

Colombia

	2014	2015		
Internet Freedom Status	Free	Partly Free	Population:	47.3 million
Obstacles to Access (0-25)	8	8	Internet Penetration 2014:	53 percent
Limits on Content (0-35)	8	8	Social Media/ICT Apps Blocked:	No
Violations of User Rights (0-40)	14	16	Political/Social Content Blocked:	No
TOTAL* (0-100)	30	32	Bloggers/ICT Users Arrested:	No
			Press Freedom 2015 Status:	Partly Free

* 0=most free, 100=least free

Key Developments: June 2014 – May 2015

- Gonzalo López, who was convicted of libel in February 2014 and sentenced to 18 months in jail for a comment posted on a newspaper’s website, exhausted all possibilities of legal remedy in April 2015 after the Supreme Court rejected his appeal and the Constitutional Court did not select the case for review (see **Prosecutions and Detentions for Online Activities**).
- In April 2015, the Supreme Court convicted and sentenced two former public officials responsible for the illegal interception of the communications of high court judges, journalists and opposition leaders. Nevertheless, intelligence agencies continued to operate with little oversight during the coverage period, and civil society groups raised concerns about illegal and excessive surveillance (see **Surveillance, Privacy, and Anonymity**).
- In August 2014, the Prosecutor General’s office cited lack of transparency and oversight in ordering a halt to the development of the Single Platform for Monitoring and Analysis (PUMA), a centralized government surveillance platform slated for use by the national police (see **Surveillance, Privacy, and Anonymity**).
- In January 2015, Facebook and mobile carrier Tigo launched the commercial initiative Internet.org,¹ which offers users free access for two months to some internet content and services. Although it promises to expand access to some online content, critics have raised concerns that it violates net neutrality (see **Media, Diversity, and Content Manipulation**).

¹ Internet.org changed its name to Free Basics in September 2015

Introduction

Despite steady improvement over the last five years, significant challenges still hamper widespread internet access in Colombia. The main obstacles are poor infrastructure, lack of development, and high costs. When users manage to surmount access and affordability issues, however, they are able to view and disseminate content relatively freely on the internet. Although there are occasional cases of content removal, takedowns are isolated rather than systematic and stem mostly from muddy legislation rather than onerous governmental policies. In a concerning development, 2014 marked the first case in which an online user received a jail sentence under Colombia's defamation laws, although he was ultimately avoid jail time based on provisions in Colombian law that take into account prior record and sentence.¹ While prosecutions for dissemination of content online are still rare, exceptionally harsh penalties for minor copyright violations and criminal penalties for defamation constitute serious violations of user rights.

Additional challenges to user rights come in the form of violence and impunity. For the past five decades, the Colombian government, various paramilitary groups, and the FARC (a guerrilla group with leftist origins), have been engaged in armed conflict. Despite ongoing peace talks between the government and the FARC since 2012, high levels of insecurity persist. In this context of violent crime, at least sixteen journalists have been murdered and many more have been threatened since 2005, with little response from the judiciary.² Self-censorship both online and offline has become a prophylactic measure against such threats, particularly in rural areas where violence and impunity are more pervasive than in cities.

In late 2014 and early 2015, convictions in trials resulting from surveillance scandals set an important precedent for punishing police, military, and government officials engaged in illegal surveillance. The Supreme Court found Bernardo Moreno, former secretary of the president's office, and María del Pilar Hurtado, former director of the government's now-defunct Administrative Security Department (DAS), guilty of illegal interception of communications against high court judges, journalists, and opposition leaders.³ In February 2015 the politically-connected hacker Andrés Sepúlveda pled guilty to similar charges in another surveillance scandal involving interception of the communications of representatives in the peace talks between the FARC and the government in Havana.⁴

Issues of internet access and net neutrality also came to the forefront of debate in Colombia, prompted by the expansion of zero rating programs. In January 2015, Facebook launched its Internet.org service, which provides free access to Facebook and some other applications for subscribers to Colombian mobile carrier Tigo.⁵ Although zero-rating programs have been permitted by Colombian law since 2011 and implemented by some carriers since that time, Internet.org is notable for its scope and for the significant media debate it triggered. Proponents argue that the increased access

1 Carlos Cortés, "Crónica de una ofensa inofensiva," [Chronicle of an unoffensive offense] *La Silla Vacía* (blog), April, 2015, <http://bit.ly/1ODNXEI>.

2 At least 142 journalists have been murdered since 1977. Fundación Para La Libertad De Prensa (FLIP) *60 AÑOS de espionaje a periodistas en Colombia*, 2015, accessed April 26, 2015, 60, <http://bit.ly/1E5ReYu>; See also Fundación Para La Libertad De Prensa (FLIP), "Periodistas Asesinados" [Journalists Killed], accessed October 5, 2015, <http://bit.ly/1Gbwn7u>.

3 "Condena de 14 años para Hurtado y 8 para Bernardo Moreno por chuzadas," [Sentence of 14 years for Hurtado and 8 years for Bernardo Moreno for 'Chuzadas'] *El Tiempo*, April 30, 2015, <http://bit.ly/1biN0yV>.

4 "Confirman condena de 10 años al 'hacker' Sepúlveda" [Sentence of 10 years for the 'Hacker' Sepúlveda Confirmed], *Semana*, April 10, 2015, <http://bit.ly/1OyKjKX>.

5 Ministry of ICT, "Mark Zuckerberg llega este miércoles a Colombia para sellar alianza con el Gobierno," [Mark Zuckerberg arrives this Wednesday to Colombia to seal the alliance with the government] January 13, 2015, <http://bit.ly/1OXaeeG>.

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to limited services is better than no services at all, but some NGOs and technology experts have raised concerns about the potential of the program to increase the digital divide and undermine the net neutrality principle.

In recent years, Colombian NGOs—namely the Foundation for Freedom of the Press in Colombia (FLIP), Fundación Karisma, Dejustica, Colnodo, and, lately, the Colombian Jurists Commission (CCJ)—have begun calling for more information regarding the scope of government surveillance and threats to user privacy, issues that will likely gain greater traction in Colombia as internet use becomes more widespread. NGOs have also begun campaigning about internet-related issues unfolding in the public debate, such as online privacy, net neutrality, the quality of mobile internet, and online copyright enforcement.

Obstacles to Access

Although internet penetration has steadily increased, Colombia still faces obstacles to access primarily stemming from socioeconomic factors. The lack of basic utilities and affordable internet access constitutes an informal barrier to information and communications technologies (ICTs). The implementation of zero-rating programs such as Facebook's Internet.org may increase access to a selection of online platforms, but critics worry that it may also aggravate Colombia's digital divide and weaken the application of the net neutrality principle.

Availability and Ease of Access

Internet access has increased steadily in Colombia over the past decade. According to the most recent figures from the International Telecommunication Union (ITU), Colombia's internet penetration rate reached 53 percent by the end of 2014, compared to 52 percent in 2013 and 30 percent in 2009.⁶ Nevertheless, with nearly half of the population still without internet, significant obstacles to access remain. Lack of infrastructure in rural areas, low levels of digital literacy, and high prices all stand in the way of widespread access.

Internet access is facilitated primarily by DSL and cable connections.⁷ Colombia's average internet speed is 3.7 Mbps—a figure that places it between Brazil and Argentina in a regional comparison.⁸ Many Colombian internet users access the internet outside of their homes, and cybercafes and education centers play a key role in expanding access. Twenty percent of internet users accessed the internet through cybercafes and 26 percent through education centers, while free public access points served a negligible percentage of internet users.⁹

Colombia's mobile penetration rate reached 113 percent at the end of 2014, and mobile phones are increasingly used to access the internet.¹⁰ Mobile connections range from basic data plans to full ac-

6 International Telecommunication Unions, "Percentage of Individuals Using the Internet," accessed June 10, 2015, <http://bit.ly/1L0r3mK>.

7 Ministry of ICT, *ICT Trimestral Bulletin*, [in Spanish], December 2014, 19, <http://bit.ly/1JeuTG7>.

8 For comparison, Brazil had an average internet speed of 3.0 and Argentina had an average speed of 4.5 at the end of 2014. The global average speed was 4.5. Akamai, *State of the Internet Visualization*, Fourth Quarter 2014, <http://akamai.me/1VdTuF5>.

9 DANE, *Basic Indicators in ICT in Colombia 2014*, April 6, 2015, http://www.dane.gov.co/files/investigaciones/boletines/tic/prese_tic_2014.pdf.

10 International Telecommunication Unions, "Mobile-cellular Telephone Subscriptions," accessed June 10, 2015, <http://bit.ly/1L0r3mK>.

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cess,¹¹ but it is not clear if official measures of mobile internet penetration count restricted plans (i.e. access only to social networks) as mobile internet connections. Mobile internet is divided between subscription plans and pay-as-you-go plans. Of the roughly 5.6 million users (approximately 12 percent of the population) who have subscription plans, almost 4.9 million (approximately 10 percent) have high-speed mobile broadband subscriptions, 3G and above. The majority of mobile internet users have pay-as-you-go plans, which claim 21.4 million users (approximately 44 percent of the population). Of these users, 17 million (approximately 36 percent) have service of 3G or above.¹²

There is significant geographical disparity in internet penetration rates in Colombia. While the capital, Bogotá, has a fixed-internet subscription rate of 19 percent, the southern rural departments of Amazonas, Vaupés, Vichada, Guainía, and Guaviare have a rate of less than 1 percent combined.¹³ Only 4 to 5 percent of Colombia's population lives in this region; however, the land accounts for approximately 55 percent of the country's geographical area.¹⁴ Although many indigenous languages are spoken here, there do not appear to be significant efforts to offer online content in these languages. Even the official websites of Amazonas, Vichada, and Guajira—each of which lays claim to a large indigenous population—are in Spanish only, with no option to display them in any of the indigenous languages present in those territories.¹⁵

High internet prices and low levels of digital literacy also present substantial obstacles to internet access in Colombia. A 2014 Digital Consumers Survey revealed that 44 percent of people without internet in their homes cite high prices as the reason why they do not acquire the service, while 28 percent state that they do not think internet connection is necessary.¹⁶ The ITU's scale of fixed-broadband prices lists Colombia as the 79th most affordable country out of 165 countries, placing it around the global median, with an average price of US\$19.80 per month.¹⁷ For comparison, Colombia's minimum legal monthly wage was set as COP 644,350 (US\$260) for 2015.¹⁸ According to the ICT ministry (MinTIC), only about eight percent of people in the country's lowest socioeconomic strata, which encompasses almost half the population, have subscriptions to fixed internet connections.¹⁹

The Private Council for Competitiveness, a national think tank devoted to exploring market competition, recommended decreasing internet and mobile prices between 20 and 40 percent in the next four years and pointed out that the high prices of internet and mobile communications are still obstacles to greater internet penetration.²⁰ Official programs such as Vive Digital, implemented in 2010 and Colombia Aprende, the Education Ministry's platform for the promotion of literacy, implemented in 2004, have begun breaking down barriers to digital literacy. Vive Digital, administered by the ICT ministry, aims to expand infrastructure, services, internet applications, and the number of Co-

11 DANE, *Basic Indicators in ICT in Colombia 2014*.

12 Ministry of ICT, *ICT Trimestral Bulletin*, 24.

13 Ministry of ICT, *ICT Trimestral Bulletin*, 40.

14 Based on DANE population projection for 2012 and the geographic area of the departments.

15 The Official Website of the Department of Amazonas, accessed August 28, 2015, <http://bit.ly/1JtV75d>; The Official Website of the Department of Vichada, accessed August 28, 2015, <http://bit.ly/1KzLbeu>; The Official Website of the Department of La Guajira, accessed August 28, 2015, <http://bit.ly/O9WQZ8>.

16 DANE, *Basic Indicators in ICT in Colombia 2014*, 11, http://www.dane.gov.co/files/investigaciones/boletines/tic/prese_tic_2014.pdf

17 International Telecommunication Union, *Measuring the Information Society 2014*, 124, <http://bit.ly/1NUbnkf>

18 Decreto 2731, December 30, 2014, <http://bit.ly/1GLXylo>.

19 Ministry of ICT, *ICT Trimestral Bulletin*, [in Spanish], December 2014, 9, <http://bit.ly/1JeuTG7>. Percentage calculated by dividing the number of internet subscriptions pertaining to this income bracket over the DANE population estimation for this income bracket.

20 Private Council for Competitiveness, *Tecnologías De La Información Y Las Comunicaciones*, [National Competitiveness Report] 2014-2015, accessed April 26, 2015, 133, <http://bit.ly/1E1Yxts>.

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Colombian internet users.²¹ Colombia Aprende also aims to expand the use of digital applications and devices, training some 16,000 teachers of digital literacy across the nation.²²

Restrictions on Connectivity

No legal provisions impose connectivity restrictions in Colombia. The government does not place limits on bandwidth, nor does it impose control over infrastructure, except in emergency situations when internet service providers (ISPs) are required to make their infrastructure available for official response.²³ In keeping with this lack of restriction, the government does not have centralized telecommunications infrastructure, nor has it established blocking protocols for instant, person-to-person communication, or tools to filter or block social media applications or content.

Colombia only has one internet exchange point (IXP), called “NAP Colombia,” through which ISPs exchange traffic to improve efficiency and speed. Located in Bogotá, the IXP is managed by the Colombian Chamber for Informatics and Telecommunications.²⁴ Eighteen mostly privately owned telecommunication enterprises have direct connection with the IXP.

ICT Market

Colombia is home to 56 ISPs, and while 88 percent of the market is concentrated in the hands of four companies, there are nonetheless multiple market options from which to choose.²⁵ Market entry is straightforward, and it is possible for anyone to establish an ISP by following the general requirements of the ICT Law (No.1341), which establishes free competition and prioritizes efficient use of infrastructure and access to ICTs.²⁶

Registration requirements are neither excessive nor onerous. Business owners must provide personal and tax identification as well as a description of services, but no fee is required. This information is published in an open registry, and the ICT ministry then has 10 days to verify the data, after which the business may begin operating. Based on the required criteria, registration can be denied when information is incomplete or false, or when an ISP does not have the proper commercial status to offer such services.²⁷ Service providers are obligated to pay a contribution of 0.01 percent of their annual income to an ICT Ministry Fund (Fontic) devoted to the development of nationwide ICT projects.²⁸ ISPs must also apply for licenses to utilize the radioelectric spectrum, although there have been no complaints of difficulties or bias with this process.

The mobile landscape is more concentrated than the ISP market. Although Colombia has at least six mobile providers, two of those companies (Claro and Movistar) control two-thirds of the mobile internet market. This situation mirrors the mobile phone sector—although there are five providers, 82

21 ICT Ministry, “Vive Digital,” <http://bit.ly/1lbnQBQ>.

22 Education Ministry, “Colombia Aprende,” <http://bit.ly/1gH1oRn>.

23 Ley 1341 [Law 1341] July 30, 2009, <http://bit.ly/1q8fyQQ>.

24 NAP Colombia, “FAQ,” <http://bit.ly/1E1ZS3C>.

25 Telmex Colombia S.A., UNE EPM Telecomunicaciones S.A., Colombia Telecomunicaciones S.A., and Empresa de Telecomunicaciones de Bogotá, Colombia S.A. are the four dominant providers. Ministry of ICT, *ICT Trimestral Bulletin*, [in Spanish], December 2014, 19, <http://bit.ly/1JeuTG7>.

26 Ley 1341 [Law 1341].

27 Decreto 4948 [Decree 4948] December 18, 2009, <http://bit.ly/1gVegGu>.

28 Ley 1341 [Law 1341].

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percent of the market is in the hands of the two aforementioned companies.²⁹ In 2009, the government declared that Claro occupied a dominant position in the market, which under Colombian law means that the company is subject to *ex ante* (prior) regulation on issues such as pricing and service bundling. The structure of the company, however, remains unchanged.³⁰ As with ISPs, mobile service providers must also contribute 0.01 percent of their annual income to Fontic.

The ICT ministry establishes public selection mechanisms for mobile service providers.³¹ A 2013 spectrum auction resulted in two new players entering the market. While this is a step in the right direction, diminished market concentration has not yet been seen.³² In March 2013, the ministry renewed the spectrum licenses of Claro and Movistar for a new ten-year term without major alterations, suggesting that little is likely to change in terms of market dominance in the next decade.³³

Regulatory Bodies

Colombia's ICT sector is subject to numerous regulatory bodies, all of which are part of the executive branch of government and have varying but limited degrees of independence from the government. The three main regulatory bodies are the ICT ministry, the Communication Regulation Commission (CRC), and the National Spectrum Agency (NSA). The Superintendency of Industry and Commerce also has some control duties as part of its consumer protection obligations.

The president appoints the ICT minister, who oversees the telecommunications sector through the ICT ministry. The ICT minister also chairs the CRC, which is responsible for ensuring efficient service and promoting competition in the telecommunications sector and is formed by the minister and three commissioners who are also appointed by the president. The ICT minister designates the head of the NSA, which is the agency in charge of planning, management and supervision of the use of the radioelectric spectrum. While some have suggested that such an executive-driven design prevents objective oversight of the sector, affording the president a great deal of influence in its operation, to date, there are no clear examples of executive bias in rulings.³⁴

A 2014 OECD report proposed two principal suggestions for improving autonomy of regulatory bodies. First, the report recommended that the CRC develop more independence from Colombia's central government because, as stands now, its board cannot deliberate without the presence of the ICT minister, and the ministry of finance fixes the agency's budget. Second, the ICT ministry should refrain from regulating the sector, and focus solely on promoting the development and use of ICTs.³⁵

Since 2010, a government-appointed concessionaire has been responsible for allocating the .co domain. For the domains org.co, edu.co, mil.co, and gov.co, applicants must comply with specific requirements; for edu.co, for example, the applicant must be an educational institution.³⁶

29 Ministry of ICT, *ICT Trimestral Bulletin*.

30 Carlos Cortés, "Mobile Internet in Colombia - Challenges and Opportunities for Civil Society: The 2013 Spectrum Auction," Open Society Foundation, <http://bit.ly/1QDvnJ1>.

31 Ley 1341 [Law 1341] art. 11.

32 Ministry of ICT, *ICT Trimestral Bulletin*.

33 Resolution 597, 2014, ICT Ministry.

34 Cortés, "Mobile Internet in Colombia - Challenges and Opportunities for Civil Society: The 2013 Spectrum Auction."

35 OECD, *Review of Telecommunications Policy and Regulation in Colombia*, April 2014, <http://bit.ly/1MOiNZP>.

36 Dominio, "Historia del Dominio Co," [History of the Domain .Co] Cointernet, <http://bit.ly/1iQywea>.

Limits on Content

No content is systematically blocked under Colombian law besides child pornography, which is blocked under laws that critics say are vague and overly broad. In addition, reports indicate that websites with content related to the FARC, a guerrilla movement that has been in armed conflict with the Colombian state since 1964, have been taken down or blocked with no explanation several times over the past years. Similar to offline media, online media in Colombia is subject to some content manipulation based on advertising revenue from government and private sources; however, online media outlets are able to exercise more independence from advertisers and government advertising revenue than offline media. Recent court cases have upheld the principle that intermediaries should not be held liable for content posted by third parties.

Blocking and Filtering

Blocking or filtering of content—other than child pornography—is not common in Colombia. However, the country has suffered from a violent conflict between the government, the FARC guerrilla group, and other paramilitary and guerrilla groups for over 50 years, and there have been sporadic reports of censorship of content disseminated by the FARC in recent years. Colombia, the United States, and the European Union recognize FARC as a terrorist organization, although several neighboring South American countries, such as Brazil, Argentina, Ecuador, and Venezuela, have not adopted that designation.³⁷

Although there are no legal restrictions on publishing materials about the ongoing conflict, FARC's presence online has been subject to different forms of restriction.³⁸ In 2012, for example, with the initiation of peace talks between the FARC and the Colombian government, FARC launched a music video on their website announcing their intentions to participate in the Havana Peace Talks. The site was blocked shortly thereafter.³⁹ Content on FARC's online accounts often consists of political or organizational propaganda rather than active recruitment or direct incitement to violence. Media coverage about censorship of FARC websites is scarce and the government has not commented on shutdowns of FARC websites or social media pages; therefore, it is not clear whether shutdowns of FARC websites are caused by technical blockings, cyberattacks, or result from decisions made by the organization itself, which operates in secrecy. Despite these instances, censorship of FARC websites does not appear to be systematic, and some FARC members have functional social media accounts.

According to the ICT ministry, the only content that is subject to blocking measures is child pornography.⁴⁰ Decree 1524 (2002) requires ISPs to undertake technical measures to prevent the online availability of child pornography.⁴¹ In response to an information request, the ICT ministry stated that the criteria used to determine which content should be blocked are set every two years by a commission that includes the Colombian Child Care Office (ICBF), the Ombudsman, the National Prosecutor, and UNICEF. The Cybernetic Police Center of the Office for Criminal Investigation and the National Police's Directorate of Criminal Investigation and Intelligence (DIJIN) evaluate reported

37 Martin Pique, "Titanes en la Cumbre después de la batalla," *Página 12*, March 8, 2008, <http://bit.ly/1iOyGm1>.

38 "Tentáculos de las FARC en Internet," [FARC's tentacles on Internet] *El Espectador*, May 10, 2012, <http://bit.ly/1jiDekV>.

39 "Jefe máximo de las FARC dice que van a La Habana sin rencores," [FARC's top leader says they go to Havana without resentment] *El Universal*, September 3, 2012, <http://bit.ly/1JiYLn9>; See also "Colombia: Guerrilla Group's Peace Negotiation Rap Video," *Global Voices*, September 3, 2012, <http://bit.ly/1QXlcz7>

40 Communication from ICT Ministry in response to Request of Information N° 661596 on February 24, 2015.

41 Ley 679, Decreto 1524 [Law 679, Decree 1524] July 24, 2002, <http://bit.ly/1NRSVKZ>.

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content and, if the content qualifies to be blocked, send the URLs to the ICT ministry, which in turn notifies the ISPs who ultimately block access to the sites. Anyone who feels adversely affected by the blocking measure may submit a complaint before DIJIN, which studies the case and decides to maintain or remove the blocking.

Although it is an important protection mechanism, the legal basis of the blocking procedure is somewhat murky, since neither of the laws restricting child pornography (Law 679 and Decree 1524) specify the process outlined by the ICT ministry. The possibility for civil or judicial oversight is limited because information about the websites blocked is classified, possibly out of fear that individuals would use circumvention tools to access child pornography sites if a list were made public.⁴²

Content Removal

The Colombian government does not regularly order the removal of content, although periodic court cases have resulted in judicial orders requiring the removal of specific information deemed to violate fundamental rights. Some unconfirmed reports suggest that content produced by the FARC guerrilla group has been subject to removal or restriction. Members of the FARC have reported closure of social media pages, including restrictions on their Facebook pages and blogs.⁴³ Meanwhile, *Anncol* (“the New Colombia News Agency”), which some political figures have denounced by as an organization that supports FARC, has changed its top-level domain (TLD) on several occasions, allegedly because of diplomatic pressure exerted by the Colombian government on administrators of those TLDs to deregister the domain name.⁴⁴

During the coverage period, cases pertaining to content disputes have exempted search engines from liability for posting links to content in their search results.⁴⁵ One important recent ruling concerned the January 2013 case of *Guillermo Martínez v. Google* and the daily newspaper *El Tiempo*. In 1997, *El Tiempo* reported that Mr. Martínez was part of a mafia group. In 2003, charges against Martínez were dropped, but eight years later, when Martínez searched for his name on Google, the original allegation still appeared. In response to Martínez’s suit, the Constitutional Court ruled that Google was not responsible for the content of the journalistic pieces that were linked to the plaintiff’s name because Google is not an editor or a publisher,⁴⁶ which suggests that the ruling may serve as a precedent to limit the liability of other intermediaries.

In May 2015, the court issued a second ruling that strengthened the precedent that search engines should not be held liable for links in their search results. The case arose from a writ for protection of fundamental rights (*acción de tutela*), which a citizen submitted to the Constitutional Court in 2013, requesting that the court order an online newspaper and Google to “erase any negative informa-

42 Communication 5245, ICT Ministry to Foundation for Press Freedom; See also: Ley 679, Decreto 1524 [Law 679 , Decree 1524] July 24,2002, <http://bit.ly/1NRSVKZ>.

43 “Continúa La Censura - Bloquearon la página en Facebook de la delegación de paz Farc-Ep” [Censorship Continues – Farc-Ep Peace delegation Facebook page is blocked], *Diálogos de Paz*. June 13, 2013. <http://bit.ly/1LwsAU4>; “About Cyberwar against Farc-Ep,” Farc-EP Peace Delegation, October 2, 2013. <http://bit.ly/1OWB4EL>

44 “Agencia de noticias de la guerrilla en internet tendría sede en Dinamarca,” [Guerrilla’s news agency would have its headquarters in Denmark], *Semana*, August 31, 2003, <http://bit.ly/1G7HV5S>; “Agencia de noticias, cercana a las FARC, utiliza a Dinamarca como base, según diario danés” [News agency akin to FARC uses Denmark as its headquarters, according to Danish journal], *ADITAL*, July, 2011, <http://bit.ly/1VfKGsI>.

45 Corte Constitucional (Constitutional Court), Sentencia T-040/13 [Judgments: T-040/13] January 28, 2013, <http://bit.ly/1FyIMlk>; Constitutional Court, Sentencia T-453/13 [Judgement T-453/13] July 15, 2013, <http://bit.ly/1R6lHaO>; Constitutional Court, Sentencia T-634/13 [Judgement T-634/13] September 13, 2013, <http://bit.ly/1OyMApE>.

46 Constitutional Court, Sentencia T-040/13 [Judgments: T-040/13].

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tion” about herself regarding the commission of a crime. In 2000, the woman had been implicated in a human trafficking investigation in relation to her work in a travel agency patronized by a man accused of human trafficking. Although she was investigated, her case reached the statute of limitations and she was never convicted. The newspaper *El Tiempo* published a note about the original case, but it did not publish anything signaling that her case had been dismissed; hence, the note violated the rights of good name and honor, according to the complainant.

In its 2015 decision, the Constitutional Court held that the media has a duty to update information regarding criminal cases until the case comes to an end. The Court ruled that *El Tiempo* must update the original note about the case to reflect that the complainant was not convicted and must use “robots.txt” and “metatags” to make the information harder to find in an online search. Finally, the Court did not order Google to de-index the information from its search results, on the grounds that search engines should not be liable for the information they index. The court also argued that liability for Google would violate guiding principles of an open internet like non-discrimination of content and harm free expression.⁴⁷ Reception to the ruling was mixed among free speech and digital rights advocates. Although many praised the fact that it exempted intermediaries from liability,⁴⁸ some worried that the ruling might place an excessive burden on the media. NGOs in Colombia have scheduled a variety of discussions over the next year to further assess the impact from this ruling.⁴⁹

Media, Diversity, and Content Manipulation

Colombia has a vibrant media environment with a number of digital media outlets and online spaces for political debate. Nevertheless, self-censorship is a notable problem for journalists in the realm of traditional media—and likely spills over into online media as well.⁵⁰ According to a national survey of journalists conducted in 2013 by Proyecto Antonio Nariño (PAN), an alliance of organizations focused on freedom of expression and access to information, 47 percent of respondents reported that they avoided publishing information due to fear of aggression; 35 percent feared losing their jobs or having their media outlets closed; 25 percent feared pressure from state actors; and 60 percent believed that media outlets in their region modify their editorial positions in order to gain political favor.⁵¹

The survey also revealed that 57 percent of respondents believe that local government pressures the media with allocation of government advertising.⁵² Given that financing is often extremely difficult, government advertising can make a significant difference in an outlet’s long-term existence. Although there are fewer detailed studies regarding the online environment specifically, one study from Javeriana University in 2012 found that at least 14 out of 61 online media outlets ran government advertisements.⁵³ Although funding from the government, partisan, or corporate interests may

47 Constitutional Court, Sentencia T-277 /15 [Judgement T-277/15] May 12, 2015, <http://bit.ly/1iQCR1b>.

48 Electronic Frontier Foundation, “Google to France: We Won’t Forget It for You Wholesale,” August 3, 2015, <http://bit.ly/1P2iyYL>.

49 Fundación Karisma, “Corte Constitucional colombiana decide sobre caso de derecho al olvido en Internet,” July 6, 2015, <http://bit.ly/1FmskVr>.

50 Although there are studies concerning self-censorship among journalists, to date, there are none concerning self-censorship among general internet users.

51 [Second National Survey on Freedom of Expression and Access to Information] May 2013, 32-35, and 38, <http://bit.ly/1WFh0cf>.

52 Proyecto Antonio Nariño, “Resultados: Segunda encuesta nacional de libertad de expresión y acceso a la información en Colombia,” 32-35, and 38.

53 Germán Rey and José Luis Novoa, *Medios Digitales En Colombia 2012*, [Digital Media in Colombia] Centro Ático, Facultad

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manipulate online reporting, online media appear to have more independence from these funding sources, whereas in the traditional setting, official advertisement and favorable government relations are often a necessary condition for the continued operations of many offline outlets, especially in rural Colombian provinces.⁵⁴

Many professional media enterprises thrive in Colombia's largest cities and, in general, the government does not interfere with operations. Authorities do not issue official guidelines or directives on coverage to online media outlets or blogs, nor does the government employ or encourage individuals to defend official actions in online forums. Free or low-cost blogging services are available and are very popular. Along with Google, Facebook, YouTube, Yahoo, and Twitter, the Alexa ranking features Blogspot and Wordpress among the top 20 websites in Colombia.⁵⁵

Net neutrality resurfaced as a topic of national debate in early 2015 when, shortly after being reelected, President Juan Manuel Santos proposed a National Development Plan that would exclude the net neutrality provision (Article 56) in place in the previous government plan.⁵⁶ Concerned that Colombia would lose its legal protections for net neutrality, several civil society groups protested, and the article was ultimately preserved.⁵⁷ Nevertheless, Colombia's net neutrality law contains explicit exceptions for zero-rating programs, like Facebook's Internet.org, which have also generated substantial debate among Colombian digital rights activists over the past year.

In January 2015, Facebook launched Internet.org through a partnership with the mobile carrier Tigo,⁵⁸ making Colombia the first country in South America to adopt the program.⁵⁹ Internet.org in Colombia offers users access to 16 applications for free for two months and was welcomed by the government as a catalyst for expanding internet access in Colombia.⁶⁰ Media coverage has been favorable, stating that even though the program only provides access to a limited number of applications and not the whole internet, the program is better than no access at all.⁶¹ However, critics have raised concerns about user privacy on the program, as well as the fact that it may endanger the net neutrality principle because it divides users into those who can access an "internet" of a few selected platforms and those who have full access to the internet.

Although Colombia has regulations that prohibit filtering, the wording is vague and could lead to arbitrary practices. Law 1450 (2010) and Resolution 3502 (2011) stipulate that ISPs can make segmentation plans "according to the needs of the segment or the user," which in practice allows them to offer plans in which the data consumption on certain applications (such as WhatsApp or Facebook)

de Comunicación Universidad Javeriana, Consejo de Redacción, 26, <http://bit.ly/1OXe47r>.

54 Censura Indirecta, "Indirect Censorship Project," press release, <http://bit.ly/1NZ6ZUM>.

55 Alexa, "Top Sites in Colombia," accessed April 26, 2015, <http://www.alexa.com/topsites/countries/CO>.

56 José Luis Peñarredonda, "Neutralidad en la red: ¿en riesgo por el Plan de Desarrollo?" [Net Neutrality at risk because of the Development Plan?] *Enter.co*, February 11, 2015, <http://bit.ly/1KDPceK>; See also Fundación Karisma, "El error del Gobierno colombiano en el Plan Nacional de Desarrollo" [Colombian government's mistake on National Development Plan] March 2, 2015, <http://bit.ly/1JtZNYM>.

57 Fundación Karisma, FLIP, Dejusticia and Colonodo, "Carta abierta al Gobierno y a los Congresistas colombianos sobre la Neutralidad de Internet," [Open letter to Colombian government and congress about net neutrality] March 5, 2015, <http://bit.ly/1OXekU5>.

58 Mark Scott, "Mark Zuckerberg Goes on Charm Offensive for Internet.org," *The Business of Technology* (blog), *The New York Times*, March 2, 2015, <http://nyti.ms/1c2UTd4>.

59 Ministry of ICT, "Mark Zuckerberg llega este miércoles a Colombia para sellar alianza con el Gobierno."

60 Ministry of ICT, "Mark Zuckerberg llega este miércoles a Colombia para sellar alianza con el Gobierno."

61 See José Carlos García, "¿Por qué se critica tan duro a Internet.org? Análisis," [Why the hard critique to Internet.org? Analysis] *El Tiempo*, January 20, 2015, <http://bit.ly/1EVOjtQ>; Alvaro Montes, "Mucho más que Facebook" [More than Facebook] *Semana*, January 17, 2015, <http://bit.ly/1DPrh9K>.

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does not affect the contracted data limit.⁶² Mobile service providers offer several kinds of data plans, many of them obscure in terms of the network management being applied, as well as which kind of content and applications users may be charged for or that may affect data consumption. Fixed internet service is subject to the same transparency and regulation issues.

Digital Activism

The internet increasingly plays a central role in social movements in Colombia. A study from the NGO Somos Defensores (“We Are Defenders”) indicates that during the first decade of the 21st century, Colombian social movements used the internet primarily to display official information, but within the last five years, as the popularity of the internet has grown, these movements have embraced the online environment to campaign and investigate issues of interest to their members.⁶³

The most important example of online mobilization in Colombia occurred in 2008, with a rally against the FARC guerrillas known as “One Million Voices Against FARC – I am Colombia.” Oscar Morales, then a civil engineer, created a Facebook group to invite people to join the movement. Traditional media and government agencies quickly picked up the cause, which gave the rally significant exposure. According to media estimates, 12 million people in 200 cities worldwide took to the streets to call for a peaceful end to the conflict.⁶⁴ In 2010, a similar rally was organized online, although with less impact. More recent mobilizations, such as peasants’ protests in the countryside and demonstrations against education and health bills, have also been organized online.

Violations of User Rights

Although prosecutions for online expression are rare in Colombia, two high profile cases in 2014 and 2015 attracted national and international criticism. In one case, the courts confirmed the conviction of an internet user who posted a comment criticizing a public official anonymously on a newspaper’s website, in the first online criminal defamation case in Colombia. Another user faces up to eight years in prison under Colombia’s excessively harsh copyright laws after he posted an academic article on the website Scribd. Although the government has taken some positive steps to prosecute illegal surveillance in recent years, evidence suggests that surveillance and violations of privacy remain widespread.

Legal Environment

Article 20 of Colombia’s National Constitution guarantees freedom of information and expression and prohibits prior restraint. This article was developed by the Constitutional Court in accordance with the standards of the Inter-American Court of Human Rights. Article 73 further provides for the protection of “the liberty and professional independence” of “journalistic activity.” Although there are no specific provisions protecting freedom of expression online, a blogger has the same liberties and protections as a print or broadcast journalist.⁶⁵ The Constitutional Court confirmed the application of

62 Ley 1450 [Law 1450] art.56, June 16, 2010, <http://bit.ly/1GpKqBc>; and Resolución 3502, [Resolution 3502] art. 9, December 16, 2011, <http://bit.ly/1GotaMW>.

63 Somos Defensores, “Una Puerta hacia la Paz,” *Revista Revelando*, 2013, 87, <http://bit.ly/1jO7wfu>.

64 “Marcha Contra Las Farc, Mayor Movilización en la Historia del País” [Rally Against FARC, Biggest Mobilization in the Country’s History] *El Tiempo*, February 4, 2008, <http://bit.ly/1dpnIsB>; See also “Yo Organicé la Primera Marcha Contra el Secuestro” [I Organized the First Rally Against Kidnapping] *El Espectador*, December 27, 2008, <http://bit.ly/1KUTDXb>.

65 Several decisions of the Constitutional Court state that Freedom of Expression is a universal right. See for example,

such protections to the internet in a 2012 ruling.⁶⁶ In its decision, the Court stressed the Joint Declaration on Freedom of Expression and the internet, which states that “freedom of expression applies to the internet, as it does to all means of communication,” and that “restrictions on freedom of expression on the internet are only acceptable if they comply with established international standards... are provided for by law, and...are necessary to protect an interest which is recognized under international law [the “three-part” test].”⁶⁷

Despite the protections for free expression established in Colombian law, Colombia still has criminal penalties for defamation, which have been applied to online speech. According to the Colombian penal code, individuals accused of insult can face between 1.3 and 6 years in jail and a fine of between US\$3000 and US\$345,000, and individuals accused of libel can face between 1.3 and 4.5 years in jail, with the same possible fines.⁶⁸ Although there are no penalties in place for libel, defamation, irresponsible journalism, or rumormongering that are specific to online content, cases pertaining to online defamation have occasionally been brought before the court with varying outcomes.

The courts have not applied the penal code’s provisions on libel and slander to third party intermediaries; however, the penal code includes a concerning provision regarding online publication or reproduction of insults against others. According to Article 222 of the penal code, “whoever publishes, reproduces, or repeats insult or libel” may also be subject to punishment. This article raises concerns as it leaves open the possibility for charges of indirect insult and libel. The following article in the penal code establishes the use of “social mediums of communication or of other collective divulgence” as an aggravating circumstance that can increase the penalty for insult or libel. The use of internet was considered an aggravating circumstance in the case against Gonzalo Hernán López (See Prosecutions and Detentions for Online Activities).⁶⁹

In July 2015, after the end of the coverage period for this report, two bombings in the capital city of Bogotá injured ten people.⁷⁰ In the wake of the attacks, the Prosecutor General declared that anyone who shares photos or videos of possible terrorist attacks in publications or on social networks instead of surrendering the material directly to the authorities is subject to prosecution.⁷¹ The statement received widespread criticism since such prosecutions would lack legal basis and would entail a serious violation of the right to expression and information;⁷² however, no one has yet been prosecuted under this edict.

Prosecutions and Detentions for Online Activities

Prosecution, imprisonment, or detention for ICT activities is quite rare in Colombia, and writers, com-

Constitutional Court, Sentencia C-442/11, [Judgement C-442/11] May 25, 2011, accessed February 26, 2014, <http://bit.ly/1YG6pic>.

66 Constitutional Court, Sentencia T-550/12 [Judgement T550/12] January 18, 2012, <http://bit.ly/1VfPnt8>.

67 UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, et al, “Joint Declaration on Freedom of Expression and the Internet,” Organization of American States, <http://bit.ly/1LSySYx>.

68 Art. 220-222 of the Penal Code, <http://bit.ly/1LC0FAz>.

69 Law 500 (2000), Criminal Code. Title V. <http://bit.ly/1ZcoeFG>.

70 This event occurred after the end of the coverage period for this report. “Diez lesionados dejaron las dos explosiones en Bogotá” [Ten injured left after explosions in Bogotá], *El Tiempo*, July 2, 2015, <http://bit.ly/1NAhhao>.

71 Adriaan Alsema, “Colombia govt threatens to imprison citizens who publish photos or videos of attacks,” *Colombia Reports*, July 6, 2015, <http://bit.ly/1G5cCqT>.

72 “Polémica desata declaración del Fiscal General que restringe el uso de videos y audios de ciudadanos” [General Prosecutor’s declarations that restricts use of citizen’s videos and audio raise polemic] *RCN Radio*, July 3, 2015, <http://www2.rcnradio.com.co/nacional/noticias/declaraciones-del-fiscal-desata-polemica-222602>

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mentators, or bloggers are not systematically subject to imprisonment or fines as a result of posting material on the internet.⁷³ Nevertheless, in a ruling that clearly violated international norms for freedom of expression, which state that criminal penalties should not apply in defamation cases, Colombian courts confirmed the first sentence for online defamation in July 2014. By applying Colombia's criminal defamation laws to online speech, this ruling sets a concerning precedent for violations of user rights.

In February 2014, private citizen Gonzalo López was convicted of libel for using an anonymous profile to insult Gloria Escalante,⁷⁴ the manager of a public utility company, in the comments section of the online version of the newspaper *El País* in 2008.⁷⁵ Judicial police identified López through his IP address and seized two computers from his office. López, who called Escalante a "rat" and a "thief" in his comments, was the first Colombian to be convicted of libel for content posted online. He was sentenced to 18 months and 20 days in prison and issued a fine of COP 9,500,000 (US\$4,700), although he did not serve jail time based on provisions in Colombian law that allow certain defendants to avoid imprisonment depending on their sentence and prior record.

López appealed the sentence, but the Supreme Court of Justice confirmed the conviction in July 2014. In October 2014, using a writ of protection of fundamental rights (*acción de tutela*), López again challenged the sentence for violating his right to freedom of expression, but his appeal was denied in February 2015. Finally, the Constitutional Court did not select the case for revision, which exhausts his options to overturn the conviction.⁷⁶

The outcome of López's case differed from a previous case where the court acquitted a journalist for insult despite the fact that the complainant was a well-known and powerful politician.⁷⁷ In July 2013, the Supreme Court overturned the conviction of Luis Agustín González for insult or slander. He was initially convicted by a lower level court for publishing an editorial that referred to a local politician as, "arrogant, humiliating, despotic, capricious, extravagant, and defiant." Following an appeal from the politician, the Constitutional Court reopened the case in March 2014, but the complainant lost the appeal.⁷⁸

Colombia has harsh penalties for copyright violations and currently lacks the flexible fair use standards employed in many countries. In July 2014, the Colombian student Diego Gómez was charged with violating copyright violations for uploading an academic thesis onto Scribd. The author com-

73 The only documented case of an individual going to jail took place in 2010, well before the timeframe of this report. See, La Silla Vacía, "Crónica del 'Falso Positivo' de Facebook en nueve episodios," *La Silla Vacía*, May 4, 2010, accessed February 26, 2014, <http://bit.ly/1L6Fv9U>.

74 Colombian law does not prohibit anonymity, so the fact that the post was anonymous did not influence the charges against López.

75 "Condenan a usuario por comentario en artículo de sitio web de noticias," *El Tiempo*, July 21, 2014, <http://bit.ly/1nNzIZQ>.

76 Carlos Cortés, "Crónica de una ofensa inofensiva," [Chronicle of an unoffensive offense] *La Silla Vacía*, April, 2015, <http://bit.ly/1ODNXEI>.

77 FLIP, "Corte Suprema de Justicia absuelve al periodista Luis Agustín González por el delito de injuria," [Supreme Court acquits journalist Luis Agustín González of libel charges] July 16, 2013, <http://bit.ly/1Jij0s6>. See also: Carlos Cortés, "La absolución de Luis Agustín González: Ganar es Perder un Poco" [Winning is Losing a Bit], *Carlos Cortés* (blog), September 2, 2013, <http://bit.ly/1KDUV4k>.

78 FLIP, "La FLIP presenta intervención ante Corte Constitucional en caso de tutela contra el diario El Espectador," [FLIP Files an Intervention in El Espectador Case] February 24, 2014, accessed February 26, 2014, <http://bit.ly/1Nv8Cbm>; See also, "Contralora ierde tutela contra Bejarano" [Comptroller Loses 'Tutela' Against Bejarano] *El Espectador*, February 9, 2014, <http://bit.ly/1gkBjF0>; and Constitutional Court, Ruling T-904, 2013. For more on Colombia's Criminal Code, see: Legislación Colombiana de Medios Audiovisuales, "Código Penal: Injuria y Calumnia," <http://bit.ly/1LSAqBV>.

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plained and pushed for a criminal prosecution. As of May 2015, the case was still ongoing. If convicted, Gómez may face up to eight years in prison on top of substantial fines.⁷⁹

In July 2014, the Superior Tribunal of Bogotá overturned the conviction of Joaquín Pérez Becerra, director of *Anncol* (“the New Colombia News Agency”), a Swedish-based news site that criticizes the economic and political policies of the Colombian government from a far left perspective. After being arrested while traveling through Venezuela, Becerra was brought to Colombia and convicted and sentenced to eight years in prison in 2012 on the charge of criminal conspiracy as an ally of the FARC guerrilla group.⁸⁰ According to the prosecutor’s office, his work in the news agency served FARC’s interests and connected them with funds from his connections in Europe. After spending three years in prison, the higher tribunal ordered his release, saying that they could not find adequate evidence to support his conviction.⁸¹

Surveillance, Privacy, and Anonymity

During the coverage period, the courts sought to reign in illegal and excessive surveillance, passing down sentences to former public officials involved in a 2009 wiretapping scandal; meanwhile, the Prosecutor General ordered a halt in the development of a centralized surveillance platform being developed by the national police based on concerns that the platform lacked sufficient oversight. Despite this progress, however, concerns about illegal surveillance by certain sectors of the government and military persist, with investigative journalists continuing to uncover grave privacy violations by the police and military in 2014 and 2015.

While intercepting personal communications in Colombia is authorized only for criminal investigation purposes and legally requires a judicial order,⁸² service providers are required to collaborate with intelligence agencies by providing access to the communications history or technical data of any specific user without a warrant.⁸³ Retention and treatment of user data by authorities other than the intelligence agencies and departments related to criminal investigation has not yet been regulated in Colombia. Colombian law also allows intelligence agencies to monitor the electromagnetic spectrum without a judicial order.⁸⁴ An additional threat to user privacy comes in the form of Article 2 of Decree 1704 (2012), which requires that ISPs have backdoor access for criminal investigation purposes—which can be used under the Prosecutor General’s authorization.⁸⁵ A service provider that does not comply with these obligations will face fines and could lose its license to operate.⁸⁶

Colombia has no general restrictions against anonymous communication, and there are no registration requirements for bloggers, cybercafe owners, or users. However, the police have access to a database that must be maintained by telecommunication service providers. This database contains

79 Maira Sutton, “Colombian Student Faces Prison Charges for Sharing an Academic Article Online,” *Deeplinks Blog*, Electronic Frontier Foundation, July 23, 2014, <http://bit.ly/WFn75B>; See also Fundación Karisma, “Read my story,” July 7, 2014, <http://bit.ly/1iAHk7h>.

80 “Condenado a 8 años de cárcel Joaquín Pérez Becerra, editor de Anncol,” [Joaquín Pérez, Anncol’s editor sentenced to 8 years of prison] *El Tiempo*, September 7, 2012, <http://bit.ly/1PzUSKF>.

81 “En libertad Joaquín Pérez, director de Anncol” [Joaquín Pérez, director of Anncol, was released] *El Espectador*, July 17, 2014, <http://bit.ly/1KHNI8j>.

82 Political Constitution of 1991, art.250, <http://bit.ly/1KlrfTI>.

83 Ley Estatutaria 1621 [Statutory Law 1621] art. 44, April 17, 2013, <http://bit.ly/1LDxHQX>.

84 Ley Estatutaria 1621 [Statutory Law 1621] art. 17, April 17, 2013, <http://bit.ly/1LDxHQX>; and see Constitutional Court, Sentencia C-540/12 [Judgement C-540/12], 2012, <http://bit.ly/1ldXI2t>.

85 August 15, 2012, <http://bit.ly/1YGdzTA>.

86 Decreto Numero 1704 [Decree 1704], art. 7.

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user data, such as name, ID number, place and residence address, mobile phone number and service activation date.⁸⁷ Users must provide accurate information under penalty of perjury, which is punishable by a minimum of six years in prison.⁸⁸

Since 1993 Colombian law has banned the use of “communication devices that use the electromagnetic spectrum” to send “encrypted messages or messages in unintelligible language.”⁸⁹ In response to an information request, the ICT ministry explained that those provisions apply only “to the content of the communications, not the encryption of the medium.” Despite of the ambiguous wording of the law, the ICT ministry further claimed that these provisions only apply to radio-like devices and not to the internet.⁹⁰ The Intelligence and Counterintelligence Act stipulates that voice encryption service may be implemented “exclusively” for the intelligence agencies and “high government” officials by telecommunications service providers.⁹¹ Thus, mobile voice encryption is restricted for any citizen who is not part of the “high government” or intelligence agencies.

Although investigative journalists have sought to uncover surveillance practices, the scope of government and military surveillance in Colombia is still unclear. Apart from the occasional public bidding or contract that sheds some light on the matter, gaining an accurate picture of Colombia’s surveillance activities is very difficult. The lack of clarity regarding surveillance is aggravated by the fact that information related to intelligence activities is classified under Law 1621 (2012). Further complicating the matter, there is no independent body to oversee surveillance activities or to hold those in charge accountable. Congress receives a yearly intelligence report, but as there is no independent oversight, partial or biased information can be submitted.⁹²

In July 2015, a hacker leaked 400 GB of documents from the Italian information technology company Hacking Team, which is best known for providing spyware to governments.⁹³ Among these documents were emails suggesting that the Colombian government had contracts with the company, evidence that supports research published by Citizen Lab at the University of Toronto in early 2014.⁹⁴ Leaked emails reference the National Police Office’s purchase of Hacking Team’s Remote Control System (RCS) called “Galileo,” which is capable of accessing and taking control of (hijacking) the target devices’ keyboard register, microphone and camera.

Although National Police have denied any direct relation with Hacking Team and have only admitted to contractual ties with a Colombian company called Robotec, which distributes Hacking Team’s services,⁹⁵ the leaked documents indicate that the National Police contacted Hacking Team directly to activate spyware.⁹⁶ Another leaked email suggested that the U.S. Drug Enforcement Agency (DEA)

87 Law 418 (1997) art. 99 [in Spanish], <http://bit.ly/1Gw5sg9>; and Resolution 0912 (2008) of the National Police, Diario Oficial, Año CXLIV, N° 47.233, January 15, 2009.

88 The penal code outlines penalties for perjury of bearing “false witness.” Penal Code, art. 442

89 Law 418 (1997) art. 102.

90 Communication N° 811811, ICT Ministry to Karisma Foundation, April 27 of 2015.

91 Ley Estatutaria 1621 [Statutory Law 1621] art. 44, April 17, 2013, <http://bit.ly/1LDxHQX>.

92 Law 906, art. 235 and 237, 2004, <http://bit.ly/1leclzp>.

93 Although this event occurred after the end of the coverage period for this report, it reflects the environment of surveillance over the past year in Colombia.

94 Bill Marczak, et al. “Mapping Hacking Team’s “Untraceable” Spyware” Citizen Lab, February 17, 2014, <http://bit.ly/1kPDo0Y>.

95 “Policía indicó no tener vínculos comerciales con firma Hacking Team,” [Police declares that there are no commercial links with Hacking Team] *El Tiempo*, July 8, 2015, <http://bit.ly/1WnPXRI>.

96 Carolina Botero and Pilar Sáenz, “In Colombia, PUMA is not what it seems,” *Digital Rights Latin America & The Caribbean*, August 24, 2015, <http://bit.ly/1JuchzP>.

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may be engaged in surveillance practices in Colombia.⁹⁷ Although it is still unclear if Hacking Team software is currently being used by the National Police or U.S. DEA, and, if so, how it is being used, several Colombian civil society organizations criticized the excessive and apparently uncontrolled use of intelligence tools in the country, which they argue has been facilitated by “weak legislation” on intelligence matters.⁹⁸

Episodes of illegal surveillance (known in Colombia as “Las Chuzadas”), carried out by intelligence agencies, the army or the police, have constituted an ongoing scandal in Colombia in recent years. In February 2014, the Colombian magazine *Semana* exposed an illegal wiretapping operation carried out by the army against government representatives taking part in peace talks with FARC leaders in Havana, Cuba.⁹⁹ According to the media, the military set up a fake internet cafe under the code name Andrómeda, which it used to illegally target government and FARC representatives. In addition to conducting illegal surveillance, the army also recruited hackers to illegally access communications between representatives on both sides of the peace talks.¹⁰⁰

In May 2014, in the midst of presidential election campaigns, *Semana* revealed a video in which Andrés Fernando Sepúlveda, who worked for the presidential campaign of Oscar Iván Zuluaga—a frontrunner against President Juan Manuel Santos—was seen discussing confidential information about FARC members participating in the peace talks and strategies to use that information during the campaign.¹⁰¹ It is not clear if Sepúlveda intercepted communications or paid for information from people participating in Andrómeda,¹⁰² but he eventually signed a plea bargain and was sentenced to 10 years of prison for illegal interception of communications and use of malicious software, amongst other charges.¹⁰³

In October 2014, reporters revealed that military intelligence services maintained a list of professional and personal email addresses of national and international journalists who had covered the peace talks between the Colombian government and FARC representatives, as well as personal email addresses of NGO members and foreign embassies diplomats. The purpose of the list is unknown.¹⁰⁴ In early 2015 the military confirmed that they were conducting investigations and that some officials involved in the scandal were relieved of their duties, and five were removed entirely from the service.¹⁰⁵

The government has taken some steps over the past year to punish perpetrators of illegal surveil-

97 Ryan Gallagher, “Hacking Team Emails Expose Proposed Death Squad Deal Secret UK Sales Push, and Much More,” *The Intercept*, July 8, 2015, <http://bit.ly/1PCTFmi>.

98 FLIP, CCJ, Dejusticia, Fundación Karisma and Colnodo, “Colombian Police Ought to Clarify Their Relationship with ‘Hacking Team’” July 30, 2015, <http://bit.ly/1KzZHD4>.

99 “Alguien Espió a los Negociadores de La Habana” [Who Spied on the Negotiators in Havana?] *Semana*, February 3, 2014, <http://bit.ly/1fVeY0F>; See also: “Las Chuza-DAS,” [No English Translation – Refers to Surveillance Scandal] *Semana*, December 19, 2009, <http://bit.ly/1JYShZ7>.

100 Helen Murphy, “Colombia Probes Reported Military Spying of Peace Negotiations,” *Reuters*, February 4, 2014, <http://reut.rs/1LDzRQL>.

101 “El video del ‘hacker’ y Zuluaga” [The video of the hacker and Zuluaga] *Semana*, May 17, 2014, <http://bit.ly/Tg6714>.

102 “‘Hacker’ del Proceso de Paz Dice que Compró Datos de Andrómeda,” [Peace Process Hacker Says He Bought Information From Andrómeda] *El Tiempo*, May 15, 2014, <http://bit.ly/1jy2v2q>.

103 “Condenan a 10 años de prisión al ‘hacker’ Andrés Fernando Sepúlveda” [‘Hacker’ Andrés Fernando Sepúlveda sentenced to 10 years of prison] *El Espectador*, April 10, 2015, <http://bit.ly/1afM3qs>.

104 “La polémica lista de Inteligencia Militar” [The polemic list of Military Intelligence] *Semana*, October 28, 2014, <http://bit.ly/1oXkObe>.

105 “Purga en inteligencia de las Fuerzas Militares por escándalo de Andrómeda” [Purge in intelligence services and military forces because of Andrómeda scandal] Blu Radio, January 23, 2015, <http://bit.ly/1iAUdW>.

lance, although it seems unlikely that these efforts have changed the overall environment for surveillance in Colombia, as intelligence agencies continue to operate with minimal oversight. On April 29, 2015, the Supreme Court sentenced Maria del Pilar Hurtado, former director of the government Administrative Security Department (DAS), and Bernardo Moreno, former secretary of the president's office, to 14 and 8 years in prison, respectively, on charges of illegal interception of communication.¹⁰⁶ Hurtado and Moreno carried out a secret wiretapping operation, exposed in 2009 by investigative journalists at the magazine *Semana*, in which the now-defunct DAS intercepted the private communications of journalists, politicians, and NGOs. Although the government dissolved DAS in 2011 in the wake of the scandal, many of the public officials who staffed the project were transferred to the National Intelligence Agency (ANI), the new federal security agency that replaced DAS. The large transfer of personnel between the DAS and ANI has engendered concern over the scope of the new agency's activities.¹⁰⁷

In August 2014, the Prosecutor General's office ordered the national police to stop development of a centralized platform for monitoring and analysis, known as PUMA, because of the lack of transparency and guarantees to its lawful use. Details about PUMA initially surfaced in June 2013, when journalists reported that the government was investing upward of US\$100 million in a monitoring platform, which was to become operational by the end of 2014 and would provide the government with the capacity to intercept communications in real-time, extending to social media, email, telephone networks, and internet data traffic.¹⁰⁸ Official reports identified PUMA as a "fundamental tool for criminal investigation to ensure public safety" and assured that it would not be used as a general intelligence-gathering apparatus. Skeptical of this assurance, the Prosecutor General's office asserted in their 2014 decision that the only way in which PUMA may be deployed is under control of the prosecutor's office. Nevertheless, it is not clear if the national police still have the monitoring equipment or it has been handed to prosecutor's office.¹⁰⁹ Recent Hacking Team leaks raise further questions, as they seem to indicate that PUMA may be up and running under the National Police.¹¹⁰

Intimidation and Violence

Corruption, longstanding armed conflict and associated surveillance, and the war against drugs have become the greatest threats facing freedom of expression in Colombia—regardless of whether that expression occurs in print or online. According to the NGO FLIP, at least sixteen journalists have been murdered and many more have been threatened since 2005.¹¹¹ These statistics represent a continuation of violence in a country that has seen at least 142 murders of journalists in the past four decades. Of these, 67 cases have already reached their statute of limitations, meaning that the victims' families will never see justice.¹¹² Impunity—a pervasive problem in Colombia's judicial system—is ranked by the nonprofit PAN's *Freedom of Expression and Access to Information Index* as one of the

106 Condena de 14 años para Hurtado y 8 para Bernardo Moreno por chuzadas [Sentence of 14 year to Hurtado and 8 year to Bernardo Moreno for 'Chuzadas'].

107 Agencia de Noticia UN, "Inteligencia y Contrainteligencia Necesitan Reglamentación Clara" [Intelligence and Counter-Intelligence Require a Clear Regulation] July 3, 2013, <http://bit.ly/1G7Tt9s>.

108 Daniel Valero, "Policía Podrá Interceptar Facebook, Twitter y Skype en Colombia" [Police Will be Able to Tap Facebook, Twitter y Skype in Colombia] *El Tiempo*, June 23, 2013, <http://bit.ly/1Mv2bmO>.

109 "Fiscalía le dice 'no' a sistema de interceptación 'Puma' de la Policía" [General Prosecutor says 'no' to Police's 'Puma' interception system] *El Tiempo*, August 30, 2014, <http://bit.ly/1HRkAc5>.

110 Botero and Sáenz. "In Colombia, PUMA is not what it seems."

111 Fundación Para La Libertad De Prensa (FLIP), "Periodistas Asesinados."

112 FLIP, *60 AÑOS de espionaje a periodistas en Colombia*.

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gravest threats to overall expression.¹¹³ Colombia has the third highest impunity rate on the Global Impunity Index of the Center for Studies on Impunity and Justice Institute.¹¹⁴

Due to the country's high level of violence, it is difficult to isolate deaths that have resulted specifically from online activity. One recent murder, however, appears to have been connected to online activism. In September 2013, lawyer Edison Molina was murdered in Puerto Berrío, Antioquia.¹¹⁵ Although there have been no significant advances in the judicial investigation, FLIP has suggested that Molina's online activity, in which he denounced acts of corruption in local government, may have led to his murder.¹¹⁶ Daniel Mejía, activist and director of the magazine *Senxura*, received a threat against his life and the life of his family in October 2014, allegedly for his reporting on illegal brick factories in Sogamoso, which he published through traditional and online media.¹¹⁷ Mejía alleges that the threats came from paramilitary organizations with the participation of a member of the military forces.¹¹⁸

Colombia's Ombudsman Office reported that more than 93 journalists were threatened between January to August 2014, though most worked offline.¹¹⁹ There is no broad trend of retaliation specifically for online content in Colombia, and in general, online journalists have not faced the same level of danger as print journalists. A high level of intimidation towards media and human rights defenders in general, however, creates a climate of fear that also affects online journalists.

Technical Attacks

Various types of cybercrime, including hacking, illegal interception and use of data, and the distribution and use of malware are criminalized under Law 1273, which was passed in 2009. Penalties range from 36 to 48 months' imprisonment, along with fines.¹²⁰ While phishing—the stealing of sensitive personal data via malware disguised as legitimate email—appears to be a significant issue in Colombia,¹²¹ most evidence of hacking and other interception has involved interagency spying and intelligence work carried out primarily by the government, the army, and other official bodies (see Surveillance, Privacy, and Anonymity).

In early 2014, following the army's Andrómeda hacking scandal, President Santos publicly stated that Colombia's cyber defense sector was sorely lacking, and announced the creation of a commission focused on strengthening national cybersecurity.¹²² Colombia then partnered with the Organization of American States (OAS) to develop two bodies—the Colombian Cyber Emergency Response

113 Proyecto Antonio Nariño, "Resultados: Segunda encuesta nacional de libertad de expresión y acceso a la información en Colombia," [Second National Survey on Freedom of Expression and Access to Information] 32-35 and 38.

114 Centro de Estudios sobre Impunidad y Justicia, "Índice Global de Impunidad 2015," Universidad de las Américas Puebla, accessed 2015, <http://bit.ly/1yOJV4I>.

115 Committee to Protect Journalists, "Edison Alberto Molina," *Journalists Killed – Colombia*, accessed July 10, 2014, <http://bit.ly/1iQQyNu>.

116 FLIP, *Protestas, Sin Garantías para Cubrir*, [Protests, without Guarantee of Coverage] Annual Report on Freedom of the Press in Colombia, <http://bit.ly/1KHQVR6>.

117 David Gagne, "Journalists Increasingly Under Fire in Colombia," InSightCrime, January 21, 2015, <http://bit.ly/1YGf6Jt>.

118 W Radio, "Señalan a militar de amenazar de muerte a periodista y activista de Boyacá" [Military accused of death threats against journalist and activist in Boyacá] news release, October 10, 2014, <http://bit.ly/1yscrTp>.

119 Gagne, "Journalists Increasingly Under Fire in Colombia."

120 Rachel Glickhouse, "Explainer: Fighting Cybercrime in Latin America," Americas Society/Council of the Americas Online, November 14, 2013, <http://bit.ly/1FyUXP1>.

121 Mimi Yagoub, "Cyber Crime in Colombia: An Underestimated Threat?" InSight Crime, July 11, 2014, <http://bit.ly/1PCXnMS>.

122 "En Ciberseguridad, 'Estamos en Panales' y Expuestos a Todo Tipo de Ataques: Santos," [In Cybersecurity, 'We are in Diapers' and Exposed to All Kinds of Attacks] *El Espectador*, February 8, 2014, <http://bit.ly/1d6jM4J>.

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Group (coICERT) and the Cyber Police Center (CCP)—in order to ensure the country's cybersecurity.¹²³ Despite the president's recent emphasis on Colombia's vulnerability to cyberattacks, there are few known cases of technical violence perpetrated by private actors.¹²⁴ One year after the government announced its cybersecurity strategy with OAS support, digital rights activists continue to push for greater participation in reforming cybersecurity and the inclusion of human rights protections in the development of the cyber security agenda.¹²⁵

123 Phillip Acuña, "Colombia to receive cyber-security assistance from international experts," *Colombia Reports*, March 31, 2014, <http://bit.ly/1YGfveW>.

124 "Santos Anuncia Creación de Comisión para Evaluar Riesgo de un Ciber-Ataque," [Santos Announces Creation of a Committee to Assess Risks of a Cyberattack] Blu Radio, February 7, 2014, <http://bit.ly/1d2I9jB>.

125 Carolina Botero Cabrera "Intimidad vs Seguridad un año después," [Privacy v. Security one year after] *El Espectador*, April 2, 2015, <http://bit.ly/1DBAHEA>.