pdf>.

discussed below. While controversy over the bill has led to it being stalled in Congress, there are still concerns that it will be passed.¹⁵⁷

Funding restrictions, financial report requirements and special tax requirements for non-profit organisations

Organisations can obtain tax exempt status and register to receive tax deductible donations via processes that do not appear to be overly burdensome.¹⁵⁸ There are no restrictions on domestic civil society organisations receiving foreign or international funding.¹⁵⁹ However, the draft law described above, if passed, would oblige NGOs to report any foreign funding, along with the purpose of such funding and other details, to the Secretariat for Planning and Programming.¹⁶⁰ Authorities would also be empowered to cancel NGO registration immediately if the NGO uses foreign funding to try to alter the public order. Neither a definition for this nor precise procedures for undertaking such cancellation are defined in the draft law.¹⁶¹

Content restrictions

The Criminal Code penalises defamation, slander and insult. Slander is defined as the false imputation of a crime to another person and is punishable between four months to two years' imprisonment. It is a defence to an accusation of slander to prove the veracity of the impugned statement. Insult is punishable with two months to one year's imprisonment and is defined as an expression which or action carried out to dishonour, discredit or scorn another person. Unlike slander, the accused cannot rely on the truth as a defence for insult. Finally, criminal defamation is an accusation constituting slander or insult where the medium of dissemination can provoke hatred or discredit or which will reduce the honour, dignity or the decorum the victim before society. Defamation is punishable by a sentence of up to five year's imprisonment.¹⁶²

The Law on Expression of Thought prohibits publications which imply treason, have a seditious character, harm morals, disrespect private life or contain slander or libel.¹⁶³ The Radio Communications Law contains a number of content restrictions, prohibiting transmissions which are contrary to the security of the State or public order (without further definition), are offensive to civic values or national symbols, injure religious belief, constitute vulgar comedy or offensive sounds, or are contrary to morals and good customs, among other things. Violations of these requirements may result in a fine.¹⁶⁴

¹⁵⁷ ICNL, Research Monitor: Guatemala, note 155.

¹⁵⁸ Council on Foundations, Guatemala, February 2019. Available at: <https://www.cof.org/content/nonprofit-law-guatemala>.

¹⁵⁹ ICNL, Research Monitor: Guatemala, note 155.

¹⁶⁰ Law Initiative 5257, note 156, Article 8.

¹⁶¹ ICNL, Civic Freedom Monitor: Guatemala, note 155.

¹⁶² Guatemalan Criminal Code, Articles 159-164. Available in Spanish at: http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20compilaciones/Compilacion%20Leyes%20Penales/expedientes/01_CodigoPenal.pdf.

¹⁶³ Law of Expression of Thought (Decree No. 9), Article 28. Available in Spanish at: gobnacionhuehuetenango.gob.gt/wp-content/uploads/2017/10/LEY-DE-LA-LIBRE-EMISION-DEL-PENSAMIENTO.pdf.

¹⁶⁴ Decree Law 433, Articles 41 and 43. Available in Spanish at: <http://radiotgw.gob.gt/lai/2018/DECRETOLEY433.pdf>.

Internet and digital rights

While Guatemala currently does not have a highly restrictive Internet regulatory regime, several proposed laws could potentially restrict freedom of expression online. A provision of the draft cybercrime law criminalises harassment, defined as deliberately, without permission or legally recognised consent, repeatedly harassing a person through personal attacks or disclosure of confidential information through any means of electronic communication.¹⁶⁵ This is insufficiently precise and could potentially include online criticisms of public figures. Another proposed law introduces a crime of “cyberterrorism” which punishes spreading information online with the aim of causing alarm, instilling fear or compelling the government with between ten and 20 years’ imprisonment.¹⁶⁶ Again, this is not clear enough to prevent its application to those who criticise public figures or the government online.

Right to information and secrecy laws

Guatemala’s Access to Public Information Law is relatively strong, ranking 55th out of the 128 countries assessed on the RTI Rating. It has a strong promotional scheme, a broad scope and a clear articulation of the right to access. However, there is no independent oversight body and information can be classified as secret by other legislation.¹⁶⁷

Guatemala’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	4	67%
2. Scope	30	29	97%
3. Requesting Procedures	30	16	53%
4. Exceptions and Refusals	30	21	70%
5. Appeals	30	5	17%
6. Sanctions and Protections	8	3	38%
7. Promotional Measures	16	14	88%
Total score	150	92	61%

Restrictions on freedom of assembly

Article 33 of the Constitution states that the right of assembly and public demonstration may not be restricted, diminished or restrained.¹⁶⁸ However, it also specifies that prior notice must be given to authorities by organisers of an assembly. The procedures for giving prior notice are not regulated

¹⁶⁵ Law Initiative 5254, Article 18. Available in Spanish at: <https://leyes.infile.com/idl/2017/registro5254.pdf>.

¹⁶⁶ Derechos Digitales, ¿Terrorismo Cibernético en Guatemala?, 21 June 2018. Available at: <https://www.derechosdigitales.org/12205/error-402-terrorismo-cibernetico-en-guatemala/>.

¹⁶⁷ RTI Rating, Guatemala. Available at: <https://www.rti-rating.org/country-data/Guatemala/>.

¹⁶⁸ Constitution, Article 33. Available at: https://www.constituteproject.org/constitution/Guatemala_1993.pdf.

by law but in practice organisers typically provide basic information about the time, date and location of the assembly,¹⁶⁹ which appears to act as a prior notice requirement, rather than requiring prior approval from authorities. The Public Order Law authorises the use of force in dispersing unauthorised protests if the president declares a “state of prevention”.¹⁷⁰ Guatemalan law also lacks clear guidance on acceptable levels of use of force in response to protests.¹⁷¹

Another law, adopted in 2014, places limits on protests which impact traffic circulation or obstruct roads. Some aspects of this law, particularly criminal sanctions for the former, are insufficiently precise and risk criminalising certain forms of protest.¹⁷² A proposed law would classify conduct which affects the channels of communication or transport as an act of terrorism.¹⁷³

National security laws

The Public Order Law allows the president to authorise “states of siege” under which authorities have increased powers to, for example, ban or restrict protests, arrest suspects, increase military presence in a region and dissolve associations and organisations.¹⁷⁴ Activists have alleged that the government frequently uses states of siege to justify restricting the rights of activists and community organisations, particularly those whose protests threaten business interests.¹⁷⁵ This misuse is aided by an expansive set of justifications for declaring a state of siege, including grounds such as “rebellion” which are not defined.¹⁷⁶

Although Guatemala’s regulatory framework places important limits on government surveillance powers, generally requiring a judicial order, it also permits an extensive range of types of surveillance.¹⁷⁷ In addition, a proposed law would create a new intelligence network which, while designed to facilitate information sharing regarding terrorist activities, does not have precisely defined functions and could justify increased surveillance of citizens.¹⁷⁸ The Guatemalan government has purchased surveillance technology which it used to engage in illegal monitoring of journalists, opposition politicians and activists.¹⁷⁹

¹⁶⁹ ICNL, Civic Freedom Monitor: Guatemala, note 155.

¹⁷⁰ Public Order Law, Article 8(4). Available in Spanish at: <https://mingob.gob.gt/wp-content/uploads/2016/01/04-marco-constitucional.pdf>.

¹⁷¹ Policing Law. Available at: <https://www.policinglaw.info/country/guatemala>.

¹⁷² Law for the Circulation of Traffic Free from Obstacle. Available in Spanish at: <http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2014/pdfs/decretos/D08-2014.pdf>.

¹⁷³ Prensa Libre, *Dos Proyectos de Ley Podrían Usarse para Limitar Protestas Ciudadanas y la Libertad de Expresión*, 22 February 2018. Available at: <https://www.prensalibre.com/guatemala/politica/dos-proyectos-de-ley-podrian-usarse-para-limitar-protestas-ciudadanas-y-la-libertad-de-expresion>.

¹⁷⁴ Public Order Law, note 170, Articles 16 and 19.

¹⁷⁵ ISHR and International Platform against Impunity, Guatemala, August 2015. Available at: https://www.ishr.ch/sites/default/files/article/files/guatemala_final.pdf.

¹⁷⁶ Public Order Law, note 170, Article 16.

¹⁷⁷ Necessary and Proportionate, note 88, <https://necessaryandproportionate.org/comparative-analysis-surveillance-laws-and-practices-latin-america> (describing the Law against Organised Crime).

¹⁷⁸ Derechos Digitales, note 166.

¹⁷⁹ Marianne Diaz, *Herramientas para Perseguir a la Oposición en Guatemala*, *Derechos Digitales*, 16 August 2018. Available at: <https://www.derechosdigitales.org/12385/herramientas-para-perseguir-a-la-oposicion-en-guatemala/>.

Whistleblower protection and other protection systems for threatened activists

Guatemala does not have a public policy for the protection of human rights defenders.¹⁸⁰ Guatemala also does not have a comprehensive whistleblower protection law. While the United Nations-backed anti-impunity commission (CICIG) was in the country, it helped to establish a witness protection programme but it remains to be seen if this programme will continue with CICIG's exit from Guatemala.¹⁸¹

Honduras

Freedom of association: non-profit registration requirements and restrictions on advocacy

Non-profit organisations in Honduras are given legal status pursuant to the NGO law and the Honduran Civil Code. All domestic NGOs which are granted legal personality must register with the civil association registry unit within the Secretary of the Interior and Population (formerly URSAC by the Spanish acronym, now DIRSAC).¹⁸² DIRSAC is also responsible for monitoring civil associations.¹⁸³ Efforts have been made in recent years to simplify the registration process and allow for online registration. The Secretary of the Interior can only refuse to register groups for a failure to comply with the registration requirements, if the by-laws contain provisions which violate the Constitution or other laws, or if the organisation tries to register under the name and logo of an already registered organisation.¹⁸⁴

The Secretary of the Interior may only cancel the legal personality of civil associations when their membership drops below a specified number (seven members for domestic associations), the organisation has failed to present annual reports and financial statements for two consecutive years or if a legal representative of the organisation commits a crime on behalf of the organisation and upon the direction of the organisation. Some due process rights are available to deregistered organisations under Honduran administrative law, including the right to appeal to administrative courts.¹⁸⁵

In practice, there have been issues with the scope of DIRSAC's authority and its ability to register organisations although it is not clear whether these are primarily linked to capacity issues or represent an intentional targeting of civil society. For example, in 2014 URSAC attempted to

¹⁸⁰ Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Guatemala, 7 May 2018.

Available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsrVIorLp58pj2f0XtkalCbyI%2FUcviUppmxFQCO%2FLXzfgCo6SyVQD9AjVEfvZhjKOIsSZWnW763gqcIJUW3f4FLyv7dK31vBAc7JZ%2F15vdlNL>.

¹⁸¹ Washington Office on Latin America, Fact Sheet: The CICIG's Legacy in Fighting Corruption in Guatemala, 27 August 2019. Available at: <https://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala/>.

¹⁸² Executive Agreement 65-2013, Article 12. Available in Spanish at:

https://www.tsc.gob.hn/web/leyes/Reglamento_ley_ONGD_2013.pdf.

¹⁸³ Agreement 770-A-2003. Available in Spanish at:

<http://www.fenagh.net/web/docs/URSAC%20Acuerdo%20No%20770.pdf>.

¹⁸⁴ Agreement 441-2016, Article 11. Available in Spanish at:

<http://www.icnl.org/research/library/files/Honduras/acuerdo.pdf>.

¹⁸⁵ Executive Agreement 65-2013, note 182, Articles 38, 40-42.

cancel the legal status of 5,429 NGOs, including a prominent freedom of expression organisation, for alleged failure to present annual financial reports. However, many of these deregistrations were later reversed after it was found that many of the NGOs had in fact submitted their annual reports.¹⁸⁶

Funding restrictions, financial report requirements and special tax requirements for non-profit organisations

NGOs are required to submit an annual financial report to the Secretary of Interior and Population. As described above, failure to submit the report can result in loss of registration and there are some concerns with the scope of government authority in enforcing this requirement.¹⁸⁷ Under a new tax code, civil society organisations with not-for-profit purposes can obtain tax exempt status.¹⁸⁸

Media regulation

In breach of international standards, only members of the Honduran Association of Journalists are permitted to practise professional journalism within Honduras. Practising professional journalists who do not register may be fined. Columnists and commentators are exempt from this requirement but only if the scope of their work is limited and does not extend to that of a “specialised reporter”, which is not defined.¹⁸⁹

The main communications regulatory body is the National Telecommunications Commission (CONATEL, by the Spanish acronym) which, in addition to other duties, is tasked with the granting, renewal and revocation of licences for radio and television services. The Commission is composed of three principal members and two substitute members¹⁹⁰ who are appointed by the President via the Secretary of State for Finance, limiting the independence of the Commission.¹⁹¹

Some aspects of the broadcast licensing process and the scope of powers given to CONATEL undermine media diversity. For example, the licensing process tends to favour wealthier commercial bidders.¹⁹² A 2011 regulation permits CONATEL to suspend licenses granted for low-power broadcast frequencies which are commonly used by community radio stations.¹⁹³ While a 2013 regulation was ostensibly designed to allow greater access to frequencies by community radio

¹⁸⁶ Knight Center for Journalism in the Americas, “Honduran government to close more than 5,000 civic organizations, including freedom of expression groups”. Available at: <https://knightcenter.utexas.edu/blog/00-15276-honduran-government-close-more-than-5000-civic-organizations-including-freedom-expres>

¹⁸⁷ Executive Agreement 65-2013, note 182, Article 38(2).

¹⁸⁸ As summarised by ICNL, Civic Freedom Monitor: Honduras, 5 March 2019. Available at: <http://www.icnl.org/research/monitor/honduras.html>.

¹⁸⁹ Decree No. 759-06, Articles 8, 45A and 59. Available in Spanish at: <http://colegiodeperiodistasdehonduras.hn/wp/wp-content/uploads/2017/11/Ley-Organica-del.pdf>.

¹⁹⁰ Agreement No. 141-2002, Article 70. Available in Spanish at: http://www.conatel.gob.hn/doc/Regulacion/leyes/REGLAMENTO_GENERAL.pdf.

¹⁹¹ Decree 185-95, Article 15. Available in Spanish at: <https://tsc.gob.hn/web/leyes/LEY%20MARCO%20DEL%20SECTOR%20DE%20TELECOMUNICACIONES.pdf>.

¹⁹² Inter-American Commission on Human Rights, *Situation of Human Rights in Honduras*, p.169. Available at: <https://www.justice.gov/eoir/file/849356/download>.

¹⁹³ Resolution NR003/11. Available in Spanish at: <http://www.conatel.gob.hn/doc/Regulacion/resoluciones/2011/NR003-11.pdf>.

stations, it imposed a number of new restrictions on them and was criticised by some for failing to reserve sufficient frequencies for community radio stations.¹⁹⁴

Content restrictions

The outdated 1958 Law on Expression of Thought contains several troubling content restrictions on publications, using vague language such as undermining the foundations of the State or attacking commercial entities without evidence.¹⁹⁵ The 2013 regulation mentioned above on community broadcasters imposes content requirements on those broadcasters, most notably a prohibition on partisan political content.¹⁹⁶

A new Honduran Criminal Code will come into force on 8 November 2019.¹⁹⁷ A version of the Code published in 2019 included criminal slander and libel provisions.¹⁹⁸ In August, the National Congress announced that these provisions would be transferred to the Civil Code but it is not clear whether this has happened.¹⁹⁹ Other provisions of the new Code are overly speech restrictive. For example, one provision provides for a sentence of one to three years' imprisonment for disseminating false rumours that frighten the population.²⁰⁰ Another provision provides for a sentence of one to two years' imprisonment for seriously undermining a person's moral integrity via psychological or verbal degrading treatment, which is not very clear.²⁰¹

Internet and digital rights

A proposed cyber security law would require Internet companies to block or remove “illegal content” (such as posts that encourage hate or discrimination)²⁰² posted by users on online platforms within 24 hours of receiving a complaint (or within 7 days if “duly justified”).²⁰³ People affected by illicit content can report those who produce or transmit illicit content to the Cyber

¹⁹⁴ Resolution NR009/13. Available in Spanish at: <http://www.observacom.org/reglamento-de-servicios-de-difusion-con-fines-comunitarios/>.

¹⁹⁵ Law of Expression of Thought, 1958, Articles 6 and 38. Available in Spanish at: http://www.observatoriodecomunicacion.cl/sitio/wp-content/uploads/2012/11/honduras_emision_pensamiento.pdf.

¹⁹⁶ Resolution NR009/13, note 194.

¹⁹⁷ La Prensa, “Nuevo Código Penal, un golpe a los medios de comunicación dicen los expertos”, 15 May 2019, available at: <https://www.laprensa.hn/honduras/1284723-410/codigo-penal-sanciones-honduras-periodistas-medios-de-comunicacion>; and Decree No. 130-2017, available in Spanish at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HND/INT_CCPR_FCO_HND_32137_S.pdf.

¹⁹⁸ Penal Code, 31 January 2019, Articles 229 and 230. Available in Spanish at: <https://criterio.hn/wp-content/uploads/2019/05/C%C3%B3digo-Penal-1.pdf>.

¹⁹⁹ Congreso Nacional de Honduras, “CN eliminará delitos contra el honor del nuevo Código Penal”, 29 August 2019. Available at: <http://congresonacional.hn/index.php/2019/08/29/cn-eliminara-delitos-contra-el-honor-del-nuevo-codigo-penal/>.

²⁰⁰ Penal Code, note 198, Article 573.

²⁰¹ Decree No. 130-2017, Article 214. Available in Spanish at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HND/INT_CCPR_FCO_HND_32137_S.pdf.

²⁰² France 24, “Honduras Lawmakers Debate Bill Seeking to Curb Online Speech”, 12 February 2018. Available at: <https://www.france24.com/en/20180212-honduras-lawmakers-debate-bill-seeking-curb-online-speech>.

²⁰³ Human Rights Watch, *Honduras: Cybersecurity Bill Threatens Free Speech*, 9 April 2018. Available at: <https://www.hrw.org/news/2018/04/09/honduras-cybersecurity-bill-threatens-free-speech>.

Incidence Response Centre when website administrators fail to respond to complaints.²⁰⁴ A website administrator is not defined in the bill. Human Rights Watch has expressed concern that the bill’s tight deadlines and harsh sanctions incentivise companies to censor content, thereby facilitating restrictions on free speech that go beyond international human rights standards.²⁰⁵

Right to information and secrecy laws

The Law for the Classification of Public Documents Related to National Security and Defence²⁰⁶ (popularly known as the “Secrecy Law”) has been in force since 2014.²⁰⁷ The law grants too much discretion to officials to classify material.²⁰⁸ The Secrecy Law has the potential to obstruct journalists from accurate reporting,²⁰⁹ in part due to the requirement that anyone who obtains or becomes aware of potentially classifiable information has a positive obligation not to share that information with third parties and to deliver the information to the closest police, civil or military authority (such as the National Defence and Security Council).²¹⁰

Honduras has a right to information law which is ranked at 69th out of the 128 countries assessed on the RTI Rating. The law’s impact is limited by a weak sanctions regime which does not provide strong enough penalties for violating the right to information. The access framework also contains several overly broad exceptions and allows information to be exempted by other legislation, which is highly problematic given the significant discretion authorities have to classify information under the Secrecy Law.²¹¹

Honduras’ RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	2	33%
2. Scope	30	24	80%
3. Requesting Procedures	30	13	43%
4. Exceptions and Refusals	30	12	40%
5. Appeals	30	18	60%
6. Sanctions and Protections	8	2	25%

²⁰⁴ Law on Cybersecurity, Article 7. Available in Spanish at: <http://congresonacional.hn/wp-content/uploads/2018/02/DICTAMEN-LEY-DE-CIBERSEGURIDAD-I.pdf>.

²⁰⁵ Human Rights Watch, note 203.

²⁰⁶ Decree No. 418-2013. Available in Spanish at:

<https://www.tsc.gob.hn/web/leyes/Ley%20para%20la%20Clasificaci%C3%B3n%20de%20Documentos%20P%C3%ABlicos%20relacionados%20con%20la%20Seguridad%20y%20Defensa%20Nacional.pdf>.

²⁰⁷ Press Freedom, *Laws and Threats Undermine Freedom of Expression in Honduras*, 4 August 2012. Available at: <http://www.ipsnews.net/2018/08/laws-threats-curtailed-freedom-expression-honduras/>.

²⁰⁸ El Heraldo, “Honduras: IAIP ordena al Congreso Nacional reformar ley de secretos”, 30 July 2015. Available at: <https://www.elheraldo.hn/alfrente/864349-209/honduras-iaip-ordena-al-congreso-nacional-reformar-ley-de-secretos>.

²⁰⁹ Press Freedom, *Laws and Threats Undermine Freedom of Expression in Honduras*, note 209.

²¹⁰ Decree No. 418-2013, Article 10. Available in Spanish at:

<https://www.tsc.gob.hn/web/leyes/Ley%20para%20la%20Clasificaci%C3%B3n%20de%20Documentos%20P%C3%ABlicos%20relacionados%20con%20la%20Seguridad%20y%20Defensa%20Nacional.pdf>.

²¹¹ RTI Rating, Country Data, as of June 2019. Available at: <https://www.rti-rating.org/country-data>.

7. Promotional Measures	16	13	81%
Total score	150	84	56%

Restrictions on freedom of assembly

Several advanced notice requirements are in place regarding assemblies notwithstanding that spontaneous assemblies are permitted by the Constitution. Advance notice of at least 72 hours is required before holding an assembly in a public place.²¹² The notification must include the name of the institution or group of persons organising the assembly, a list of those who support the assembly and a declaration by the organisers to comply with the law regarding the prohibition of weapons, rioting and disruption of the free movement of citizens. The organiser must also disclose the names of all those who participate in the assembly.

Decree No. 120-2013 allows for the creation of special Employment and Economic Development Zones (“ZEDEs” by the Spanish acronym). Decree No. 120-2013 mandates that only six of the 378 articles of the Constitution must be enforced in ZEDEs and that remaining articles will be relevant only where applicable, which is somewhat unclear but appears to limit the applicability of other articles of the Constitution.²¹³ The rights to association and assembly are not included among the directly applicable rights, meaning that demonstrations could conceivably be banned in ZEDEs.

National security laws

Article 555 of the new Criminal Code defines treason, among other things, as an act that directly undermines the territorial integrity of the State, compromises its sovereignty or threatens its unity. This wording is insufficiently precise and could potentially cover speech which was critical of government actions.²¹⁴

The new Criminal Code originally contained the controversial Article 335-B, which established a criminal offence punishable by four to eight years’ imprisonment for individuals or media outlets that engaged in the “apology, glorification [or] justification” of terrorism.²¹⁵ Article 335-B was removed from the new Code on 5 June 2018 due to controversy.²¹⁶ However, some aspects of remaining terrorism provisions in the Code still raise concerns, such as Article 588, which prohibits collaborating with a terrorist association by providing it with information or assistance. This could potentially criminalise humanitarian aid, especially given the lack of a requirement of a specific intent to aid a terrorist cause.²¹⁷

²¹² ICNL, Civic Freedom Monitor: Honduras, note 188.

²¹³ Decree 120-2013, Articles 1 and 8(1). Available in Spanish at: https://tsc.gob.hn/web/leyes/Ley_zonas_empleo_desarrollo_eco_2013.pdf. For a detailed explanation, see CIEL, Should the Inter-American Development Bank Fund Honduras to Implement Controversial Special Economic Zones?, 2017. Available at: <https://www.ciel.org/wp-content/uploads/2017/12/ZEDEanalysis.pdf>.

²¹⁴ Penal Code, Article 555. Available in Spanish at: <https://criterio.hn/wp-content/uploads/2019/05/C%C3%B3digo-Penal-1.pdf>.

²¹⁵ *Ibid.*

²¹⁶ Conexihon, “¡Al Fin! Derogado el Artículo 335-B”, 5 June 2018. Available at: <http://www.conexihon.hn/index.php/libertad-de-expresion/687-al-fin-derogado-el-articulo-335-b>.

²¹⁷ Penal Code, note 214, Articles 229 and 230.

The Law for Telecommunications Interception contains ambiguous restrictions that could allow law enforcement agencies to request surveillance of Internet activity and communications for any crime. While this requires judicial authorisation, surveillance may be requested for anyone “under investigation” without a sufficient requirement of probable cause. The legal framework also does not provide for adequate supervisory mechanisms over surveillance activities.²¹⁸

Whistleblower protection and other protection systems for threatened activists

The Protection Law for Human Rights Defenders, Journalists, Social Communicators and Justice Operators recognises the right to promote human rights. Under the Protection Law, the State is required to respect human rights defenders by taking reasonable steps to prevent threats, harassment and assault of defenders by both private and State actors. Prevention tools include supporting entities dedicated to the promotion of human rights, strengthening accountability mechanisms, encouraging equitable and inclusive social structures, responding to early warning signs of intimidation, ratifying international human rights instruments and promulgating a culture of respect for human rights.²¹⁹

The law mandates the creation of a special fund for the protection of human rights defenders.²²⁰ However, it does not specify how much money the protection mechanism should receive. In practice, the mechanism has been underfunded.²²¹

Honduras does not have a comprehensive protection regime in place for whistleblowers although the Law on Witness Protection may offer some protection to whistleblowers who fall under its scope.²²²

Mexico

Freedom of association: non-profit registration requirements and restrictions on advocacy

²¹⁸ Fundación Acceso, *Digital Privacy for Human Rights Defenders?*, p. 20. Available at:

<http://www.acceso.or.cr/assets/files/Resumen%20Ejecutivo%20Privacidad%20Digital-EN.pdf>.

²¹⁹ Decree 34-2015, Articles 1 and 12. Available in Spanish at: <https://www.sedh.gob.hn/documentos-recientes/263-ley-de-proteccion-para-las-y-los-defensores-de-derechos-humanos-periodistas-comunicadores-sociales-y-operadores-de-justicia/file>.

²²⁰ *Ibid.*, Article 66.

²²¹ Conexihon, “Gobierno incumple con el traslado de fondos al Mecanismo de Protección”, 26 February 2019.

Available at: <http://www.conexihon.hn/index.php/dh/989-gobierno-incumple-con-el-traslado-de-fondos-al-mecanismo-de-proteccion>.

²²² Decreto 63-2007. Available in Spanish at:

[https://www.tsc.gob.hn/web/leyes/Ley%20de%20Protecci%C3%B3n%20a%20Testigos%20en%20e%20l%20Proceso%20Penal%20\(09\).pdf](https://www.tsc.gob.hn/web/leyes/Ley%20de%20Protecci%C3%B3n%20a%20Testigos%20en%20e%20l%20Proceso%20Penal%20(09).pdf).

Mexico civil society organisations may incorporate and register as legal entities. This process is relatively straightforward and without notably burdensome requirements.²²³ One source, however, indicates that in practice the process can be expensive.²²⁴

Once registered, organisations are also generally free to operate and engage in advocacy. Reporting obligations are in some cases complex, however, and require filing multiple reports at the federal and state level, depending on the organisational form and the relevant state law. In some cases, failure to meet these requirements may result in the suspension of the activities of the organisation.²²⁵

Funding restrictions, financial report requirements and special tax requirements for non-profit organisations

Mexico's money laundering law classifies donations to non-profit organisations as a "vulnerable activity".²²⁶ This designation introduces additional reporting obligations which may be challenging for some organisations to comply with, such as keeping a file with detailed donor information for donations of a certain size.²²⁷

After Andrés Manuel López Obrador became President in December 2018, he announced an intention to reduce government funding for civil society organisations. In February 2019, he issued a circular which halted the distribution of government funds to civil society organisations.²²⁸

Media regulation

In 2013 Mexico enacted a set of constitutional amendments, followed by a new Telecommunications and Broadcasting Law in 2014. These changes established a new regulatory body, the Federal Telecommunications Institute (IFT), and introduced some reforms designed to promote media diversity.²²⁹ The independence of the IFT, along with rules governing the appointment of Commissioners and its governance, is enshrined in the Constitution. The IFT has seven commissioners appointed by the President with the consent of the Senate. The Presiding Commissioner is selected by the Senate by a two-thirds majority vote. Commissioners serve single nine-year staggered terms.²³⁰

²²³ ICNL, Civic Freedom Monitor: Mexico, 3 June 2019, available at:

<http://www.icnl.org/research/monitor/mexico.html>; and Council on Foundations, *Nonprofit Law in Mexico*, August 2019, available at: <https://www.cof.org/content/nonprofit-law-mexico>.

²²⁴ Carlos Eduardo Ponce Silén, *Limitations to Freedom of Association of Civil Society Organizations in Latin America*, 2010, p. 30. Available at:

https://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/other_contributions/World-Report_of_Sr.Ponce_on_Free_Association_in_Latin_Am.pdf.

²²⁵ ICNL, Civic Freedom Monitor: Mexico, note 223; and Council on Foundations, note 223.

²²⁶ Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin, 2012, Article 17(XII). Available in Spanish at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPIORPI_090318.pdf.

²²⁷ ICNL, Civic Freedom Monitor: Mexico, note 223; Council on Foundations, note 223.

²²⁸ ICNL, *ibid*.

²²⁹ Federal Law on Telecommunications and Broadcasting, 2014. Available in Spanish at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LFTR_020419.pdf.

²³⁰ Constitution, Article 28. Available in English at:

https://www.constituteproject.org/constitution/Mexico_2015.pdf?lang=en.

These reforms have resulted in some positive movement towards greater media diversity but civil society groups have still criticised the lack of broadcasting diversity, especially in the television sector.²³¹

Government advertising is a contentious topic in Mexico, with critics alleging that the large amount of government advertising is used to promote positive coverage of the government. Under pressure from a 2017 court decision, Congress enacted the 2018 General Social Communications Law, which introduces some requirements related to transparency around advertisement spending. However, press freedom groups have described the Law as legalising instead of limiting the long-standing practice, and failing to adopt effective oversight and enforcement measures.²³²

Content restrictions

While defamation is no longer a crime at the federal level, a number of states still have state-level criminal prohibitions on defamation or other honour related offences.²³³ Otherwise, defamation and libel are civil matters although in practice there are examples of the aggressive use of civil lawsuits against journalists. A 2016 Supreme Court decision overturned a cap in Mexico City law on financial damages for defamation which could lead to more aggressive use of civil defamation laws against the media.²³⁴

Internet and digital rights

The 2014 Telecommunications Law requires Internet service and telecommunications providers to retain user data for 24 months and to grant security agencies access to that data, raising concerns about government ability to access private data.²³⁵ More positively, a Mexican judicial ruling has affirmed that a warrant is needed to access this user data.²³⁶

At the state level, at least six states have enacted so-called “anti-meme” laws which criminalise the online sharing of harmful memes or other images which damage the reputation of another person.²³⁷

²³¹ Freedom House, Freedom in the World: Mexico, 2019, available at: <https://freedomhouse.org/report/freedom-world/2019/mexico>; and Freedom House, Freedom of the Press: Mexico, 2017, available at: <https://freedomhouse.org/report/freedom-press/2017/mexico>.

²³² General Law of Social Communication, 2018, available in Spanish at: <https://www.fonacot.gob.mx/nosotros/Documents/Marco%20Juridico/Ley%20General%20de%20Comunicacio%C%81n%20Social%20vigente%20a%20partir%20del%2001-01-2019.pdf>; and CPJ, “Mexico’s Press Question Commitment to Press Advertising Reform”, 8 May 2019, available at: <https://cpj.org/blog/2019/05/mexico-president-amlo-press-advertising-reform.php>.

²³³ IACHR Special Rapporteur for Freedom of Expression, *Special Report on the Situation of Freedom of Expression in Mexico*, June 2018, available at: https://www.oas.org/en/iachr/expression/docs/2018_06_18_CIDH-UN_FINAL_MX_report_ENG.pdf.

²³⁴ Freedom House, Freedom of the Press: Mexico, 2019, note 231.

²³⁵ Federal Law on Telecommunications and Broadcasting, note 229, Article 190.

²³⁶ Freedom House, Freedom on the Net, 2018. Available at: <https://freedomhouse.org/report/freedom-net/2018/mexico>.

²³⁷ Article 19, *Democracia Simulada, Nada que Aplaudir*, 2018. Available at: https://articulo19.org/wp-content/uploads/2018/03/INFORME-A19-2017_v04.pdf.

Right to information and secrecy laws

Mexico’s right to information law is one of the strongest in the world, ranked second out of the 128 countries assessed on the RTI Rating. Notably, it overrides inconsistent secrecy legislation.²³⁸ The primary challenge for Mexico lies in the effective implementation of this law.²³⁹

Mexico’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	6	100%
2. Scope	30	30	100%
3. Requesting Procedures	30	28	93%
4. Exceptions and Refusals	30	28	93%
5. Appeals	30	26	87%
6. Sanctions and Protections	8	4	50%
7. Promotional Measures	16	14	88%
Total score	150	136	91%

Restrictions on freedom of assembly

Mexico has constitutional protection for freedom of assembly. Otherwise, assemblies are regulated at the state rather than the federal level. State laws typically require some prior notice for assemblies, such as Mexico City which requires that organisers give seven days advance notice. In recent years, a few states have increased the permissible use of force by police responding to protests, including the State of Puebla, which authorised police to use deadly force to disperse protests.²⁴⁰

In addition, Mexico enacted a new federal Law on the Use of Force in May 2019. It governs use of force by State public security institutions. While some aspects of the law are positive and introduce important limits on the use of force and accountability measures, other aspects are problematic from a freedom of assembly perspective. Specifically, Article 27 prohibits lethal force against peaceful demonstrations with a “lawful object”.²⁴¹ This implies that lethal force is acceptable if demonstrations are not “lawful”, without clarifying what this means.

National security laws

²³⁸ RTI Rating, Mexico. <https://www.rti-rating.org/country-data/Mexico/>.

²³⁹ Ana Campoy, *The Country with the World’s Best Transparency Law has a Terrible Record on Transparency*, 15 October 2016, Quartz. Available at: <https://qz.com/808618/the-country-with-the-worlds-best-transparency-law-has-a-terrible-record-on-transparency/>.

²⁴⁰ ICNL, Civic Freedom Monitor: Mexico, note 223.

²⁴¹ National Law on the Use of Force, 2019. Available in Spanish at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LNUF_270519.pdf.

In an attempt to respond to high levels of criminal violence in the country, Mexico has enacted some laws in recent years providing for military responses to violence. This includes a controversial 2017 Internal Security Law which was held to be unconstitutional by the Supreme Court. The President subsequently introduced a constitutional amendment followed by a “National Guard Law” which creates a new hybrid military and police force.²⁴² There are some human rights concerns about a move towards militarising response to crime. While many of these concerns relate to the powers that may be used against criminal actors, the scope of powers of the new National Guard force have not yet been fully defined, raising questions about general investigatory and surveillance powers in the future.²⁴³

Laws in many Mexican states still have so-called “halconeo” laws which criminalise searching for information related to security matters, despite a 2017 Supreme Court decision that found such laws to be unconstitutional.²⁴⁴

Whistleblower protection and other protection systems for threatened activists

Mexico does not have a unified law providing for whistleblower protection but it does have a partial protection regime created by a mix of several laws enacted as part of a 2017 anti-corruption package. The foremost of these is the General Law on Administrative Responsibilities which requires public bodies to create confidential reporting channels for whistleblowers.²⁴⁵ Weaknesses in the framework include a lack of specific rule prohibiting the dismissal or other sanctioning of whistleblowers without due cause.²⁴⁶

Mexico has also had a Mechanism to Protect Human Rights Defenders and Journalists since 2012. As of August 2019, the mechanism was serving 903 people but it does not have sufficient staff or budget to match its needs.²⁴⁷

Peru

Freedom of association: non-profit registration requirements and restrictions on advocacy

Under the Civil Code, civil society organisations may take three forms: an association, a foundation and a committee. An association is, in practice, the primary form used by organisations.

²⁴² National Guard Law, 2019. Available in Spanish at:

http://www.diputados.gob.mx/LeyesBiblio/pdf/LGN_270519.pdf.

²⁴³ For a discussion of human rights implications of the new law, see Amnesty International, *What is the Significance of the Creation of the National Guard for Mexico*, 6 March 2019. Available at:

<https://www.amnesty.org/en/latest/news/2019/03/que-significa-para-mexico-la-aprobacion-de-la-guardia-nacional/>.

²⁴⁴ Article 19, *The Expression Agenda Report 2017/2018*, 2018, p. 31. Available at: https://www.article19.org/wp-content/uploads/2018/12/XPA-Report_A19.pdf.

²⁴⁵ OECD, *Integrity Review of Mexico*, 2017, p. 125. Available at: https://read.oecd-ilibrary.org/governance/oecd-integrity-review-of-mexico/protecting-whistleblowers-in-mexico-ensuring-secure-channels-and-protections-for-reporting-corruption_9789264273207-7-en#page3. The General Law on Administrative Responsibilities is available in Spanish at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA_120419.pdf.

²⁴⁶ OECD, *ibid.*, p. 18.

²⁴⁷ Daina Beth Solomon, “U.N. Urges Better Protection of Journalists, Activists as Mexico Murders Climb”, 26 August 2019. Available at: <https://www.reuters.com/article/us-mexico-violence/u-n-urges-better-protection-of-journalists-activists-as-mexico-murders-climb-idUSKCN1VG2AA>.

The Civil Code contains few details on registration so, despite some regulations standardising registration procedures, there are some issues with the amount of discretion exercised by registrars.

The main regulatory challenges for civil society arise for those who are considered to be “non-governmental organisations” which are subject to additional regulations, including a requirement to register with the Peruvian Agency for International Cooperation (APCI). The category of “non-governmental organisations” is based on organisations being involved in “international technical cooperation.” The category of organisations belonging to this category changed in 2006 and was followed by a Constitutional Court decision providing further interpretive guidance. Essentially, registration with APCI is not mandatory unless organisations receive foreign funding and either accept State tax benefits or receive State resources. In practice, however, since most organisations accept some sort of State resources, most organisations with projects financed or implemented with foreign funding need to register with APCI.²⁴⁸

Previously, NGOs had to renew registration with APCI regularly, giving APCI significant supervisory authority over their activities. This requirement has since been eliminated but reporting obligations to APCI are still extensive and include detailed information about activities and sources of funding.²⁴⁹

Funding restriction, financial report requirements and special tax requirements for non-profit organisations

The additional legal requirements imposed on organisations involved in “international technical cooperation” is an indirect restriction on foreign funding given the additional reporting and registration obligations it imposes, as described above. However, Peru does not prohibit organisations from accessing foreign funding.

Obtaining tax exempt status for non-profits is somewhat restrictive. For example, an organisation’s application for this will be denied if any of its activities do not fall within the established tax-exempt categories.²⁵⁰

Media regulation

Peru does not have an independent broadcasting regulatory authority. Instead, licensing is handled directly by the Ministry of Transport and Communications.²⁵¹ It also lacks anti-monopoly laws

²⁴⁸ ICNL, Civic Freedom Monitor: Peru, 24 July 2019, available at: <http://www.icnl.org/research/monitor/peru.html>; and Council on Foundations, *Nonprofit Law in Peru*, 1 May 2019, available at: <https://www.cof.org/content/nonprofit-law-peru#exemptions>.

²⁴⁹ ICNL, *ibid.* and Council on Foundations, *ibid.*

²⁵⁰ Council on Foundations, *ibid.*

²⁵¹ Law 28278 on Radio and Television. Available in Spanish at: http://sc.pcm.gob.pe/wp-content/uploads/files/publicidad_estatal/marcolegal/LEY_DE_RADIO_Y_TELEVISION.pdf.

which apply to either the print or broadcast media.²⁵² In practice, media ownership is highly concentrated, with three media companies dominating 84 percent of the market.²⁵³

Content restrictions

Peru criminalises defamation, libel and slander. While the later two will not result in criminal penalties, defamation may result in up to two years' imprisonment or three years if the information was disseminated by means of the press or another social communication tool.²⁵⁴

A few other provisions in the Penal Code also improperly restrict speech. Article 315-A prohibits grave disturbance to public tranquillity which it defines as the dissemination of false news or a non-existent fact or which could damage life or property. Article 344 prohibits insult to national symbols or heroes or alteration of a map of Peru. Article 438 prohibits intentionally altering the truth to the prejudice of third persons ("generic falsity").²⁵⁵ This last provision has been used at least once against a television host who alleged corruption in the local government on the grounds that he engaged in "generic falsity to the prejudice of the State".²⁵⁶

Internet and digital rights

A controversial legislative decree requires telecommunications providers to retain user data for three years. It also provides that police may access, in some cases without a warrant, geolocation data of users.²⁵⁷

Right to information and secrecy laws

Peru's right to information law ranks 93rd out of the 128 laws assessed on the RTI Rating. While the law is strong in terms of the scope of information it covers and its relatively clear procedures for making requests, it does not trump conflicting secrecy rules.²⁵⁸ The law also fails to establish an independent oversight body to handle appeals when an authority denies a request. However, a 2017 decree established a National Authority for Transparency and Access to Public Information

²⁵² Media Ownership Monitor: Peru, Media Regulation. Available at: <https://peru.mom-rsf.org/en/findings/media-regulation/>.

²⁵³ Paola Nalvarte, "High Level of Media Concentration Threatens Freedom of Information in Peru", Journalism in the Americas Blog, 12 June 2016. Available at: <https://knightcenter.utexas.edu/blog/00-17828-high-media-concentration-threatens-press-freedom-peru-according-ojo-publico-and-rsf-re>.

²⁵⁴ Penal Code, Articles 130-132. Available in Spanish at: [http://www2.congreso.gob.pe/sicr/cendocbib/con5_uibd.nsf/001CD7E618605745052583280052F800/\\$FILE/COD-PENAL_actualizado_16-09-2018.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con5_uibd.nsf/001CD7E618605745052583280052F800/$FILE/COD-PENAL_actualizado_16-09-2018.pdf).

²⁵⁵ Penal Code, *ibid.*, Articles 315-A, 344 and 438.

²⁵⁶ Monica Medel, "TV News Director Sentenced to Two Years Behind Bars for Denouncing Corruption in Peru", Journalism in the Americas Blog, 4 August 2011. Available at: <https://knightcenter.utexas.edu/blog/tv-news-director-sentenced-two-years-behind-bars-after-denouncing-corruption-peru>.

²⁵⁷ Legislative Decree 1182, as described by Kimberly Carlson, Peru's Unhappy History with Surveillance, and How to Fix It, EFF, 24 October 2016. Available at: <https://www.eff.org/deeplinks/2016/10/perus-unhappy-history-surveillance-and-how-fix-it>.

²⁵⁸ RTI Rating, Peru. Available at: <https://www.rti-rating.org/country-data/Peru/>.

as well as an Administrative Tribunal responsible for resolving appeals.²⁵⁹ This decree was highly controversial because it provided for more limited powers for the oversight body than what had been suggested by an expert commission and because the oversight body does not have the power to view classified documents to determine if they were properly classified.²⁶⁰

Peru's RTI Rating Scores

Category	Max Points	Score	Percentage
1. Right of Access	6	4	67%
2. Scope	30	29	97%
3. Requesting Procedures	30	17	57%
4. Exceptions and Refusals	30	17	57%
5. Appeals	30	14	47%
6. Sanctions and Protections	8	4	50%
7. Promotional Measures	16	8	50%
Total score	150	93	62%

Restrictions on freedom of assembly

Peru's Constitution provides that meetings held in public thoroughfares or plazas require prior notification but may only be prohibited for proven safety or health concerns.²⁶¹ Ministry of Interior decrees regulate the prior notice process which must be two days for political gatherings and three days for non-political ones. They must include a signed commitment that the public gathering will not try altering the public order, hindering traffic or causing damage, with the signer assuming criminal liability. If authorities fail to respond to the notice, it is a deemed denial of the petition.²⁶² In practice, these prior notice requirements can effectively operate as requiring advance permission, not just notice.²⁶³

²⁵⁹ Legislative Decree 1353 of 2017. Available in Spanish at: <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-que-crea-la-autoridad-nacional-de-transp-decreto-legislativo-n-1353-1471551-5/>.

²⁶⁰ Paula Nalvarte, "Experts Criticise Entity Created by the Peruvian Government to Regulate Access to Public Information", Journalism in the Americas Blog, 17 January 2017. Available at: <https://knightcenter.utexas.edu/blog/00-17919-experts-criticize-newly-created-entity-would-regulate-policies-access-public-informati>.

²⁶¹ Constitution, Article 2(12). Translation available at: http://www.congreso.gob.pe/Docs/files/CONSTITUTION_27_11_2012_ENG.pdf.

²⁶² The various decrees are summarized by ICNL, Research Monitor: Peru, note 248.

²⁶³ Civicus and APRODEH, *Republic of Peru: Joint Submission the UN Universal Periodic Review*, 30 March 2017, para. 5.3. Available at: <http://www.civicus.org/images/Peru.JointUPRSubmission.pdf>.

A 2012 Legislative Decree enables the police to provide security services to private companies.²⁶⁴ This provision, which is controversial due to the use of police to provide security to extractive industry projects, is currently subject to a constitutional challenge.²⁶⁵

National security laws

Under Article 137 of the Constitution, the president with the consent of the cabinet may declare a state of emergency in response to disturbances of the peace or domestic order. During an emergency, constitutional rights to personal freedom and security, inviolability of the home and freedom of assembly and movement may be suspended. In addition, the armed forces may assume control over domestic order.²⁶⁶ This provision is broader than international human rights standards which provide that derogations from human rights during times of emergencies must be strictly required by the exigencies of the situation and which establish a higher bar for what constitutes an emergency. In practice, states of emergency in Peru have been relied upon to justify suspensions of rights following protests over mining projects.²⁶⁷

Some aspects of the anti-terrorism raise human rights concerns. For example, a criminal provision against “apologising for terrorism” does not have sufficiently clear intent requirements or other language to ensure its narrow application to speech which directly and specifically incites terrorist actions.²⁶⁸

The legal regime governing surveillance contains a number of key protections but, despite a major controversy in 2015 over intelligence agencies spying on journalists, it still lacks a strong oversight system and does not place sufficient limits on access to certain types of user data (see the section on digital rights).²⁶⁹

Whistleblower protection and other protection systems for threatened activists

Peru’s whistleblower protection regime is reasonably well developed. Law 29542 provides for a range of protection measures for current or former public servants, public contractors or any citizen who has knowledge of misconduct on the part of public servants. This also highlights one potential weakness of the law which is its exclusive focus on public servants.²⁷⁰

²⁶⁴ Decreto Legislativo 1267, Article VI. Available in Spanish at: <https://busquedas.elperuano.pe/normaslegales/ley-de-la-policia-nacional-del-peru-decreto-legislativo-n-1267-1464781-2/>.

²⁶⁵ La Republica, “Presentan Demanda para Anular Convenios entre la PNP y las Empresas Mineras”, 10 April 2019. Available at: <https://larepublica.pe/sociedad/1447281-presentan-demanda-anular-convenios-pnp-empresas-mineras-colegio-abogados-policia/>.

²⁶⁶ Constitution, Article 137. Translation available at: http://www.congreso.gob.pe/Docs/files/CONSTITUTION_27_11_2012_ENG.pdf.

²⁶⁷ Marco Aquino, “Peru Government Taps Armed Forces to Unblock Copper Protests”, 16 October 2019. Available at: <https://www.reuters.com/article/us-peru-copper-protest/peru-government-taps-armed-forces-to-unblock-copper-protests-idUSKBN1WV1TR>.

²⁶⁸ Penal Code, note 254, Article 316-A.

²⁶⁹ Miguel Morachimo, “State Communications Surveillance and the Protection of Fundamental Rights in Peru”, Necessary and Proportionate, available at: <https://necessaryandproportionate.org/country-reports/peru>; and Kimberly Carlson, *Peru’s Unhappy History with Surveillance*, Electronic Frontier Foundation, 24 October 2016, available at: <https://www.eff.org/deeplinks/2016/10/perus-unhappy-history-surveillance-and-how-fix-it>.

²⁷⁰ Law 29542, Article 5. Available in Spanish at: https://apps.contraloria.gob.pe/unetealcontrol/pdf/Ley_29542.pdf.

Law 27378, which relates to organised crime, also provides protections for witnesses, investigators, victims and even collaborators involved in criminal proceedings.²⁷¹

Venezuela

*Introductory note: The legal situation in Venezuela is somewhat complex currently due to an ongoing constitutional crisis. In 2017, President Maduro created a National Constituent Assembly via decree. This body, which is made up of members of his own party, has become the de facto legislature, because the Supreme Tribunal of Justice (the highest court), which is not independent from Maduro, transferred the powers of the opposition-led National Assembly to itself. The Supreme Tribunal of Justice declared most of the acts of the opposition-led legislature to be unconstitutional and Maduro has relied upon emergency powers to issue laws via decree.*²⁷²

Freedom of association: non-profit registration requirements and restrictions on advocacy

On paper, non-profit registration is not highly complex in Venezuela. Organisations may register as civil associations under the Civil Code, which requires non-profits to register with the Subsidiary Registry Office in the district in which the non-profit will be based.²⁷³ Similarly, the legal framework in theory does not subject civil society organisations to extensive administrative oversight. In practice, however, the registration process is often closed to human rights organisations.²⁷⁴

In addition, the Venezuelan government's ideological orientation in favour of a "people power" programme has, in recent years, focused on promoting a civil society sector that is explicitly affiliated with the regime. A series of laws which establish and promote "people power" organisations have excluded independent civil society organisations from engaging with the government. Most government agencies now only grant the right to participate in policy-making to "people power" organisations, for example.²⁷⁵

In addition, some laws have attempted to limit perceived anti-government activity and foster pro-government cooperation from civil society. For example, the 2010 Law for Protection of Political Liberty and National Self-Determination prohibits civil society organisations engaged in the defence of political rights from hosting foreign citizens who speak in a manner that could act against State sovereignty.²⁷⁶ Under a 2014 law, all legal persons are required to register with the

²⁷¹ Law 27378, Article 21. Available in Spanish at: https://www.oas.org/juridico/spanish/per_res31.pdf.

²⁷² For a detailed explanation see International Crisis Group, *Power without People*, 19 June 2017. Available at: <https://www.crisisgroup.org/latin-america-caribbean/andes/venezuela/b036power-without-people-averting-venezuelas-breakdown>.

²⁷³ Civil Code, Article 19(3). Available in Spanish at: https://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf.

²⁷⁴ ICNL, Civic Freedom Monitor: Venezuela, 15 November 2017. Available at: <http://www.icnl.org/research/monitor/venezuela.html>.

²⁷⁵ *Ibid.* For a list of the various "people power" or "popular power" laws, see <https://www.civilisac.org/monitor/leyes-sobre-participacion-y-poder-popular>.

²⁷⁶ Law of Defense of Political Sovereignty and Self-Determination, Article 8. Available in Spanish at: <http://www.icnl.org/research/library/files/Venezuela/Leysobrer.pdf>.

military within 60 days and support national defence.²⁷⁷ Civil society organisations are no longer allowed to provide legal assistance to victims of human rights violations committed by officials.²⁷⁸

Funding restriction, financial report requirements and special tax requirements for non-profit organisations

The Law for Protection of Political Liberty and National Self-Determination prohibits non-profits dedicated to the “defence of political rights” or other “political objectives” from possessing assets or receiving any income from foreign sources. The law provides for steep fines and other consequences if such organisations receive foreign funding, such as a fine equivalent to double the amount of the foreign funding.²⁷⁹ In 2019, the National Assembly has reportedly been discussing a law to prohibit civil society organisations from receiving foreign funding.²⁸⁰

Other barriers include a strict currency exchange law which requires that any donation be converted to the local currency via declaration and exchange at the national bank or another legally designated institution. A 2014 law also ended tax exempt status for non-profit organisations as a category, meaning they must obtain status as charitable or social assistance institutions to obtain tax exemption. These categories are defined narrowly, focusing on action such as direct medical aid or education to the destitute, and do not easily encompass policy organisations.²⁸¹

Only “people’s power” organisations are eligible to receive financial support from government agencies.²⁸²

Media regulation

The Law on the Exercise of Journalism requires journalists to be members of the National College of Journalists and hold a journalism degree, contrary to international standards.²⁸³ However, the print media is not otherwise directly regulated by the State and the National College of Journalists, which handles journalistic ethic issues, is not a State body. In practice, however, almost all independent print media outlets have been forced to close in Venezuela due to a combination of the economic crisis and government harassment, such as via lawsuits or tax audits. In addition, the law grants the government a legal monopoly on importing newsprint and the State has failed to

²⁷⁷ Registration and Enlistment Law for the Defense of the Nation, Article 40. Available in Spanish at: <https://microjurisve.files.wordpress.com/2014/06/ley-de-registro-y-alistamiento-para-la-defensa-integral-de-la-nacic3b3n.pdf>.

²⁷⁸ ICNL, Civic Freedom Monitor: Venezuela, note 274 (describing reforms to the Criminal Procedure Code).

²⁷⁹ Law of Defense of Political Sovereignty and Self-Determination, note 276, Articles 6 and 7.

²⁸⁰ Civicus, “Venezuelan Government Continues to Repress Freedom of Association”, 28 September 2019. Available at: <https://monitor.civicus.org/newsfeed/2019/09/28/venezuelan-government-continues-repress-freedom-association/>.

²⁸¹ ICNL, Civic Freedom Monitor: Venezuela, note 274; and Council of Foundations, *Nonprofit Law in Venezuela*, December 2018, available at: <https://www.cof.org/country-notes/venezuela>.

²⁸² ICNL, Civic Freedom Monitor: Venezuela, note 274.

²⁸³ Law of the Practice of Journalism, Article 2. Available in Spanish at: <http://www.defiendete.org/html/de-interes/LEYES%20DE%20VENEZUELA/LEYES%20DE%20VENEZUELA%20II/LEY%20DE%20EJERCICIO%20DEL%20PERIODISMO.htm>.

supply sufficient newsprint to meet the demands of newspapers. This resulted in the last independent newspaper, El Nacional, suspending its print edition in 2018.²⁸⁴

Venezuela's National Telecommunications Commission, CONATEL, regulates broadcasting and the Internet, including issuing and overseeing licences and sanctioning any violations. This body is not independent as the President has the power to appoint and remove the director and the other four members of the board.²⁸⁵

The broadcast legislation permits the Executive to suspend or revoke broadcasting licences when it decides that this would be in the best interests of the nation or of public order or security.²⁸⁶ In addition, the Law on Social Responsibility in Radio, Television and Electronic Media also gives CONATEL extensive authority to impose fines, block transmissions or revoke the licences of broadcasters which violate a range of obligations, including the long list of content restrictions described in the next section.²⁸⁷

Broadcasters can also be required to carry State messages. President Maduro frequently uses the Law on Social Responsibility in Radio, Television and Electronic Media to justify interrupting programmes to make official statements, which stations must carry without compensation.²⁸⁸

In May 2019, President Maduro announced that he would create a "National Telecommunications Corporation" which would unify the regulation of State media and private media under a body led by the head of CONATEL. This appears to be an attempt to nationalise, indirectly, the remaining private media.²⁸⁹

Content restrictions

Venezuelan law contains numerous restrictions on freedom of expression which do not conform with human rights law. For example, the Penal Code criminalises defamation, with heightened prison terms for defamation of the President. It also has a *desacato* provision which prohibits insulting the honour of State officials and another provision which prohibits intimidating or threatening public officials or their families.²⁹⁰

²⁸⁴ IACHR, *Situation of Human Rights in Venezuela*, 31 December 2017, p.173, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Venezuela2018-en.pdf>; and DW, "Venezuela's Anti-Government Newspaper, El Nacional, Forced to Stop the Presses", 13 December 2018, available at: <https://www.dw.com/en/venezuelas-anti-government-newspaper-el-nacional-forced-to-stop-the-presses/a-46730985>.

²⁸⁵ Organic Telecommunications Law, Article 40. Available in Spanish at: <http://www.conatel.gob.ve/wp-content/uploads/2014/10/Ley-Org%C3%A1nica-de-Telecomunicaciones.pdf>.

²⁸⁶ *Ibid.*, Article 189 (Décima).

²⁸⁷ Law on Social Responsibility in Radio, Television and Electronic Media, Article 29. Available in Spanish at: <https://historiadelascivilizacionesblog.files.wordpress.com/2016/07/ley-de-responsabilidad-social-en-radio-televisic3b3n-y-medios.pdf>.

²⁸⁸ Freedom House, *Freedom of the Press: Venezuela*, 2017. Available at: <https://freedomhouse.org/report/freedom-press/2017/venezuela>.

²⁸⁹ Netblocks, "Mapping the Implications of Venezuela's New National Telecommunications Corporation", 24 May 2019. Available at: <https://netblocks.org/analysis/mapping-the-implications-of-venezuelas-new-national-telecommunications-corporation-98aZgYAO>.

²⁹⁰ ICNL, *Civic Freedom Monitor: Venezuela*, note 274.

The Law on Social Responsibility in Radio, Television and Electronic Media prohibits broadcasters from disseminating a range of content, most of which is defined in very general terms. This includes promoting discrimination, promoting anxiety in the citizenry or trying to alter the public order, failing to recognise legitimate authorities, fostering distress in the public and anything contrary to the security of the nation, which induces homicide.²⁹¹

The Law Against Hate for Peaceful Coexistence and Tolerance, passed in 2017, also contains problematically vague prohibitions on hate speech, such as via general references to promoting or inciting hatred or intolerance, without a sufficient intent requirement or other guarantees against abuse. Penalties for those who disseminate such content are ten to 20 years' imprisonment.²⁹²

Internet and digital rights

Legislation such as the Law on Social Responsibility in Radio, Television and Electronic Media offers some legal basis for blocking and filtering content. But President Maduro has also used a state of emergency decree to authorise extensive powers to monitor and filter Internet content.²⁹³ CONATEL, the broadcasting regulator, is also responsible for Internet regulation. In addition to blocking content, CONATEL can sanction Internet service providers, which are subject to intermediary liability for content which violates the Law on Social Responsibility in Radio, Television and Electronic Media or the Law against Hate.²⁹⁴

A bill currently before the National Constituent Assembly would declare a sovereign Venezuelan Internet. The bill contains sweeping restrictions on Internet use in Venezuela, imposes a duty on citizens to report irregular situations which pose a risk to internal peace and order, permits broad surveillance powers, requires service providers to censor content and introduces the concept of “content security” which would permit preventative actions to “counteract hate” online.²⁹⁵

Right to information and secrecy laws

Venezuela does not have a law on access to information.²⁹⁶ Presidential Decree 457 grants broad powers to the Strategic Centre for Security and Protection of the Homeland. This is a decentralised body of the Office of the Presidency in charge of “unifying the flow of information” on security,

²⁹¹ Law on Social Responsibility in Radio, Television and Electronic Media, note 287, Articles 27(4) and (5).

²⁹² Constitutional Law against Hate for Peaceful Existence and Tolerance, Article 20. Available in Spanish at: https://albaciudad.org/wp-content/uploads/2017/11/GO-41.274-_081117.pdf.

²⁹³ IPYS, “Nuevo Estado de Excepción Contempla ‘Regulaciones Contundentes’ a los Contenidos en Internet”, 17 May 2017. Available at: <https://ipysvenezuela.org/alerta/nuevo-estado-excepcion-contempla-regulaciones-contundentes-los-contenidos-internet/>.

²⁹⁴ Constitutional Law against Hate, note 292, Article 14.

²⁹⁵ Proposed Draft Constitutional Law of Cyberspace of the Bolivarian Republic of Venezuela. Available in Spanish at: <https://www.accessnow.org/cms/assets/uploads/2019/01/ley-del-ciberespacio-venezuela.pdf>. Described in English at Access Now, “A Bill in Venezuela Seeks to Give the Government Absolute Control Over the Internet”, 17 January 2019. Available at: <https://www.accessnow.org/a-bill-in-venezuela-seeks-to-give-the-government-absolute-control-over-the-internet/>.

²⁹⁶ RTI Rating, Country Data. Available at: <https://www.rti-rating.org/country-data/>.

defence, and intelligence matters. The president of the centre has the authority to label information as classified if it is of strategic interest to the security of the nation.²⁹⁷

Restrictions on freedom of assembly

Peaceful assembly is mainly regulated by the Law on Political Parties, Public Gatherings and Demonstrations. Article 43 requires 24-hour advance notice in writing to civil authorities indicating the place, date, time and objective of an assembly. Anyone who violates this law can be detained for between 15 and 30 days and authorities are required to take all preventive measures to prevent public gatherings that have not given advance notice.²⁹⁸

Supreme Tribunal of Justice decisions and Executive Resolutions require public demonstrations to obtain authorisation, with prior notice alone being insufficient. Unauthorised demonstrations are automatically deemed to be violent such that protestors do not receive the benefit of the right to peaceful assembly.²⁹⁹

The Organic Law on National Security establishes a ban on assemblies in areas declared to be “security zones” by military authorities. The executive can declare a security zone in any area deemed to be necessary for the defence of the nation. Anyone who organises, holds or incites activities that disrupt or affect the organisation of security zones can be imprisoned for between 5 and 10 years.³⁰⁰

Provisions in the Penal Code facilitate bringing criminal charges against protestors. Obstructing public highways can result in a four to 16 year sentence. Other provisions related to disobeying authorities or conspiring to help insurgents or subversives can also be used against protestors. In practice, authorities regularly arrest and charge protestors. There have also been serious concerns about the use of force against protestors including the use of lethal weapons and toxic gases, and arbitrary detention and torture of protestors.³⁰¹

National security laws

Venezuela has relied heavily on declared states of emergency to grant broader powers to the executive branch. While the Constitution places restrictions on such decrees, President Maduro has used the (non-independent) Supreme Tribunal of Justice to ratify these decrees, circumventing the Constitution’s procedural requirements and obligations to conform to the limits on emergency decrees in international human rights treaties.³⁰²

²⁹⁷ Decree 457 of 2013, Articles 7 and 9. Available in Spanish at: <http://manifestar.org/wp-content/uploads/2014/07/Decreto-N%C2%B0-458-mediante-el-cual-se-crea-el-Centro-Estrat%C3%A9gico-de-Seguridad-y-Protecci%C3%B3n-de-la-Patria-CESPPA.-2013.pdf>.

²⁹⁸ Law on Political Parties, Public Meetings and Demonstrations, Articles 43 and 49. Available in Spanish at: <http://www.icnl.org/research/library/files/Venezuela/LeyManifestacio.pdf>.

²⁹⁹ ICNL, Civic Freedom Monitor: Venezuela, note 274.

³⁰⁰ Organic Law of National Security, Articles 47, 48(7) and 56. Available in Spanish at: <https://www.acnur.org/fileadmin/Documentos/BDL/2008/6667.pdf>.

³⁰¹ ICNL, Civic Freedom Monitor: Venezuela, note 274.

³⁰² Constitution, Article 339, available in Spanish at: <https://venezuela.justia.com/federales/constitucion-de-la-republica-bolivariana-de-venezuela/titulo-viii/capitulo-ii/#articulo-337>; Andrew Cawthorne and Alexandra Ulmer,

Some crimes relating to national security in the Criminal Code are generic in nature and are not clearly defined. For example, treason, which may result in up to 30 years' imprisonment, includes conspiring against government institutions, antagonising those institutions by any means or threatening national sovereignty.³⁰³ The Code of Military Justice establishes a number of military offences which may be applied to civilians as well as military staff. This includes crimes such as treason against the fatherland, rebellion, subversion, false alarm and other acts prohibited by the Commanders in Chief.³⁰⁴ Many of these crimes, like their equivalents in the Penal Code, are overly vague. Several other laws permit civilians to be investigated and tried in military courts.³⁰⁵ In practice, trying civilians in military courts has become increasingly common in recent years.³⁰⁶

The intelligence agencies are able to conduct surveillance with little independent oversight or transparency. This is partly because surveillance is largely regulated through executive decrees which generally give the executive significant control over the authorities responsible for surveillance and grant broad surveillance mandates.³⁰⁷ A highly controversial programme is the “Fatherland ID” project, which provides Venezuelans with identity cards which collect data on them as the cards are used to obtain public benefits, vote and engage in other activities. Critics allege that this programme is designed to collect information for purposes of extensive surveillance of the citizenry.³⁰⁸

Whistleblower protection and other protection systems for threatened activists

Venezuela does not have a whistleblower protection law.

Venezuela Declares ‘Economic Emergency’, Reveals Depth of Crisis, 15 January 2015, available at: <https://www.reuters.com/article/us-venezuela-economy-idUSKCN0UT2ER>; and Human Rights Watch, *Venezuela: Revoke Emergency Decree*, 19 May 2016, available at: <https://www.hrw.org/news/2016/05/19/venezuela-revoke-emergency-decree>.

³⁰³ Criminal Code, Articles 128 and 129. Available in Spanish at: https://www.oas.org/juridico/spanish/mesicic3_ven_anexo6.pdf.

³⁰⁴ Code of Military Justice. Available in Spanish at: <https://www.agaconsultores.com.ve/pdf/13-codigo-de-justicia-militar.pdf>.

³⁰⁵ For a detailed discussion of these in Spanish, see International Commission of Jurists, *El Juzgamiento de Civiles por Tribunales Militares en Venezuela*, 2018. Available at: <https://www.icj.org/wp-content/uploads/2018/04/Venezuela-Civiles-Tribunales-Militares-Publications-Reports-Thematic-Reports-2018-SPA.pdf>.

³⁰⁶ Amnesty International, *Venezuela: Use of Military Courts against Civilians undermines Rule of Law*, 10 May 2017. Available at: <https://www.amnesty.org/en/latest/news/2017/05/venezuela-uso-de-tribunales-militares-contra-civiles-pone-en-jaque-al-estado-de-derecho/>.

³⁰⁷ These are described in detail at Acceso Libre, International Human Rights Clinic at Harvard Law School and Privacy International, *The Right to Privacy in Venezuela, Stakeholder Report to the Universal Periodic Review*, 2016. Available at: http://hrp.law.harvard.edu/wp-content/uploads/2016/04/venezuela_upr2016.pdf.

³⁰⁸ Angus Berwick, “How ZTE Helps Venezuela Create China-Style Social Control”, Reuters, 14 November 2018. Available at: <https://www.reuters.com/investigates/special-report/venezuela-zte/>.