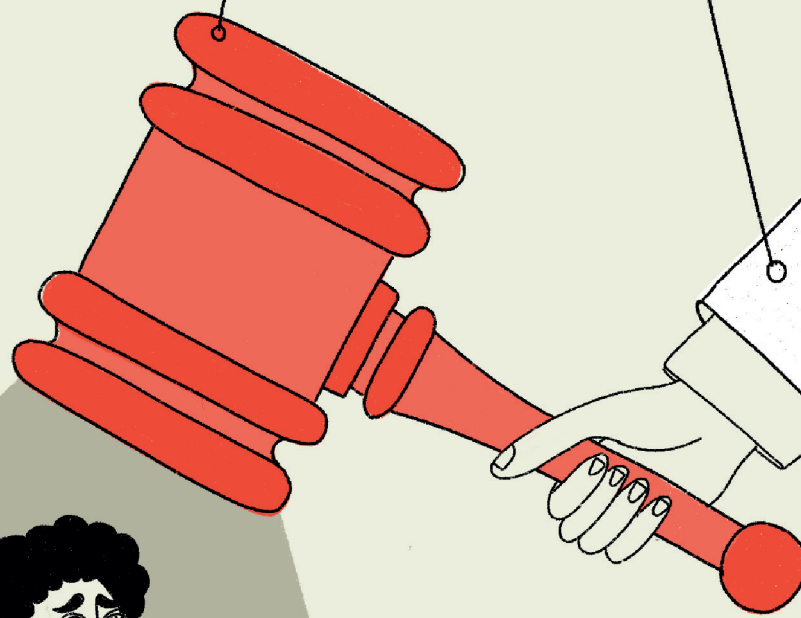


# LAWS TO SILENCE



Judicial Harassment  
Against Freedom of  
Speech in Mexico  
and Colombia

**FLIP** FUNDACIÓN PARA  
LA LIBERTAD  
DE PRENSA

ARTICLE<sup>19</sup>



**Justice for Journalists**  
Foundation for International  
Investigations of Crime against Media

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The Foundation for Press Freedom (FLIP) is a non-governmental organization that defends freedom of expression and promotes optimal conditions for those who practice journalism can satisfy Colombian people's right to be informed.

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Justice for Journalists Foundation (JFJ) is London-based non-governmental organisation. JFJ funds journalistic investigations into violent crimes against media workers and helps professional and citizen journalists to mitigate their risks. The foundation was established in August 2018 by Mikhail Khodorkovsky, founder of the Open Russia pro-democracy movement, an Amnesty International-recognised prisoner of conscience, and Putin's most prominent critic, together with his former business partner, philanthropist and member of the Free Russia Forum's standing committee Leonid Nevzlin.

Our mission is to facilitate journalists' access to existing resources and make them relevant to the specifics of each region. We believe security is the essential basis for work in the media. We help journalists acquire the skills and knowledge to address their professional challenges.



**Justice for Journalists**  
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Investigations of Crime against Media

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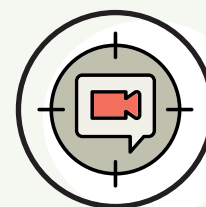
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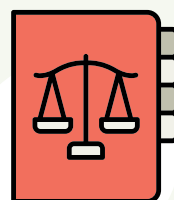
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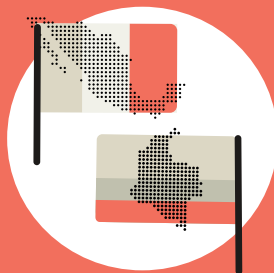
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# 1

## JUDICIAL HARASSMENT IN MEXICO AND COLOMBIA



## • Introduction and Characterization of Judicial Harassment





Threats to freedom of speech, and particularly to the journalistic activity in the region are notorious. Among these, there is a phenomenon that has become increasingly recurrent, which from the Foundation for Press Freedom (FLIP) and ARTICLE 19 we have called as judicial harassment: The abuse of judicial mechanisms to censor and intimidate persons who disclose information of public interest, whether for their journalistic work and/or for the defense of human rights. For the purposes of this report, we will analyze the phenomenon, particularly in Mexico and Colombia.

+ Complaints that are usually made are against the honor, goodwill and/or privacy of public officers in the exercise of their duties.

Such a figure may include criminal charges, civil claims, administrative proceedings, or constitutional actions in the case of Colombia. Complaints that are usually made are against the honor, goodwill and/or privacy of public officers in the exercise of their duties, individuals with public exposure, or even fabricated accusations of terrorism or subversion toward human rights defenders. This leads to judicial proceedings to intimidate human rights defenders and journalists<sup>1/1</sup>.

Judicial harassment can be characterized by four main elements, to be briefly developed below: i) The judicialization of freedom of speech concepts; ii) the appearance of an unfounded case; iii) inequality between the parties to the conflict, and iv) to seek the silencing of a matter of public interest<sup>2</sup>.

<sup>1/1</sup>. Footnotes that refer to a bibliographic citation are at the end of the document. Footnotes that provide additional information are found in the base of every page.

 <p><b>Judicialization of Freedom of Speech Conflicts</b></p>	<p>A conflict over the truthfulness or scope of an expression, in front of a person or organization, whether an opinion or information, is brought to the jurisdiction for resolution by judges.</p>
 <p><b>Appearance of an Unfounded Cause</b></p>	<p>The use of jurisdictional channels is reckless or unreasonable; the cause seeks to generate fear or pressure on the person who communicates, beyond seeking the correction of a false or harmful expression. These do not necessarily seek a favorable decision.</p>
 <p><b>Inequality Between the Parties to the Conflict</b></p>	<p>There is substantial inequality between the parties in terms of political, economic and/or social power. For those who exert pressure through judicial harassment, the use of jurisdictional mechanisms is not an exorbitant effort as it does for the victim.</p>
 <p><b>Silencing an issue of public interest</b></p>	<p>The expression that is accused of, refers to a matter of public interest that has an impact on the social, political and/or economic sphere of society. The Inter-American Court of Human Rights (IACHR) has established that, when it comes to matters of public interest, “the criminal offense is excluded and, therefore, the possibility of it being considered a crime and subject to punishments”<sup>3</sup>.</p>

Judicial harassment is a recognized problem at the regional level. For 2017, the Office of the Special Rapporteur for Freedom of Expression (RELE in Spanish) of the Inter-American Commission on Human Rights (IACHR) warned in its report called:



*Silenced Areas: Regions of high danger to exercise freedom of speech*<sup>4</sup> that “censorship has increased through extreme violence directed against male and female journalists, or harassment through criminal or civil lawsuits”. Likewise, in its 2019 annual report, after outlining a case in Argentina, the RELE stated that “journalists investigating corruption or undue actions by public authorities, should not be the target of judicial harassment or other harassment as retaliation for their work”<sup>5</sup>.

The trend over judicial harassment in the region - even though there is underreporting - is that cases increase. In Colombia alone, there was a significant increase. FLIP went from 14 cases of judicial harassment in 2017, to 66 cases in 2019, and 36 in 2020. In the case of Mexico, just 1 case was recorded in 2015. For 2017, it rose to 13, and climbed to 21 in 2019; in 2020 it reached 39 registered cases.

Judicial harassment, while a problem in several countries, does not have an institutionalized enunciation spot, as it does in other jurisdictions. Such is the case in the United States, where a discussion of the abuse of judicial mechanisms to silence public debate under the name of SLAPP<sup>6</sup> (Strategic Litigation Against Public Participation) started.

The SLAPP aims to manipulate the judicial system under a simulation of legitimate judicial claims; in this case, using crimes of slander or defamation to end criticism, benefiting from the costs of the legal processes and the time to litigate cases, that may take years, which causes an inhibitory effect on freedom of speech<sup>7</sup>.

This report then arises from the need to analyze the phenomenon, and to visualize it from two latitudes and a region where the press and freedom of speech constantly face various risks.

Through documentary review, the analysis of existing cases and records at FLIP and ARTICLE 19, from the testimonies of people affected by judicial harassment, and the revision of national and international standards on freedom of speech, we will expose how judicial harassment operates in Mexico and Colombia, who it aims to silence, and the impacts it has on the journalistic activity, on the defense of human rights and, overall, on society, public deliberation, and democracy.

<sup>4</sup> Inter-American Commission of Human Rights (IACHR), Special Rapporteur for Freedom of Expression, “Silenced zones: Regions of high danger to exercise freedom of speech”, OAS/Ser.L/V/II IACHR/RELE/INF.16/17, 2017. See: [http://www.oas.org/es/cidh/expresion/docs/publicaciones/ZONAS\\_SILENCIADAS\\_ESP.pdf](http://www.oas.org/es/cidh/expresion/docs/publicaciones/ZONAS_SILENCIADAS_ESP.pdf)

The report outlines cases in which journalists were subjected to judicial proceedings in retaliation for the exercise of their activity.

<sup>6</sup> Strategic Litigation Against Public Participation. This name was coined for the first time by professors George Pring and Penelope Canan in the 80s decade.

# 2

## **INTERNATIONAL STANDARDS ON FREEDOM OF EXPRESSION AND THE RIGHT TO INFORMATION**



The main standards for freedom of speech and the phenomenon of judicial harassment against human rights defenders and journalists, are developed below.<sup>8</sup> This is to have a clear framework on the international protection provided to freedom of speech, and to understand how judicial harassment contravenes it.

## 2,1

### WHAT IS FREEDOM OF SPEECH AND WHAT PROTECTS IT?



Freedom of speech, in all its forms and manifestations, is a fundamental and inalienable right, inherent to all persons. It implies the freedom to manifest any idea or thought through any platform. It also protects the search, dissemination, and reception of information, especially in the public interest. That is why all speeches, whether cultural, political, academic, to name a few, presume protection.<sup>9</sup>

Freedom of speech is a prerequisite for the very existence of a democratic society. In this regard, the work of human rights defenders and journalists should be highlighted, as they play an essential role in communicating complaints, alleging human rights violations, and criticizing the activities of public authorities or individuals with public exposure. It is therefore necessary for human rights defenders and journalists to enjoy the protection and independence necessary to fully perform their roles.

The right to freedom of speech is protected by various international treaties. The most important ones are listed below:

<sup>8</sup>. It should be recalled that journalists and media professionals can be regarded as human rights defenders when, through their activities, they promote human rights in general and seek to protect the rights of others. See Sekaggya, Margaret, “Report on the Situation of Human Rights Defenders”, UN, A/HRC/19/55, 2011.

<sup>9</sup>. This definition was built on elements of international instruments on the matter, such as: The Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), and the American Convention on Human Rights (Article 13)

Right to Freedom of Speech		
Level	Treaty	Article
 <b>Universal</b>	<i>The Universal Declaration of Human Rights</i>	<b>19</b> Not to be disturbed because of ones opinions, to seek, receive and impart information and ideas through any media and, regardless of frontiers, by any means of expression.
	<i>International Covenant on Civil and Political Rights</i>	<b>19 (1)</b> No one may be harassed because of his/her opinions. <b>19 (2)</b> Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.
 <b>Regional</b>	<i>American Convention on Human Rights</i>	<b>13 (1)</b> Every person has the right to freedom of thought and expression. This right includes freedom to seek, receive and disseminate information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print or in the form of art, or through any other means of his/her choice.
		<b>13 (2)</b> The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship.
	<i>European Convention on Human Rights</i>	<b>13 (3)</b> The right of expression may not be restricted by indirect methods or means <sup>10</sup> .
		<b>10</b> This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.

<sup>10</sup>. Such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or of items and equipment used in the dissemination of information, or by any other means tending to impede communication and circulation of ideas and opinions.

## Assumptions of the Exercise and Protection of Freedom of Expression

Freedom of expression is a fundamental element containing assumptions on which the existence of a democratic society is based. In view of this, it is possible to say that a society that is not well informed is not fully free. Without effective freedom of expression, embodied in all its assumptions, democracy fades, as the space to criminalize and silence the work of human rights defenders and journalists opens. Such assumptions are as follows:

**Existence of a democratic system of law, where restrictions on human rights are contained in the law<sup>11</sup>, pursuing legitimate objectives, these being necessary and proportional.**

**Prohibition of prior censorship, interference or direct or indirect pressure<sup>12</sup>.**

**Everyone has the right to communicate their opinions in any form and by any means<sup>13</sup>.**

**Prior conditions, such as truthfulness, opportunity, or impartiality on the part of States, are incompatible with the right to freedom of expression recognized in international instruments<sup>14</sup>.**

<sup>12</sup>. IACHR, Palamara Iribarne v. Chile Case, 2005. The Court, in this case, understands that it may be the duty of employees or officers of an institution to keep confidential certain information to which they have access in the exercise of their duties, when the content of such information is covered by said duty. However, when such information is obtained from open sources, they should not prohibit the publication of such information; UN, op.cit., para. 13; UN, Marques de Morais v. Angola Case, No. 1128/2002, 2002; ECJ, The Sunday Times v. the United Kingdom, 1979; ECJ, ‘Spy-catcher’ cases, 1991.

**Every social communicator has the right to reserve his or her sources of information, notes, and personal and professional records<sup>15</sup>.**

**Any aggression or threat or murder of social communicators, as well as the destruction of their work material, violates freedom of expression<sup>16</sup>.**

**It is the duty of the States to prevent and investigate events affecting freedom of expression, punish their authors and ensure adequate redress to victims<sup>17</sup>.**

From the development of case law and legal doctrine, the following principles of protection of freedom of expression have been crystallized:

**Freedom of expression is a fundamental and inalienable right, inherent to all people. It is an indispensable requirement for the very existence of a democratic society<sup>18</sup>.**

**Freedom of expression must be exercised without discrimination based on sex, religion, political opinion, or any other social status<sup>19</sup>.**

**The exercise of the right to access information may relate to information of a person or his/her property, expeditiously and not onerously, as well as access to information held by the State<sup>20</sup>.**

In direct relation to the impact of freedom of expression on the defense of human rights, social activism and journalism, various standards of protection have been established to avoid illegitimate restrictions that facilitate or generate criminalization and judicial harassment.

## 2,2

## INTERNATIONAL STANDARDS ON THE PROTECTION OF FREEDOM OF EXPRESSION AGAINST JUDICIAL HARASSMENT



Common Law	Inter-American System	Universal System	European Protection System
Prohibition of previous censorship by the State <sup>21</sup> .	The laws of privacy should not inhibit or restrict the investigation and dissemination public interest <sup>22</sup> .	Freedom of information and freedom of expression are cornerstones of all free and democratic <sup>23</sup> .	Proportionality between law and order and freedom of expression <sup>24</sup> .
To punish attacks to honor of public figures, malice in journalists' must be proved real <sup>25</sup> .	Protection to reputation must be guaranteed only through civil sanctions, restricting the use of criminal law <sup>26</sup> .	Public debates on political figures in a democratic society, especially in the media, are relevant for not to limit them <sup>27</sup> .	Authorities are subject to scrutiny which is more rigorous than that on individuals <sup>28</sup> .
Criminal defamation can only apply to statements made knowing that they were false <sup>29</sup> .	In cases where damages to honor are alleged, a review should be made of whether there was real malice <sup>30</sup> .	Given the preponderant importance in a democratic society on the right to freedom of expression and of a free press and other media, these should not be censored with criticism from a public officer <sup>31</sup> .	Prohibition of prior censorship <sup>32</sup> .



Common Law	Inter-American System	Universal System	European Protection System
The real malice standard also applies to public figures, including businesspeople, celebrities, and elected officers <sup>33</sup> .	Laws that sanction offensive expressions directed at public officers, undermine freedom of expression and the right to information <sup>34</sup> .	In cases of defamation charges, a fair measure should be applied, so that these do not have a paralyzing effect that restricts the right to freedom of expression <sup>35</sup> .	Importance of informing society about topics of public interest <sup>36</sup> .
Real malice means that a statement of defamation was false or made without regard to its truth <sup>37</sup> .	The use of State power and public resources (official credits, official advertisement) with the aim of putting pressure on communicators undermines freedom of expression <sup>38</sup> .		Due care in the imposition of measures by States, for not to cause an inhibitory effect toward journalists <sup>39</sup> .
No publication should be censored unless it is proven: 1) that this would result in damage to the nation, 2) that is of a direct, immediate, and irreparable nature. In the case of the Pentagon Papers, the government failed to prove these elements <sup>40</sup> .	Any act aimed at censoring social communicators is incompatible with freedom of expression. Social communicators have the right to carry out their work independently <sup>41</sup> .		

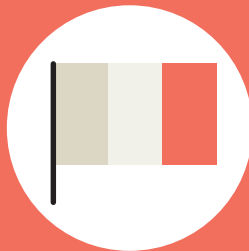




Common Law	Inter-American System	Universal System	European Protection System
Freedom of expression protects clearly offensive statements about public figures, provided that these cannot be reasonably interpreted as factual statements <sup>42</sup> .			A value judgment should not prove its veracity <sup>43</sup> .
Expressions seeking social activism cannot be sanctioned. In doing so, the Court protected two elements of discourse: Emotional (the expression of emotion), and cognitive (the expression of ideas) <sup>44</sup> .			

# 3



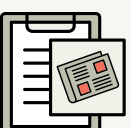
## **JUDICIAL HARASSMENT IN MEXICO**



## 3,1



## MEXICAN LAWS THAT ALLOW JUDICIAL HARASSMENT

In Mexico, there are various criminal, civil, and intellectual property norms that allow judicial harassment, which restrict the exercise of the right to freedom of expression of human rights defenders and journalists:

Type	Regulations	Definition
 <b>Criminal</b>	<b>Defamation</b>	The one who, through a willful malicious communication to another, indicts to an individual or collective entity, an event that causes discredit, dishonor or damages his/her reputation.
	<b>Libel</b>	Intent to attribute dishonorable and false actions to one person.
	<b>Slander</b>	Intent to attribute criminal acts to a person, these being false.
 <b>Civil</b>	<b>Moral Damages</b>	The damage that a person suffers in his/her feelings, affections, beliefs, decorum, honor, reputation, private life, configuration, and physical appearance, or in consideration others have on himself/herself.
 <b>Intellectual Notification</b>	<b>Property and Withdrawal</b>	Forces providers of digital platforms and search engines (Facebook, Twitter, Safari, Google) to remove content from the Internet.

## Inhibitory Effect of Existing Rules on Freedom of Expression

The rules in the table above cause an inhibitory effect or *chiling effect* -on human rights defenders and journalists- which has the following elements and effects:

Inhibitory Effect <sup>45</sup>	
 Items	 Effects
To unjustifiably restrict the exercise of the right to liberty of expression	Fear of consequences for the making of a certain communicative action, whose performance should be protected
Imposition of excessive and disproportionate measures	Fear of damage caused, including costs of access to justice or litigation
Lack of legal certainty provided by law	

The inaccuracy of the rules, and excessive sanctions imposed against the exercise of freedom of expression, generate an inhibitory and fear effect for the defense and promotion of the rights of access to information and freedom of expression.

The imposition of criminal or civil sanctions on offenses against public servants related to the exercise of their duties, goes against a democratic society. In this sense, the effects they bring with them are to discourage the exchange of views and free democratic debate. This is why demands appear on the need to decriminalize criticism of people with public projection. It is important to clarify that it is not a question of denying the honor of those in a public service, but that their possible injury does not affect or inhibit freedom of expression. Care must be taken in the imposition of sanctions since these can inhibit and discourage human rights defenders or journalists from participating in the discussion of issues of a legitimate general interest.

## Political Use of Criminal, Civil and Intellectual Property Regulations to Punish the Exercise of Freedom of Expression

We are living in a profound security crisis that seriously affects the human rights of individuals. Acts of violence have targeted those who are most indispensable in publicizing situations of conflict and insecurity, corruption, and criminality. These people are human rights defenders and journalists. To silence all those demands of these groups and human rights violations.

About freedom of expression, cases<sup>46</sup> in which authorities use the law and legal procedures to inhibit, harass and silence criticism against human rights defenders and journalists are increasing.

In view of this, the IACHR<sup>47</sup> pointed out that this type of violence has a particular political objective: To attack democratic life at all levels. The mode of operation of the authorities which has been identified, is to punish with high fines, to make arbitrary arrests, or to eliminate and remove information (as will be seen in paragraph 7 of this report).

It is urgent to ensure that human rights defenders and journalists are not subjected to judicial harassment or other harassment in retaliation for their work.

## Figures that Facilitate the Criminalization of the Defense of Human Rights Activity

### FIGURES IN CRIMINAL LAW



In Mexico, there are different criminal laws that facilitate judicial harassment of human rights defenders and journalists, such as crimes against honor. These are regulated in the various Criminal Codes of the federal entities.

Such crimes against honor, also known as contempt, are defamation, slander, and libel. In general, they are all expressions that affect a person's honor. Public officers or private individuals with public outreach generally use these regulations as a mechanism to discourage and censor criticism. Their existence is justified on the pretext of the need to protect the proper functioning of public administration<sup>48</sup>.

However, the effect it brings with it is to inhibit defenders and journalists from expressing their views on problems of public interest. In this regard, the RELE has reiterated in several of its reports<sup>49</sup>, to disagree on that crimes against honor continue to be used to silence criticism<sup>50</sup>.

In this context, where human rights violations of human rights defenders and journalists are increasing, it is of great concern that such crimes remain in most federal entities, and that is why the need to decriminalize them is required.

<sup>48</sup>. The IACHR, in its 1994 annual report, "Chapter V on the Compatibility of the Laws of Contempt, and the American Convention on Human Rights," stated that the justification of crimes against honor has a dual function: 1) by protecting public officers from offensive and/or critical expression, they are free to perform their duties; and 2) contempt laws protect law and order, because criticism of public officers may have a destabilizing effect on the national government. See: <https://www.cidh.oas.org/annualrep/94span/indice.htm>.

<sup>50</sup>. Contempt laws are a kind of legislation that penalizes the expression that offends, insults, or threatens a public officer in the performance of his or her official duties. These also include criminal defamation laws, including insult and slander legal definitions, for the same purpose as contempt. Refer to: IACHR, "Annual Report 1994", op.cit.

## REGULATIONS IN CIVIL LAW



Moral damage is a legal definition of civil law regulated in the local civil codes of the 32 states of the Republic; therefore, anyone can promote a lawsuit against someone, more through local civil law. These are the damages that an individual may suffer in his or her character. Moral damage shall be presumed when the liberty or physical or mental integrity of persons is unlawfully violated or undermined.

It is used to pressure and censor journalists and human rights defenders, most often through lawsuits filed by public officers seeking high compensation. In this sense, journalists and human rights defenders in the country have gone through a tortuous path, with claims that demand the payment of exorbitant figures for an alleged moral damage caused by press notes or contents that they have published<sup>51</sup>.

Civil penalties, such as compensation or fines, could be less harmful to freedom of expression than criminal penalties. Nonetheless, over the past few years, it has been seen that these exceed the economic capacity of human rights defenders and journalists, generating economic violence.

This violence is due to the low wages that a person gets within the working environment, impacting his or her survival. An example of this is the case of Juan Pablo Barrientos<sup>52</sup> where he points out that what he fears most is to have a civil lawsuit because it means paying large amounts of money, with which he does not have because he is only engaged in journalistic work and has no money. In view of this, a precariousness situation in the journalistic work and of defense of human rights is observed, which does not allow the payment of large sums of money to face judicial processes, that require high amounts to be able to pay for them<sup>53</sup>.

<sup>51</sup>. Like the case of Sergio Aguayo, a journalist, who, after criticizing the duties performed by the former governor of Coahuila, was sentenced to pay 10 million Mexican pesos for “punitive damages,” for damaging his honor in a journalistic column.

<sup>52</sup>. For details of the case, see paragraphs 5 and 6 of this report.

<sup>53</sup>. In the case of journalism, in the context of job insecurity, many people work independently as a freelance, in the absence of alternatives to be able to enter the formal workforce environment. In addition, they still are the victims of aggression and harassment. In this respect, in 2018 ARTICLE 19 recorded that there were 20 attacks of this kind of workers, and in 2019 there was an increase to 34 attacks; to know more about this see: ARTICLE 19, “Annual Report, On Silence, not to start over with a clean slate,” 2018 and the “Dissonance, Voices in Dispute” Report, 2019.

## INTELLECTUAL PROPERTY



According to the World Intellectual Property Organization (WIPO), intellectual property is intended to regulate the protection of moral and material interests resulting from the authorship of scientific, literary, or artistic productions<sup>54</sup>.

Legislation applicable under this branch of law facilitates both administrative and judicial harassment of human rights defenders and journalists because it restricts the exercise of freedom of expression, the right to access information and digital rights, to safeguard copyright.

One of the figures that can limit the mentioned rights is the so-called Notice and Take Down, which obliges providers of digital platforms and search engines (Facebook, Twitter, Safari, Google) to remove content from the Internet. The procedure for removal shall take place when one person accuses another of violating his or her copyright, and shall be carried out without judicial control, without evidence submission and without any trial.

It is a censorship mechanism, because it allows the removal of information by the Internet service provider, without having a legal process, which establishes an extrajudicial mechanism that violates freedom of expression, access to information and due process<sup>55</sup>.

This legal definition can be found in the Digital Millennium Copyright Act (DMCA). It is a law of American origin that applies to everyone who uses their services, like GoDaddy, Google, Twitter, to say a few. Section 512 regulates the deletion of content on the Internet. Such removal can be made simply when the right holder warns that his/her copyright is being violated, without judicial scrutiny. However, there have been cases where it has been shown that this law serves to censor journalists or human rights defenders, since they remove the content without a court ruling<sup>56</sup>.

In Mexico, something like Section 512 of the DMCA is being adopted through the amendments to the Copyright Act (April 2018). Precautionary measures, and an order issued by a judge to prevent irreparable harm to the parties, given the procedures of a trial, and without the violation of rights being found and with the lack of a due process were introduced<sup>57</sup>.

<sup>56</sup>. An example is the case of Pedro Canché, an independent Mayan journalist, who deals with political and human rights issues, who had to immediately remove his contents from his server without having the opportunity to defend himself, so he was censored.

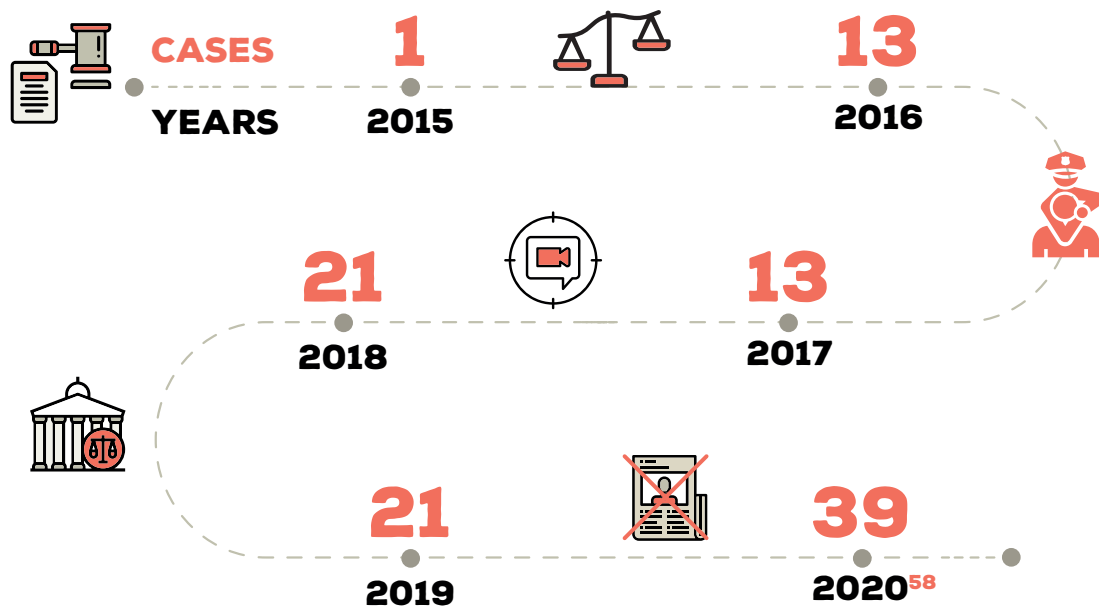


**3,2**

## VICTIMS OF JUDICIAL HARASSMENT

### • Figures on Judicial Harassment in Mexico

Cases of judicial harassment registered by ARTICLE 19 from 2015 to 2019 are as follows:



It should be noted that the numbers of cases are not dehumanizing people, but rather trying to show the magnitude of the problem by viewing the direct impacts to people.

<sup>58</sup>. ARTICLE 19 has been adapting the concepts of aggression according to the demands of the context of violence that the press is going through; therefore, the concepts considered for years 2015-2017 and 2018-2019 are different, although in essence they imply the same thing. From 2015 to 2017, the following specific documented attacks were considered: Judicialization, legal actions, administrative harassment, and judicial harassment. From the year 2018 onwards, specific attacks called: Administrative harassment, ministerial or judicial harassment by criminal proceedings, and judicial harassment by civil proceedings were considered.

- Systematization of Cases

## CASE OF ROBERTO SAUCEDO AND ARNOLDO CUÉLLAR<sup>59</sup>



### WHO IS AIMED TO BE CENSORED?

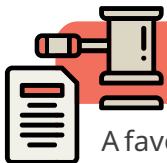
**Roberto Saucedo**, lawyer, and member of the Organization for Transparency named “Ciudadanos Hartos”, and collaborator of the Collective for Freedom of Expression of Guanajuato. And **Arnoldo Cuéllar**, activist and journalist.

### WHAT ARE THE REASONS FOR CENSORSHIP?

Reports and publications of large budget contracts of municipal officers, involving the probable commission of influence peddling, illicit enrichment, bankruptcy of municipal finances and nepotism.

### WHO CENSORS?

Municipal officers and television entrepreneur (the Rodríguez Rocha family)



## CASE SPECIFICATIONS

A favorable ruling was obtained for the activists, since the Magistrate who was responsible for carrying it out, used the standards of protection of freedom of expression, namely: **1)** she noted that the publications made are not offensive or inciting violence; **2)** these are issues of public interest relevant to society, thus are protected by freedom of expression; **3)** expressions given by activists are founded on a factual basis and **4)** plaintiffs are people with public outreach, therefore they must tolerate a greater degree of interference in their personal scope.

Roberto Saucedo, lawyer, and member of the Organization for Transparency named “Ciudadanos Hartos”, and collaborator of the Collective for Freedom of Expression of Guanajuato. Arnoldo Cuéllar is a journalist and activist in favor of transparency and information freedoms in Guanajuato, and director of the digital media named Poplab.mx, a portal where he has revealed acts of corruption by public officers and big entrepreneurs. Unfortunately, both have been victims of judicial harassment.

In May 2018, Roberto Saucedo was notified of two claims for the alleged moral damage committed against Silvia Rocha Miranda, the municipal councilor of Guanajuato, and her husband, Jorge Antonio Rodríguez Medrano, owner of TV8 private TV channel, of *Telecom Nacional S. de R.L. de C.V.* concessionaire.

Claims indicate that a “patrimonial and non-patrimonial” damage is caused to such persons, caused by publications made through the defendant’s Facebook account, and in which these account for the power relations between Jorge Antonio Rodríguez Medrano and municipal officers, which have led on the concessionaire that owns channel TV8, *Telecom Nacional S. de R.L. de C.V.* on not to pay the amount of 87 million Mexican pesos it owes to the municipality of Guanajuato.

The municipal civil servant demanded the payment of compensation for moral damage. The other lawsuit, filed by Jorge Antonio Rodríguez Medrano, owner of TV8 private TV channel, demanded the payment of 84 million Mexican pesos for “moral damage and endangering”, as well as the payment of 850,000 Mexican pesos for indirect moral damage.

In the same sense, Arnoldo Cuéllar and *Zona Franca* website (the media where he worked at the time of the lawsuit) were also the victims of a lawsuit for moral damages, filed by Rodríguez Medrano, because of the publication of the large budget contracts he allegedly received from the public administration of the State capital; on the way Rodríguez’s family members have been placed in local government posts, as well as being exempt from the payment for the use of the route for the distribution of the cabling of his television service.

The events described above show a clear tendency on the part of the Rodríguez Rocha family to use judicial remedies to inhibit journalistic and defense activities through judicial harassment and civil claims (of which 6 were accumulated) with disproportionate compensation. Despite this, finally in 2020 activists were awarded a ruling confirming the protection of freedom of expression.

## LEONARDO GARCÍA CASE<sup>60</sup>



### WHO IS AIMED TO BE CENSORED?

Human rights defender (**Leonardo García**).



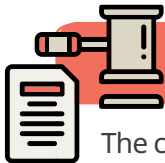
### WHAT ARE THE REASONS FOR CENSORSHIP?

Allegations of irregularities and corruption in the approvals of construction licenses, and conflicts of interest by the Deputy Secretary of Works of Hidalgo, Marco Antonio Rico Moreno, shareholder of SYLMA construction company.



### WHO CENSORS?

The construction company named SYLMA, S.A. de C.V., endorsed by Hidalgo State Prosecutor's Office and the Judiciary Faculty of the Section.



## CASE SPECIFICATIONS

The complaint was made without foundations, because the crimes of defamation and slander were repealed in Hidalgo, where he had been charged. Being a representative advance for the guarantee of the right to the freedom of expression.

Leonardo García, a human rights defender, was arbitrarily detained in January 2018 in Ecatepec de Morelos, State of Mexico, where he was transferred to Hidalgo by Hidalgo ministerial police without identifying themselves. The origin of his arrest was because he was charged for the crime of slander in alleged damage to a construction company named SYLMA, S.A. de C.V. He was handcuffed and transferred in a car to CERESO in Actopan, Hidalgo, where he was detained for half a day.

The judicial harassment of Leonardo García relates to citizen complaints and requests for access to information on irregularities in construction license approvals and conflicts of interest by the Deputy Secretary of Works of Hidalgo, Marco Antonio Rico Moreno, in respect of SYLMA construction company, belonging to *Grupo Rico*.

During 2017, Leonardo García initiated investigations into corruption in works approved by the Deputy Secretary in various fractionations, derived from the frequent overflow of sewage from the drainage, and the consequent floods that damaged Leonardo's property. The activist noted that Hidalgo's government was colluded with SYLMA construction company, demonstrating that there are acts of corruption in which Hidalgo's Deputy Secretary of Works, Marco Antonio Rico, took part.

In addition, irregularities were found in the trial of the human rights defender, since he was arrested without a prior subpoena, he had not been notified that there was a criminal proceeding against him, adding that the detention and transfer were arbitrary and unnecessary since the need for caution is credited. Similarly, the police officers which conducted the arrest did not identify themselves and did not explain the reason for the arrest, violating Leonardo's defense guarantees.

The use of criminal law through the figure legal definition of slander, to curtail the expression and flows of information that are of obvious public interest is therefore of concern. Fortunately, in this case, after several efforts to decriminalize offenses against honor, the complaint against Leonardo was declared without grounds, because said crimes were successfully repealed in the state of Hidalgo, where he was charged.

## SERGIO AGUAYO CASE<sup>61</sup>



### WHO IS AIMED TO BE CENSORED?

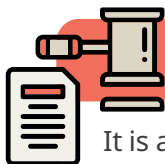
Columnist and human rights activist (Sergio Aguayo).

### WHAT ARE THE REASONS FOR CENSORSHIP?

A press column where a critical opinion on the activities carried out by a public officer of the government of Coahuila was given.

### WHO CENSORS?

Public officer (Humberto Moreira).



## CASE SPECIFICATIONS

It is a bad precedent against the exercise of freedom of expression, as follows:

- 1)** The judge does not verify the actual malice, by not giving reasons or standards about the remarks given to Moreira; **2)** He also noted that the remarks were not an opinion but an offense (bearing in mind that by being a person of public interest, a much broader level of criticism must be tolerated according to international and national standards); **3)** At no time is it analyzed or justified whether Aguayo's opinion column had irreparable damage; and **4)** The amount requested of 10 million Mexican pesos is disproportionate and not reasonably justified.

In July of 2016, Sergio Aguayo, a columnist, and human rights activist, was sued for moral damage by the former governor of Coahuila and former national president of the Institutional Revolutionary Party (PRI), Humberto Moreira, in considering that he had suffered damage from the publication of his column titled “We Must Wait” (*“Hay que esperar”*), published in *Reforma* and *El Siglo de Torreón* newspapers.

It is a text of opinion, where he publishes the actions of the Mexican authorities at the time of Moreira’s arrest in Spain, resulting from the investigation against him in that country for the crimes of racketeering, money laundering, embezzlement of public funds and bribery. In this column, Aguayo states that Moreira “*is a politician who produces a corrupt stench; that, in the best of scenarios, he was reluctant in the face of terrible human rights violations committed in Coahuila, and that, finally, he is a champion of the renowned Mexican impunity.*”

+ The journalist was sentenced to pay 10 million Mexican pesos for moral damage in favor of Moreira, thus generating a lousy precedent against the exercise of freedom of expression in Mexico.

In March 2019, the Sixteenth Court of Civil Affairs in Mexico City ruled in favor of the journalist and acquitted him of all and every benefit that was claimed. However, the ruling was challenged by the former governor, and finally settled in the Sixth Civil Division, which decided to revoke the sentence of first instance, and to sentence the journalist to the payment of 10 million Mexican pesos for moral damage in favor of Moreira, thus generating a lousy precedent against the exercise of freedom of expression in Mexico<sup>62</sup>. As a very publicly known case, it came to the Supreme Court of Justice, and the steps to be taken are that a deadline is opened for the justice operator to prepare the draft for knowing the final judgment on the merits of the case.

61. It should be noted that both Sergio Aguayo and his lawyer have documented different moments where conflict of interest is presumed on the judge, who revoked the sentence, such as the delivery of the license of Notary 124 of Saltillo, made by the governor of Coahuila and brother of Humberto Moreira, to the brother of the Magistrate.

This case exemplifies that people with political power have full freedom to use judicial mechanisms to inhibit freedom of expression, to stop publishing issues that bother them, imposing disproportionate amounts of money to intimidate. In addition to whether by starting civil or criminal proceedings against journalists, derived from their publications, these may be disproportionate and intimidating for the journalistic and advocacy activity.

## PEDRO CANCHÉ CASE<sup>63</sup>



### WHO IS AIMED TO BE CENSORED?

Journalist (**Pedro Canché**).

### WHAT ARE THE REASONS FOR CENSORSHIP?

The publication of organized crime activities in Quintana Roo.

### WHO CENSORS?

A third party, not identified through GoDaddy.



## CASE SPECIFICATIONS

It is a case of administrative harassment, where the notice and takedown legal procedure, is used as a mechanism of censorship against the journalist, this being caused by his critical publications on matters of general interest in Quintana Roo. Which violates his right to freedom of expression.

Pedro Canché<sup>64</sup>, is a journalist of Mayan and independent origin, besides being a relevant person in the state of Quintana Roo for dealing with political and human rights issues published in his media: *"Portal Pedro Canché"*. The journalist has been recognized in his community for the coverage and dissemination of the social demands of his people for 20 years.

<sup>64</sup>. Is a case that ARTICLE 19 has supported and systematized.

ARTICLE 19 has collaborated with Canché on several occasions, as he has suffered several assaults due to his work. For example, he has been jailed for the crime of “sabotage”, for his coverage of excessive water utility charges in a demonstration, and he denounced the repression of the movement through videos and social media reports. Nonetheless, he approached the organization again for a notice for the deleting of content on his website.

In 2019, the journalist received death threats to stop publishing information related to organized crime activities. Later in 2020, his website, NOTICIASCANCUN.MX went closed without being advised, and with no reason on why it was canceled. To this end, Canché sent an email to GoDaddy, his web server, asking the details of the interruption and blocking of his news portal, to which GoDaddy responded by saying that it was sent a report of alleged copyright infringement from an unidentified third party. It was therefore decided to remove the information, without allowing the journalist to defend himself and to review the content of the notification he allegedly received, and for the option of a counter-notification<sup>65</sup> (regulated in article 512 of the DMCA).

+ It was decided to remove the information, without allowing the journalist to defend himself and to review the content of the notification he allegedly received, and for the option of a counter-notification.

In the end, Canché was forced to search for and move all his content to a new web server. It is therefore worrying that the measures taken are the elimination of information, as well as that journalists do not have the opportunity to access justice.

What is seen in this case is: 1) That priority is given to copyright against freedom of expression, without judicial control to assess whether rights are actually being violated; 2) The use of the DMCA and copyright law to violate the right to freedom of expression.

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<sup>65</sup>. Service providers must notify their users if their content has been removed and ensure that they have the opportunity to challenge the decision.



## 3.3

# ROLE OF THE STATE IN THE JUDICIAL HARASSMENT OF JOURNALISTS AND HUMAN RIGHTS DEFENDER IN MEXICO

## • Patterns of Assault on Judicial Harassment

According to the systematization and testimonies of the cases, it was possible to identify certain patterns of aggression in judicial harassment against journalists and human rights defenders to censor them, namely:

- 1 Persons suffering from judicial harassment are human rights defenders and journalists. Because they are fundamental parts of a democratic society to report and report human rights violations. It should be emphasized that such harassment is carried out on all people equally, even though some have more political weight than others.
- 2 Public officers and big business people with public outreach, are the people who try to censor human rights defenders and journalists through complaints of damages to their honor. Mainly, so that they do not bring their illegal acts to light. Corruption, influence peddling, illicit enrichment, racketeering, and nepotism are among the most recurring themes.
- 3 The consequences of the judicial harassment experienced by human rights defenders and journalists are several, such as the exhaustion for trials that usually last years to have a ruling; the harassment and threats they suffer throughout the process; high compensation that they must pay for the various claims that they face, affecting their economy; and the inhibitory effect that is generated by carrying out their defense and/or journalistic work.

4

It is the judiciary branch that has the responsibility to guarantee the human rights of individuals through their judicial decisions, and therefore plays an important role in preventing judicial harassment of human rights defenders and journalists. In this regard, the Supreme Court of Justice of the Nation (SCJN) has issued several guidelines regarding freedom of expression, to guide the action of justice operators in matters related to the real malice<sup>66</sup>, dual system of protection<sup>67</sup>, implementation of compensation<sup>68</sup> and the prevalence of freedom of expression in the face of criticism against the actions of public officers<sup>69</sup>. However, it is noted that local courts do not follow the guidelines marked, such as in the case of Sergio Aguayo.

5

Proceedings against journalists or human rights defenders, whether by criminal or civil procedures, are fearful and unjustified, through arbitrary detentions such as the case of Leonardo García, or disproportionate compensation, such as the cases of Roberto Saucedo, Arnoldo Cuéllar and Sergio Aguayo.

6

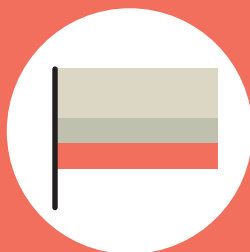
In the case of Pedro Canché, it could be observed that the reason for blocking his website, using the Notification and Takedown legal figure, was for dealing with racketeering issues, and not precisely for violating copyright. DMCA and copyright law are used to threaten freedom of expression.

7

Of all the cases, that of Roberto Saucedo and Arnoldo Cuéllar, had a favorable judgment, being a good precedent on freedom of expression. Unfortunately, judiciary harassment, judgments and decisions that go against this right, which generate a mechanism of censorship that inhibits the exercise of freedom of expression for all those who exercise journalism and the defense of human rights, persist.

# 4

## **JUDICIAL HARASSMENT IN COLOMBIA**



## 4.1

## COLOMBIAN REGULATIONS THAT ALLOW JUDICIAL HARASSMENT

In Colombia, we have identified three ways under which pressure is exerted against journalists through the judicial apparatus. Below, they are presented according to their jurisdiction, and a brief analysis of their use is made.

### CRIMINAL



Criminal complaints used to exert pressure on journalists correspond to libel and slander crimes. Libel is defined in article 220 of the Criminal Code and consists in making dishonest accusations against another person. He has a prison sentence of 16 to 54 months, and a fine of 13.33 to 1,500 minimum wages.

Slander, for its part, is defined in article 221 of the Criminal Code, and consists in falsely attributing to a person the commission of criminal acts. He has a prison sentence of 16 to 72 months, and a fine of 13.33 to 1,500 minimum wages.

Both crimes cover the protection of the rights to goodwill and honor.

It should also be mentioned that the Colombian Criminal Code establishes an aggravating factor in article 223, where it is stated that when any of the above-mentioned conducts is committed using social media, of collective dissemination or public meeting, the punishment will be increased from one-sixth to one-half of the sentence. This certainly adds an extra burden to journalists facing this type of judiciary proceedings.

## CONSTITUCIONAL



The writ request for protection of fundamental rights is stipulated in article 86 of the Colombian Political Constitution, in such a way that any person, at any time and place, claims protection of his/her fundamental rights when these are violated or threatened.

This is the form of judicial harassment that FLIP records with the most recurrence. Writs for protection of fundamental rights used against journalists demand protection of goodwill, honor, and privacy. In these cases, the rights mentioned come under tension with the right to freedom of expression, and it is the duty of the judge to ponder based on the tripartite test. In practice, however, there are judges who make decisions that do not conform to the standards of freedom of expression.

Moreover, the writ for the protection of fundamental rights is an expedited process, in which a judgment of first instance may not take more than ten days to be delivered, so response times are short. It is not enforceable without first asking the journalist to rectify (which, however, judges do not always follow) and, although it does not generate a criminal record, if the journalist refuses to comply with a rectification order, he/she may incur in contempt, which results in up to 6 months of arrest and a fine of up to 20 Colombian minimum monthly wages. This is disproportionate to the protection of freedom of expression<sup>70</sup>.

<sup>70</sup>. Such is the case of journalist Edison Lucio Torres, who is described later in the report, who on two occasions, on the non-rectify of publications -which were fully supported- on a famous evangelical pastor, led him to arrest warrants. It should also be noted that because of the ease of filing writs for protection of fundamental rights, on more than one occasion FLIP has recorded simultaneous actions against journalists investigating a particular case; these cases are also described below. One of them is that of Juan Pablo Barrientos, who received multiple writs for the protection of fundamental rights when revealing pedophilia in the Catholic Church. Sergio Mesa, who investigates corruption in the health sector in Colombia's Lower Cauca Region, has also received simultaneous multiple writs for the protection of fundamental rights for his journalistic work.

## CIVIL



The form of judicial harassment at the civil scope used against journalists, is the non-contractual civil liability action, regulated in article 2431 of the Colombian Civil Code which states that: “The perpetrator of one crime or fault, who infers harm to another, is liable to compensation, without prejudice to the primary penalty imposed by law for the fault or crime committed.”

In this type of judiciary proceedings, it is usually alleged that journalistic publications have caused moral and property damages, and high amounts of money are requested in the form of compensation<sup>71</sup>. It is a concern that FLIP has identified claims that are openly contrary to freedom of expression, such as the prohibition of referring to a particular individual in the future, or the elimination of controversial content.

Although this is the form of judicial harassment that FLIP has the least record of, the potential for self-censorship in journalists is excessively big, as they face economic consequences that can be devastating in their personal lives. Likewise, the duration of these proceedings is usually extensive, which implies being immersed in a judiciary proceeding for years, with the economic and emotional wear that this implies.

<sup>70</sup>. As established by the IACHR, civil sanctions must be strictly proportional, so that they do not cause an inhibitory effect. The *Tristan Donoso v. Panama Case*, 2009, summarizes it well in paragraph 129: “the fear of civil punishment, in the face of the claim [...] of a very high civil compensation, can clearly be as intimidating and more inhibiting for the exercise of freedom of expression than a criminal sanction, as long as it has the potential to compromise the personal and family life of the one who accuses a public officer, with the obvious and worthless result of self-censorship, both for the affected person and for other potential critics of the performance of a public servant”.

## ON THE USE OF ADMINISTRATIVE MECHANISMS



In addition to these three main forms of judicial harassment, in March 2020, a case was presented in which, through administrative jurisdiction, particularly through the Deputy Office for the Protection of Personal Data of the Superintendency of Industry and Commerce, journalist Daniel Samper Ospina was sanctioned for the use of an official photo of the presidential family in a meme published in his Twitter account (which he even eliminated), on the basis of an alleged economic exploitation of the personal data of minors (the sons of the president of the republic), even though the photo was in the public domain, and it was used to refer to a current and public interest topic, and did not cause any harm to the presidential family.

The sanction imposed was symbolic, as it forced the journalist to refrain from using personal data of minors for marketing or advertising purposes, and to publish the conclusions and ruling section of the decision on his Twitter account. Nevertheless, the message left in the environment is that of using an administrative entity to punish criticism of the incumbent government, especially since that entity prioritizes the cases on which it decides, and that the superintendent, Andrés Barreto, is a close friend of President Ivan Duque<sup>72</sup>.

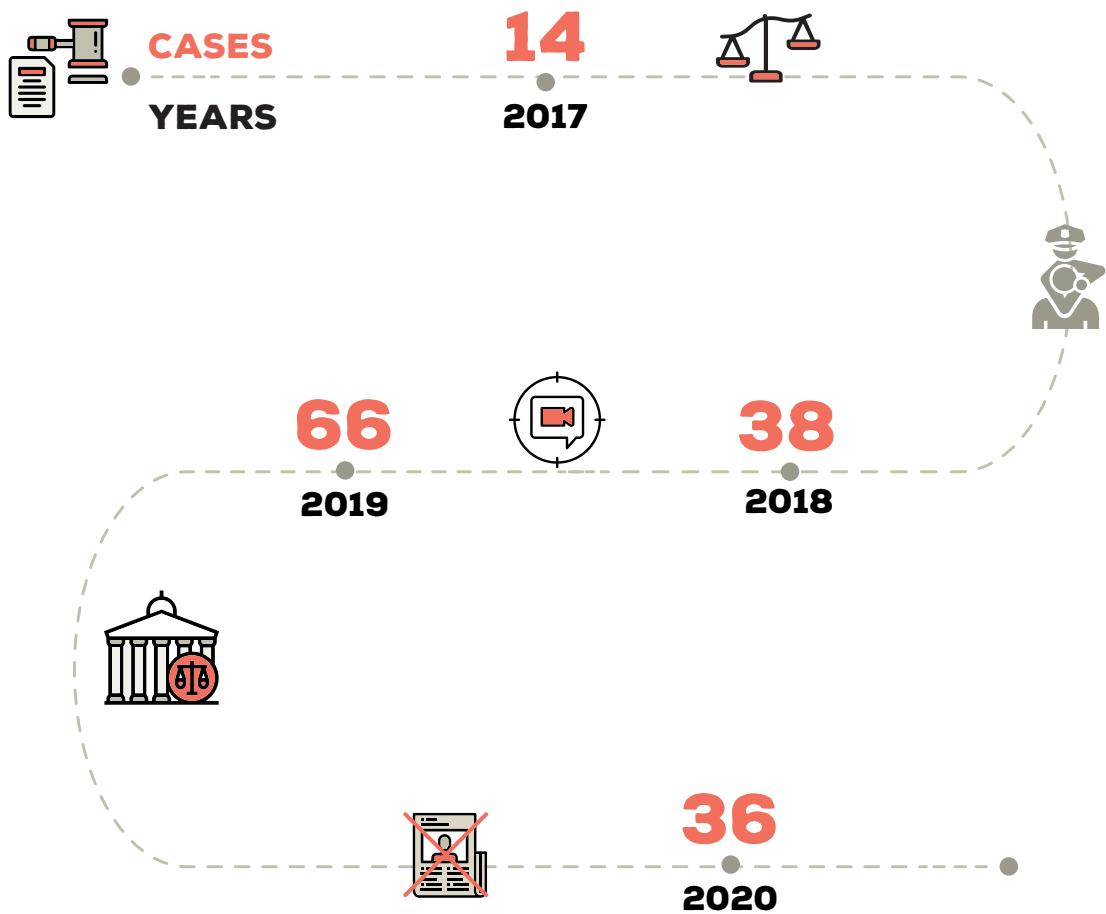
As stated above, the excessive use of judicial mechanisms to attack journalistic work, creates an intimidation environment for those engaged in reporting on matters of public interest. The inhibitory effect these actions cause, prevents a free flow of information and issues that are bothersome for various power groups.

4.2

VICTIMS OF JUDICIAL HARASSMENT

• Figures on Judicial Harassment in Colombia

FLIP began recording cases of judicial harassment from 2017 to 2020.



FLIP contacted four journalists from various parts of the country to obtain their testimony and impressions of their work and the judicial proceedings they have had to face in this context:



## • Systematization of Cases

### PARAMILITARISM IN POLITICS AND MONEY IN WORSHIP



#### WHO IS AIMED TO BE CENSORED?

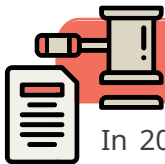
Edison Lucio Torres

#### WHAT ARE THE REASONS FOR CENSORSHIP?

1. Complaints about the relationship between political actors and paramilitary groups: From funding to political support.
2. Reports about questions about religious cult leaders, their internal dynamics and funding.

#### WHO CENSORS?

1. Javier Cáceres Leal, then senator of the republic, president of the Senate in 2009, and later sentenced for his ties with paramilitary groups on the Colombian Caribbean coast, particularly in the department of Bolívar.
2. Miguel Arrázola, pastor and leader of Ríos de Vida evangelical church in Cartagena.



### CASE SPECIFICATIONS

In 2007, Javier Cáceres Leal files a complaint for libel and slander against Edison Lucio Torres. After years of unjustified delay, in 2011 he was first sentenced to 14 months in prison, in a disproportionate and contrary decision to freedom of expression standards. A year later, after the Senator was arrested for the same actions as those denounced by the journalist, he was acquitted in second instance.

Two protection of fundamental rights judiciary proceedings, marked by procedural irregularities, are filed at different times at the end of 2018 and in 2019. Firstly, they request the correction and apology by the journalist in respect of publications made, questioning the finances and relations of Pastor Arrázola and Ríos de Vida Church; and the second one, requesting the removal of the press notes concerning the matter. In both cases, a contempt interlocutory proceeding took place; in the first case, a 5-day arrest was ordered, and a 10-day arrest in the other.

Edison Lucio Torres is a journalist from Magangué (Bolívar), whose history is marked by pressures, risks, and the loss of colleagues due to the violence and mafia networks that in recent history have dominated the map of the Colombian Caribbean coast. He had protection of fundamental rights judiciary proceedings, that were filed by Miguel Arrázola in 2019, a famous evangelical pastor and leader of the Ríos de Vida Church in Cartagena. Amid irregularities, the result was a 5-day arrest warrant, another 10-day arrest warrant and the enforcement of a fine.

Between 2006 and 2007, he received death threats and extensive criminal proceedings for denouncing the paramilitary ties of then-senator Javier Cáceres Leal, who became president of the Senate in 2009. In 2017, beginning his investigations into Pastor Arrázola and his church, he was faced with another death threat from the pastor, and in 2018 he was intercepted outside his home by armed men who his security scheme could repel.

**+ In a weary trial, with the pressure of a possible sentence adding to death threats, Edison was sentenced to 14 months in prison and to the payment of a compensation.**

While there are several trials that he has faced, only two will be mentioned, which can illustrate the vicissitudes and the use of the judicial system to intimidate journalists. The first one refers to a complaint on libel and slander, filed in 2006 by then-Senator Javier Cáceres Leal, in response to the allegations that Edison made about his ties with paramilitary groups on the Caribbean coast, particularly with the heads of the AUC, Salvatore Mancuso and Juancho Dique.

In a weary trial, with the pressure of a possible sentence adding to death threats, Edison was sentenced to 14 months in prison and to the payment of a compensation. He appealed the judgment with the High Court of Cartagena in 2012, after the then senator was arrested and sentenced to 9 years in prison for his ties with paramilitaries. He was acquitted.

The second is about the judicial proceedings brought by Pastor Miguel Arrázola in response to the journalist's investigations into the Ríos de Vida Church. As a result of this, libel and slander complaints arose, which failed (but actions writs for protection of fundamental rights did), which did not comply with the prerequisite of requesting rectification. In the first one, it was ordered to rectify and apologize. The order was not fulfilled because the journalist ensured the veracity of his claims and the sentence was challenged. However, prior to the resolution of such a challenge, the interlocutory proceeding of contempt filed by Arrázola was decided, resulting in a 5-day arrest warrant and a fine of 5 Colombian minimum monthly wages<sup>73</sup>.

Later, another writ for the protection of fundamental rights against the journalist was decided, which ordered the elimination of all content published about Arrázola and the Ríos de Vida Church. This process witnessed irregularities, such as the undue notification to the journalist, who had access to the decision more than two months after it had been issued. An event that prevented the possibility of exercising his defense and to challenge the judgment. That said, failure to comply with the sentence order, resulted in another contempt interlocutory proceeding, which this time brought the journalist the arrest warrant of 10 days and a fine of 10 Colombian minimum monthly wages<sup>74</sup>. As a way of conclusion, Lucio claims that he has had to accept judicial harassment as a feature of the journalistic trade.

## LOWER CAUCA REGION, HEALTH AND CORRUPTION



### WHO IS AIMED TO BE CENSORED?

Sergio Mesa

### WHAT ARE THE REASONS FOR CENSORSHIP?

Corruption investigations within the Caucaasia administration, and on the health industry, related to the political group known as *"El Clan Rodríguez"*.

### WHO CENSORS?

Several public officers, including the Mayor (Acting) of Caucaasia, Felix Olmedo Arango Correa; Orlando José Rodríguez Álvarez, Manager of the Hospital of Caucaasia; Carlos Alfonso Orrego Castro, former manager of the Hospital of Yarumal and director of the Hospital of Puerto Berrío.



## CASE SPECIFICATIONS

Sergio Mesa has received more than 6 writs for protection of fundamental rights because of his investigations into the corruption surrounding the management of the health industry and within the municipal government of Caucaasia, Antioquia. While the writs for the protection of fundamental rights have not been decided against him, the concurrency and profile of those who sue him, make it clear that their purpose is to intimidate the journalist. In addition to this, the fact that the persons who file these writs for the protection of fundamental rights are represented by the same lawyer, the facts that underpin the legal actions are the same and, in Mesa's words, these fit under the definition of reckless writs for the protection of fundamental rights.

Sergio Mesa, a lawyer by profession, is a journalist from Yarumal, Antioquia, who has been involved in investigating crime, corruption, and human rights issues, particularly in the department of Antioquia. His case is highlighted by the numerous writs for protection of fundamental rights filed against him by public officers because of his investigations into corruption in the health industry, and that involve an influential political group of the Lower Cauca Antioquia Region, especially in the municipality of Caucasia, which he has called the “Rodríguez Clan”. Among those who file these writs for the protection of fundamental rights, the Mayor (Acting) of Caucasia himself, officers of the mayor’s office and of public hospitals are highlighted.

In November 2019, Sergio Mesa received six writs for protection of fundamental rights for violating the right to goodwill and honor, for information he had published from fearful characters about the bad management they had made of the hospital. He won those 6 writs for protection of fundamental rights.

A seventh writ for the protection of fundamental rights was filed against him as a consequence of the investigation named “The fair of ‘crooked contracts’ of the mayor’s office of Caucasia”; this time by the Mayor (acting) of the municipality. With the aggravating fact that these were filed directly through the legal department of the Mayor’s Office, that is, public resources were used for the journalist to retract on possible acts of corruption in the administration<sup>75</sup>.

On the way in which those who have filed writs for protection of fundamental rights operate, the journalist claims that he identified the following *modus operandi*: 1) these are persons who are all related to the hospital and use the same lawyer<sup>76</sup> and the same facts [to support the writ for the protection of fundamental rights]; 2) In denying them the writs for protection of fundamental rights, then they go to complaints [for libel and slander] at the Office of the Prosecutor. Likewise, Mesa also claims that he has approximately 20 complaints of libel and slander at the Prosecutor’s Office. However, judicial attacks are not the only instrument used by the State; he has also been the subject of smear campaigns that threaten his journalistic work.

In this regard, the case of Sergio gives account of two particular elements of judicial harassment: 1) the fact that the judicial actions against him were declared inadmissible, by the same lawyer, and following the criteria of recklessness in their filing, shows that the fact that they were not filed in order to particularly guarantee the rights in the litigation, but that are used as an intimidation strategy; and 2) on more than one occasion, judicial harassment is not an isolated action in the attempt to silence journalistic work, especially in contexts where violence and corruption prevail; it is accompanied by other strategies, such as smear campaigns and threats to the lives of those who break the silence.

<sup>75</sup>. Attorney Luz Aide Gaviria represented all persons who filed the writs for protection of fundamental rights, trying to silence Sergio Mesa’s investigations related to the “Rodríguez Clan” except, of course, the Mayor in charge who used the municipal government’s resources to do so.

## PEDERASTY AND CATHOLIC POWER



### WHO IS AIMED TO BE CENSORED?

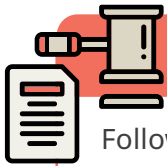
Juan Pablo Barrientos

### WHAT ARE THE REASONS FOR CENSORSHIP?

Research on Pederasty within the Catholic Church.

### WHO CENSORS?

Numerous priests of the Catholic Church. A famous priest from the city of Medellin is highlighted: Carlos Yepes.



## CASE SPECIFICATIONS

Following Pederasty investigations in the Catholic Church, Juan Pablo Barrientos was the subject of various writs for protection of fundamental rights and criminal complaints seeking to silence his investigations. After the publication of his book "Let children come to me" (*"Dejad que los niños vengan a mi"*), where he compiles his investigations, in one week, he received four writs for protection of fundamental rights and one criminal complaint. One of these legal actions issued orders openly contrary to freedom of expression: A precautionary measure, ordering the journalist and his publisher to suspend the reproduction, marketing, and sale of the book; and an order to disclose data from one of its sources. Although such decisions were finally revoked, they realize the potential for censorship of these judicial actions.

Juan Pablo Barrientos has been a journalist for 14 years and has worked in various media. He has researched various topics in different settings, highlighting research on deputies of the Antioquia Assembly; on the Church of God Ministry of Jesus Christ International of María Luisa Piraquive; on the finances and properties of Armed Forces generals, and more recently on pedophilia cases within the Catholic Church, the latter illustrating the extent of judicial harassment to silence journalists.

The story of judicial harassment of the journalist began in 2018, when he started to investigate a network of pedophiles in Medellin, concealed by the archbishop. In March of the same year, he published the first part of his investigation, where he denounced 17 pedophile priests and abusers of minors, with names and surnames. As a result, Father Carlos Yepes made threats against Juan Pablo, and a week later between 45,000 and 55,000 signatures were sent to him demanding him to retract. So Yepes filed four writs for the protection of fundamental rights, which were won by Juan Pablo in the first and second instance. Despite this, a criminal complaint on libel and slander was filed against him.

Subsequently, on October 1, 2019, the book “Dejad que los niños vengan a mi” was published, so three priests filed three writs for protection of fundamental rights against him. In one of these, the judge issued the profoundly serious precautionary measure of suspending the printing and marketing of the book against the publishing house in which it was published. Although in the defense of the writs for the protection of fundamental rights proceeding it was achieved that such orders to be removed, these are a sign of the possible impact that such judicial actions can have on freedom of expression, especially when judges themselves give legitimacy to attempts to silence the press<sup>77</sup> The writs were ruled in favor of the journalist, and one of them reached the High Court of Antioquia, where the decision was confirmed.

+ In 2018, Juan Pablo Barrientos started to investigate a network of pedophiles in Medellin, concealed by the archbishop.

Then, a criminal complaint arose from another priest, who withdrew it after not reaching conciliation. The three criminal complaints filed by Carlos Yepes had a conciliation hearing in which the journalist remained in his position. The process, although has not progressed, has not been filed with the Office of the Prosecutor, and Yepes has not withdrawn the complaint.

## ACCOMPLICES IN THE JUDICIARY BRANCH



### WHO IS AIMED TO BE CENSORED?

Gonzalo Guillén



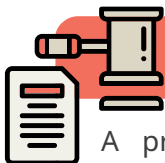
### WHAT ARE THE REASONS FOR CENSORSHIP?

Guillén has been subjected to various judicial proceedings on various issues. Here is a particular case about an assertion derived from his investigations involving the president of the University of La Guajira with the mafias of the department, particularly with the person convicted on murder and former governor, mister Kiko Gómez.



### WHO CENSORS?

Carlos Robles, president of the University of La Guajira, and someone who is close to Kiko Gómez.



## CASE SPECIFICATIONS

A protection of fundamental rights judiciary proceeding marked by irregularities and serious signs of corruption that had a total procedure of more than one year. The journalist was not notified of its existence, until a contempt interlocutory proceeding emerged along with possible penalties of arrest and fine. He was not allowed access to the full file of his case. The relationship between the judge's wife and the University of La Guajira was later made clear; as was his kinship with a person belonging to the organization of Kiko Gómez.

Gonzalo Guillén has been a journalist for more than 40 years; throughout his career he has worked for national and international media until the formation of his own project: La Nueva Prensa. Much of his work has focused on investigating issues of corruption and violence in the country. Several are the judicial processes that Gonzalo has faced throughout his journalistic career. For the purposes of the report, only one process in particular is to be pointed out, that gives account of how corruption, in connection with abuse of the judiciary, undermines press freedom in the country.

Much of Guillén's work has put the magnifying glass on the department of La Guajira in the north of the country. From the investigations in La Guajira, Guillén and

other journalists have revealed the corruption networks linked to drug trafficking and violence, which hit one of the most impoverished departments in the country<sup>78</sup>. In this context, is where one of the many judicial processes that the journalist has been subjected to is framed, and that has Carlos Robles as main protagonist<sup>79</sup>, being the president of the University of La Guajira, who has been questioned about his closeness to the mafia powers of the department.

As a result of these questions, a protection of fundamental rights judiciary proceedings was brought to him, on which the journalist never heard of it. He was never notified in due form about the existence of a writ request for protection of fundamental rights; he ended up learning of its existence when an interlocutory proceeding of contempt began<sup>80</sup>. Likewise, the municipal judge who conducted the protection of fundamental rights judiciary proceedings (besides not being the competent one) was related to the fabric to which the journalist has been denouncing in La Guajira.

This resulted in a cumbersome legal process of more than a year, where the writ for the protection of fundamental rights was finally ordered to be reassigned. When that distribution was made, and this time it was in the hands of another judge, Carlos Robles decided to withdraw the action. The above, to say the least, and considering the circumstances described above, and according to Guillén's testimony, implies that the influences of the powers of La Guajira were used to have a customized judge.

The case described above is only one of several that Guillén has faced. His work has annoyed power given his expressions and investigations, which is a clear sign of how the abuse of judicial instruments seeks to silence his voice.

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<sup>80</sup>. Remember that the interlocutory proceeding of contempt is initiated in the face of the failure to comply with a court order and may result in arrest and fine penalties.



## 4.3

## ROLE OF THE STATE IN JUDICIAL HARASSMENT OF JOURNALISTS AND HUMAN RIGHTS DEFENDERS IN COLOMBIA

### • Patterns of Assault on Judicial Harassment

The cases described above illustrate the global characteristics or patterns of judicial harassment in Colombia that should be highlighted:

1

Judicial harassment is not a mechanism to be used in isolation against journalists; on more than one occasion, it is accompanied by harsh smear campaigns, persecution, and threats to the lives of journalists who report events of public interest.

2

Public officers are the ones who most use judicial action to intimidate or silence journalists; however, individuals exposed to public life also use it when they disclose information about their actions that is of public interest.

3

There are recurrent actors in the prosecution of this type of judicial proceedings against journalists, as illustrated by the case of Sergio Mesa, where a specific lawyer is the one who represents those Mesa refers to in his publications.

The same is true in less local contexts, where lawyers who enjoy large social, political, and economic capital, often take action against journalists who refer to their clients or even to the lawyers themselves. One example is lawyer Abelardo de la Espriella who, to illustrate his vision, published a tweet that literally says: *“Recipe” against professional libelers and slanderers:*

1. Denounce, so that the macula of a sentence always persecutes them.
2. Sue, to take away from them the three “pieces of stuff” they have, so they become homeless. (A.D.L.E) #LibertadDeExpresiónNoEsDifamación<sup>81</sup>.

4

The State, through justice operators, plays a crucial role in preventing attempts to silence or intimidate journalistic work by using legitimate mechanisms of access to justice, thus succeeding. In several trials, FLIP has found that judges issue measures contrary to freedom of expression standards. From disproportionate arrest warrants, as it occurred in the case of Edison Lucio Torres, to extremely serious precautionary measures, such as the one issued in principle in the case of Juan Pablo Barrientos, which ordered the suspension of the printing and distribution of his book. The State itself must provide answers to this phenomenon that instrumentalizes it to undermine the democratic exercise of freedom of expression.

5

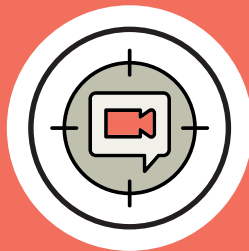
Regardless of whether judicial actions do not end in sentencing against those who exercise the journalistic work, the fact of having to face a judicial process with little or no foundations, inevitably results in a time, emotional and resources waste.

6

As the case of Gonzalo Guillén illustrates, journalists also can be facing violations of the due process of law in the context of the judicial actions that are brought against them, for example: improper notifications and problems accessing the files of the proceedings. Likewise, in corruption permeated contexts, there is the possibility that judicial operators may be in favor of the interests of those who bring actions against journalists.

# 5

## IMPACTS OF JUDICIAL HARASSMENT



The systematic cases and the collection of testimonies from journalists and human rights defenders, identify various effects and impacts generated by the criminalization and judicial harassment that they lived.

## • Physical and Personal Integrity Consequences

In this regard, the IACHR has pointed out that human rights defenders and journalists who have suffered unjustified criminal or civil proceedings on the part of the authorities, have both individual and collective impacts:

**1**

**Individuals:** May include fear, anguish, insecurity, frustration, and helplessness, as well as stress, anxiety, depression, insomnia, isolation and insecurity of the person subject to a proceeding, thereby impacting their physical and emotional health<sup>82</sup>.

**2**

**Collective:** When criminalizing social leaders or indigenous authorities who perform significant functions of a society or community, this has a negative impact on the collective, because it affects not only the person in the proceeding, but the society in which his/her leadership is performed<sup>83</sup>.

The above-mentioned impacts can be best viewed in the testimonies of human rights defenders and journalists who have suffered judicial harassment, for example:

### Edison Lucio Torres Case:

*"It was an exceptionally long process, since they issued the indictment resolution in 2007 and the judge sentences me in 2011. Hearings were always postponed. I went through a hard period, and that was accompanied by death threats. If you put yourself in my shoes you will realize: On the one hand the death threats, and the judicial process on the other."*

### Sergio Mesa Case:

*"It's a wear and tear, I have to be supremely well advised, well prepared, so that any publication I make will be attacked by a writ request for protection of fundamental rights."*

### Gonzalo Guillen Case:

*"Death threats plus judicial harassment, one really lives on stress."*

### Caso Arnaldo Cuéllar:

*“There are reactions from the public power, there is a complication to address topics, to cover events and get interviews. From power, this is observed as if we were strong enemies. There is spying, hacking attempts, there has been harassment on social media.”*

### Caso Pedro Canché:

*“Denouncing or reporting on the terrible and horrendous crimes, has brought me at least 11 death threats from narcotraffickers and individuals, by phone, Whatsapp, by Facebook.”*

The IACHR also indicated that the criminalization of human rights defenders and journalists may harm their health. In particular, criminal proceedings generate a situation of great stress in the person in detention, because of the uncertainty that arises as to whether he or she will be released or not<sup>84</sup>.

In this regard, Pedro Canché told us that:

*“My health is declining, I sleep a lot, I get old fast, I have pain all over my stomach, vomit a lot, my head aches and I have a poor quality of life.”*

Leonardo García also told us that he has health impacts such as:

*“MY HEALTH: My quality of life decreased on me... I was hoping to be able to obtain victim status from the Executive Commission on Victims Attention, CEAV to get the damage repaired, but the recent reform that eliminated the Trusts came to give me the coup of grace now; it will be impossible and in vain to be a human rights defender.”*

In view of this, the Commission reiterates that the right to personal integrity, which encompasses physical, mental, and moral integrity, constitutes one of the most fundamental values in a democratic society. For this reason, the State must guarantee it for the free labor development of human rights defenders and journalists<sup>85</sup>.

## • Smear Campaigns

It should also be noted that the existence of smear campaigns on human rights defenders and journalists has an irreparable impact on their lives. One example of this is the case of Sergio Mesa, who was the subject of smear campaigns and threats through social networks. This prompted the media in networks to refer to him as a worker “for the guerrillas, which must be exterminated in Yarumal.”

Sergio Mesa noted that:

*“It was not to attack my investigations, it was not to deny what I had published. It was attacking me personally, attacking me professionally. To misrepresent investigations that I had done. Posing a scenario where I was discredited and annihilated.”*

Unfortunately, with this case, we realize that judicial attacks are not isolated events, but are part of a whole strategy to silence the journalistic work that Sergio Mesa, in this case, has had to suffer.

On the other hand, taking up the European System, the Court (on issues of smear campaigns) has argued that in the case of the right to freedom of expression, it depends not only on the duty of the State on not to interfere, but may require positive measures of protection. This is important because in the case of *Özgür Gündem v. Turkey*, it determined that the Turkish State had a positive obligation to take investigative and protective measures when the pro-PKK newspaper and its journalists had been victims of a campaign of violence and intimidation, affecting their journalistic work. This is to prevent violent acts aimed at censoring the publication and distribution of the newspaper<sup>86</sup>.

## • Effects on Family Life

Negative effects also reach the family. They damage the interpersonal relationships of human rights defenders and journalists, because, like them, families can also be threatened and harassed due to judicial harassment, altering their daily lives<sup>87</sup>.

In the case of Edison Lucio Torres, both his family and he have had to suffer harassment and threats on the judicial harassment of Edison, for the simple fact of being a journalist and reporting human rights violations:

*“That brought me and my family death threats in 2007”.*

For Leonardo Garcia, his family has been his support throughout the process, which is important to continue his work in defense of human rights:

*“FAMILY: My wife and children have been too tolerant, as well as cautious of my physical and mental recovery, as well as their concern to see me recovered has been a very important factor in my process.”*

## • Social Impacts

One of the social effects of journalists and human rights defenders, is that they are stigmatized by their work, which can also be extended to their families and loved ones. What it causes, is that these people are seen as criminals, generating a social rejection<sup>88</sup>.

Following the previous paragraph, the case of Juan Pablo Barrientos reflects this stigmatization for his work, in this case, to denounce corrupt acts of the Church, and pedophile fathers in particular. This generates an unfavorable public opinion on the part of the citizens of Medellín.

*“I have everything to show that I was doing my journalistic work. He put me as an enemy to the people of Medellin. That is the case that concerns me most about security.”*

In addition, the case of Sergio Mesa also shows that social disapproval for his work:

*“By my own experience, and the experience of other friends, one is annihilated in three ways. First: They start with judicial actions. Second: One is annihilated with smear, with the credibility of your work being undermined. And when those first two strategies do not work, then there is physical annihilation. (...) They are not cheap to hire a hitman for a couple of bucks.”*

In turn, such criminalization creates an inhibitory effect on human rights defenders and journalists who, for fear of criminal prosecution, are limited to carrying out their defense tasks; this affects society in general, because they will not receive information of general interest that contributes to a democratic society. We see this effect in the case of Gonzalo Guillén, when he tells us that:

*“It is a case where one’s chances of defending are minimal because what do I do to go to litigate in Barranquilla. It is absurd. The purpose is that one is afraid of those people and does not publish anything again.”*

## • Economic and Labor Effects

Economic expenses tend to have a terribly negative impact on the workplace of human rights defenders and journalists, as they are a direct consequence of a judicial process, for the following<sup>89</sup>:

1. A lawyer must be hired, and expert opinions be paid.

2. In some cases, it has been seen that excessive financial fines must be paid for the claims brought against the journalist or advocate.
3. Running out of work, affects the economic situation of both human rights defenders and journalists and their families.
4. The stigmatization of human rights defenders and journalists affects their work and, together with it, funding sources.

In Edison's case, he was removed from his working environment and delegitimized:

*"They sentenced me and shut down the news outlet, then I knew it was through the influence of the senator. Then I was left speechless: Without the media. I was stigmatized: Sentenced. The foundation I had created was persecuted. They closed all the doors for us."*

The case of Pedro Canché is also worrying, because by deleting his information, he was left without a portal on where to publish his news, thus affecting his audience:

*"Impacts on the website, we were without a means of dissemination, and when the public did not find, they migrated to other pages".*

Similarly, in the case of Arnolando Cuéllar, his work and funding sources have been limited:

*"Basically, we have been blocked from providing public services in the labor-business aspect, or of providing advertising services to entities that have been the subject of research by our media."*

Similarly, I have also had to pay for the experts' opinions to carry out the judicial proceedings:

*"There have been unexpected expenses, experts' opinions have not been cheap, and it these have been paid by us. Expert accounting opinions from 10 and 15 thousand Mexican pesos. It has been difficult to address it at said times."*

In the case of Juna Pablo, he tells us that having judgments takes time, besides that it is frustrating to constantly think about the money that must be paid for the lawsuits that might be brought to him for performing his journalistic work:

*"Obviously, it is wearing, it takes away one a long time. One is worried on it at times: what happens if I lose this? and of course, the upper limit would be to 'retract or rectify here'. But at some point, there will come a civil lawsuit that is the one I fear most because it means lots of money. I have no money. I live from this and have no money. (...) I try to 'bite the bullet'."*



In the same sense as Juan Pablo, Gonzalo Guillén points out that:

*“...one spends more time in the court rooms than publishing things with journalists. I have been a journalist for 45 years, but I have never reached the level of judicial harassment that is now being experienced.”*

Finally, Leonardo García tells us that his economic and labor impacts have been:

*“ECONOMIC: The debts and expenses that I faced throughout my legal process have not allowed me to liquidate that mortgage loan; far from being able to end it in the established periods, now it has me overwhelmed month by month on how to pay that mortgage.”*

*“WORK: Derived from the series of licenses and absences in my work, for so many permits and appointments in Hidalgo, I lost bonuses as well as various benefits that I always had for being a person committed to my work.”*

In summary, we can see that the most recurrent impacts of judicial harassment are:

1. Human rights defenders and journalists suffer constant fear in all spheres of their lives, and they feel fear and stress.
2. They suffer stigmatization because of their journalistic work or the defense of human rights, suffering a delegitimization in society.
3. There are psychological impacts on human rights defenders, journalists, and the family.
4. There is a wear and tear over the elapsed time that human rights defenders and journalists face over the judicial harassment processes in which they are involved. In addition to extra costs for carrying out these processes.

Finally, the testimony of Leonardo García shows us all the ravages and impacts he has had to face in exercising his right to freedom of expression:

*“Your life collapses in so little time in various aspects of life; the economic, work, family, social and, above all, my physical and mental health effects, leave me in a state of brutal defenselessness.”*

# 6

## **CONCLUSIONS AND RECOMMENDATIONS**



**Judicial harassment is a complex problem where much debate is needed in public forums and within State offices.** While it must be made clear that the right to access the administration of justice applies to all citizens, the possibility of the same right being used in contravention of the right to freedom of expression through the abuse or unjustified use of the different judicial mechanisms existing in Colombia and Mexico, must be considered. This is a discussion that dates to the 80s decade and has resulted in the enactment of various laws in several countries, where the United States are highlighted, to avoid what in the international context has been called as strategic litigation against public participation (SLAPP).

As stated in the introductory part, we identified 4 elements that make it possible to characterize judicial harassment, and thus enable us to feed the discussion on what mechanisms to design to avoid it, in addition to, of course, the various examples around the world. These are: (i) the judicialization of freedom of expression matters, that is, a judicial process is begun on an expression that the person who denounces or claims considers that violates the law or affects his/her rights. (ii) Existence of an unfounded cause, that is to say, that after a first analysis, it is possible to prove that the action is initiated under facts or arguments that do not actually support an impact on rights but seek to silence or avoid the expression of the one who is sued. (iii) Evidence of arms inequality in the process, the plaintiff (public officer, or private individual exposed to public life) is a person whose social, economic, and political capital allows him/her to initiate a reckless action against subjects who do not enjoy the same capital, such as journalists and/or Human Rights defenders. And finally (iv) actions seek to silence expressions that are of public interest.

That said, this report highlights several things about the dynamics it pursues, and how judicial harassment of journalists and human rights defenders occurs in Colombia and Mexico. Two countries that, despite their contextual differences, are constantly facing risks to the exercise of freedom of expression, and where the judicial harassment phenomenon has common ground.

It has become clear that those who bring actions that may fall under the term of judicial harassment, are civil servants or former public officers, as well as, to a lesser extent, individuals exposed to public life who seek to avoid or react to the dissemination of information concerning or involving them, and of course, intimidating the one who broadcasts it. Its range of action is wide and varied: From criminal and civil actions, through protections to fundamental rights, to administrative processes, usually under the argument of impact on goodwill, honor and/or privacy.

This phenomenon has a direct impact on democracy and the possibility of openly discussing and pointing out issues that are of public interest. Globally, the greatest impact of judicial harassment is what has been coined in literature as an “inhibitory effect,” that is, the systematic silencing of those who would usually freely express themselves, in fear of the consequences that their expressions might have. In this case, the fact of facing a judicial process with all it implies.

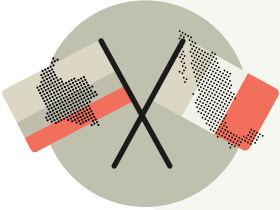
What then does it mean to face a judicial process for spreading expressions in defense of Human Rights and/or in the light of a journalistic exercise? Based on the review of several cases, and the hearing of testimonies from persons who have been subjected to judicial harassment in both countries, as well as the analysis of the work done daily by both FLIP and ARTICLE 19, it has become clear that those who face these processes not only suffer the consequences entailed in economic, psychological and time matters to judicially defend themselves. They directly face the interests of powerful characters, threats to their lives, smear campaigns, stigmatization of their journalistic work and/or defense of Human Rights.

+ "Inhibitory effect" is the systematic silencing of those who would usually freely express themselves, in fear of the consequences that their expressions might have.

If the threats already faced by those who have the courage to point out uncomfortable truths for powerful people are added to the growing phenomenon of judicial harassment, we have a picture where freedom of expression is at greater risk. The use of the legitimate ways of the State to silence public debate is not acceptable in democratic societies. Governments, not only in Colombia and Mexico, but in the entire region, should seek to establish mechanisms and tools for justice operators to make decisions that conform to international standards for freedom of expression, and to seek procedural alternatives so that such actions can be promptly identified, dismissed and sanctions are imposed on those who use them in bad faith.

## Recommendations

### TO STATES:



1. A To take a stand in favor of freedom of expression and protection for journalists and human rights defenders to eradicate attacks and intimidation against them, as they play an important role in exercising a free press in democratic societies
2. To officially recognize the value of journalistic work and of defending rights, to safeguard freedom of expression, and condemn attacks against journalists and human rights defenders.

### TO THE JUDICIARY:



1. To prevent journalists and human rights defenders from being subjected to judicial harassment and stigmatization campaigns in retaliation for their work, by establishing fixed protocols and criteria for their non-reproduction.
2. Ensure that justice operators are sensitized on freedom of expression, so that their decisions are consistent with international human rights jurisprudence and standards, and thus be able to prove judicial harassment.
3. Ensure adequate training of judicial personnel in relation to international human rights law and standards, on freedom of expression, for their application in judgments on cases of judicial harassment of journalists and human rights defenders.

### TO THE LEGISLATIVE BRANCH:



1. To repeal the criminal legal definitions that criminalize freedom of expression, and regulated in the criminal codes, as well as to stop using other criminal legal definitions to inhibit the exercise of journalism and to defend rights.
2. To reform civil codes to ensure protection of freedom of expression, identifying specific limits and criteria for the application of sanctions, for example, in the case of damage to honor, in accordance with international standards.
3. To reform the codes of procedure, by introducing provisions that allow judges to evaluate and dismiss actions that can be identified as judicial harassment; for example, based on the 4 criteria presented at the beginning of this report.

### TO THE PROSECUTORS' OFFICES:



1. To ensure that all investigations into crimes relating to freedom of expression are conducted in an impartial, independent, and transparent manner by specialized agents in the field. This ensures that appropriate sanctions are applied.

# 7

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