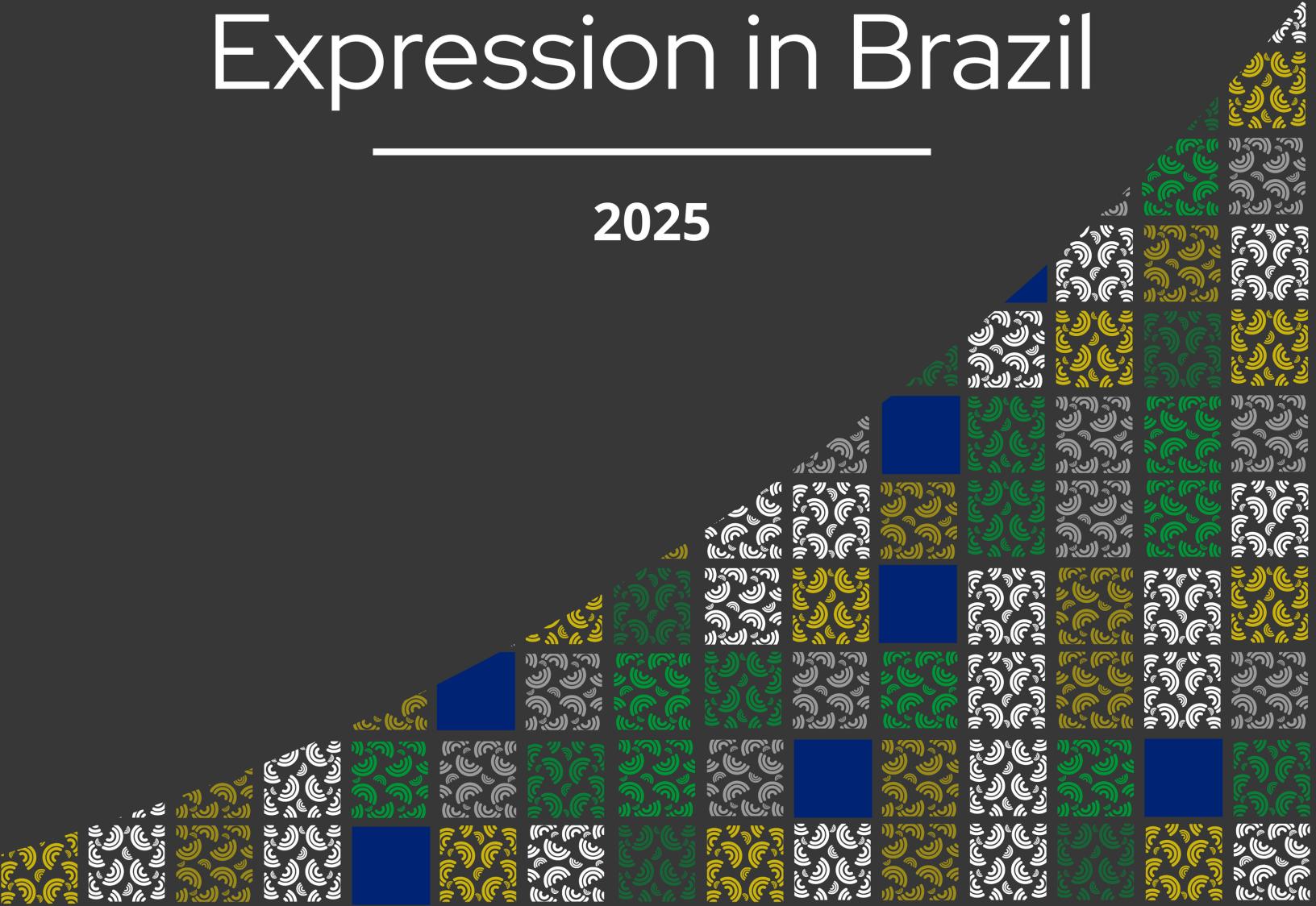


# Special Report on the Situation of Freedom of Expression in Brazil

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# Special Report on the Situation of Freedom of Expression in Brazil

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Special Rapporteurship for Freedom of Expression of  
the Inter-American Commission on Human Rights

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Special Rapporteur for Freedom of Expression

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*This report was approved on November 27.*

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## I. INTRODUCTION: TAKING THE RIGHT TO FREEDOM OF EXPRESSION SERIOUSLY

1. At the invitation of the Brazilian government, in February 2025 the Special Rapporteurship for Freedom of Expression (SRFOE) of the Inter-American Commission on Human Rights (IACHR) visited the country to analyze the situation of the right to freedom of expression. The SRFOE's interest in undertaking this mission was informed in part by the incidents surrounding and consequential of the coup d'état attempt of January 8, 2023, and its consequences, which triggered a series of perspectives on actions taken to respond to the coup attempt and to safeguard the democracy, freedom of expression and the rule of law.

2. The delegation found that Brazil has strong and effective democratic institutions, as evidenced by the State's statements and policies intended to guide its actions and public policy in compliance with national and international human rights standards. The visit itself is a gesture in this direction. Reaffirming Brazil's status as a democratic State governed by the rule of law is a prerequisite for understanding the situation of the right to freedom of expression in the country. The State holds free and fair elections, and is characterized by separation of powers and the rule of law. Its constitutional arrangements guarantee the protection of human rights.

3. This report seeks to identify and assess differing perspectives regarding the right to freedom of expression in Brazil. During the country visit, a wide array of groups – including persons who oppose the current government, parliamentarians across the political spectrum, human rights defenders, non-governmental organizations and journalists – expressed their beliefs regarding cases of allegedly undue restrictions to expression, as well as good practices by the State. On the other hand, there were those who expressed views that the threat to democracy was so extreme in the post-elections period, that freedom of expression restrictions were proportionate, legal, and necessary. In order to properly discuss these issues, the report also examines the current legal framework regarding freedom of expression in Brazil, including the hypotheses of its criminalization, the norms applicable to social media regulation, and norms applicable to public authorities.

4. The right to freedom of expression is one of the cornerstones of a democratic society. However, its exercise and protection do not occur in an abstract manner. The existence and functioning of democratic institutions are essential for an environment that enables the exercise of the right to freedom of expression. There can be no exercise of freedom of expression, freedom of demonstration, freedom of the press, artistic freedom, access to information, or expression of gender,

identity, or human creativity in the absence of a society based on the rule of law and the full functioning of democratic institutions.

5. The Special Rapporteurship understands that Brazil has undergone deliberate attempts to delegitimize the internationally recognized 2022 election results, in addition to the planning and attempted execution of a coup d'état. In this context, the defense of democracy in Brazil is also a fundamental component of the defense of the right to freedom of expression in the country, since freedom of expression requires a democratic society to be fully exercised.

6. Additionally, democracy, understood in its substantive dimension, requires the defense of human rights, which are interdependent and interrelated. A society that ignores national and international obligations to guarantee equality, non-discrimination, and respect for human rights cannot, for this reason, universalize the defense of the right to freedom of expression. The defense of freedom of expression that ignores the interdependence of human rights and the relationship to other features of democracy, such as free and fair elections, causes the erosion of its democratic foundation and will inevitably lead to the prevalence of certain voices over others, which will remain silenced, without any real possibility of expressing themselves.

7. The Rapporteurship observed a clear functional separation of powers, judicial autonomy, and a fully functioning system of checks and balances. Brazil therefore has ample means to continue defending the exercise of freedom of expression. The Rapporteurship emphasizes that the right to freedom of expression must be protected both by obligations not to act, consistent with duties of respect, and by positive obligations, required by the duty to guarantee. Thus, the purpose of this report is not to express an opinion on whether the State should do more or less, but rather to offer a perspective based on existing standards, and supply tools so that the State, across all its organs, can strengthen the fulfilment of its obligations, so that the adequate defense of the right to freedom of expression contributes, constantly and progressively, to the defense of democracy and the rule of law.

8. The Rapporteurship recognizes the seriousness of the attempts to alter the constitutional order as a result of the 2022 elections outcome, that led to the intervention of the various branches of government. The very seriousness of the attacks requires that justice operators act swiftly and impartially to definitively determine the guilt of those responsible. The timeliness of proceedings is especially important when these proceedings involve precautionary or interlocutory limitations to freedom of expression. In this sense, there exist intense debates surrounding delays in investigative mechanisms, with no conclusive information about their closure. Thus, legitimate

dilemmas arise from the contrast between State action and Inter-American standards on freedom of expression, and the Rapporteurship encourages the State to resolve them.

9. The polarization of political and institutional positions also affects interpretations of the right, and the restrictions, to freedom of expression in Brazil, and inhibits constructive public debate. This polarization can deter diversity of perspectives. In fact, the Rapporteurship found that there are those in Brazil that recognize historical nuances and dilemmas related to freedom of expression, but feel inhibited to participate in public debate, since the debate appears to have coalesced into immutable positions.

10. On the one hand, some of the actors who most accuse the State of censorship attempt to restrict the free dissemination of their opponents' ideas, even calling on the State to do so. It is also noteworthy that some actors are reluctant to repudiate events in the recent past that were considered by the IACRH to be attacks on Brazilian democracy, or even the deep structural inequalities that challenge Brazilian society. On the other, the right to freedom of expression is likened to existential threats to democratic societies, which ignores the role that this right plays in maintaining democracy and protecting minority voices against majorities. The understanding that freedom of expression is a risk to democracy, rather than one of its constituent elements, is one of the most delicate problems that have been identified in the institutional framework.

11. In this sense, it is relevant to acknowledge that a fully enabling environment for the exercise of freedom of expression demands, simultaneously, guarantees for especially protected speech, and adequate restrictions to unprotected expression. In this sense, both allowing for completely unrestricted speech, as well as adopting restrictions which do not fulfil the necessary criteria, can be a risk to democracy.

12. In this context, Brazilian authorities, backed by certain sectors of civil society, are sometimes unwilling to engage in self-criticism and reluctant to question the compatibility of restrictions on freedom of expression with Inter-American standards. The defense of democracy cannot be achieved by overreaching restrictions that amount to censorship. At the same time, freedom of expression must not be used to minimize the imperative of truth, justice, and accountability for the 2023 attempts to alter the constitutional order.

13. There is an important debate in Brazil regarding an alleged failure of investigative authorities to properly clarify and prevent attacks on democratic institutions before 2023, such as by not having initiated opportune investigations. The Rapporteurship understands that the Federal Supreme Court played a pivotal role in initiating proceedings to investigate and resolve this situation.

However, there are also concerns that these measures constitute a concentration of power. While the defense of democracy is an objective that must ground State action, there is a risk in transforming a temporary solution, intended to be exceptional, into an enduring problem, since it sets precedents that may be used to the benefit of potentially authoritarian regimes of the future. Mitigating this risk requires recognizing any excesses in State action, especially when they occur in relation to the most critical threats to democracy that generated the exceptional measures.

14. The Rapporteurship found that Brazilian society continues to be strongly marked by the legacy of the military dictatorship that occurred in the second half of the last century, with pockets of authoritarianism and structural inequality that inform a division of power and rights. The lack of a complete resolution of this dictatorial past, without sufficient initiatives for memory, truth, and justice, has led to the uncritical coexistence of authoritarian symptoms, discourses, forms of exercising power, and attitudes. Some of the actors that most energetically refer to the right to freedom of expression disregard the fact that the State, throughout distinct political moments and at federal and state levels, has historically and continues to use repressive actions, including police power, against the most vulnerable groups of the population, who also consider themselves censored.

15. The Rapporteurship has observed that there are powerful public voices, across distinct branches and levels of the State, who speak out without fear of the consequences against the people and groups over whom they exercise authority. These voices propagate expressions that intimidate the exercise of journalistic activity and attack historically discriminated groups, questionably evoking the defense of their right to freedom of expression while silencing other such groups. The Rapporteurship notes that the relationship between freedom of expression and the fight against all kinds of discrimination and social exclusion in Brazil is a latent preoccupation, monitored, in conjunction with the IACtHR, through its Annual Reports. To this extent, the Rapporteurship is thankful for the useful information submitted during the visit regarding this phenomenon and believes it to be duly incorporated into its Annual Report 2025, in an effort to preserve the readability of this report. The Rapporteurship reiterates that the right to equality and the right to freedom of expression must reinforce each other. Freedom of expression must be fully guaranteed to maintain a pluralistic and diverse society and as a tool for the whole of society to learn about different realities and demands, and participate in building a more inclusive and egalitarian future.

16. The use of the internet in Brazil is ubiquitous and fundamentally influences interactions between citizens, public debate, and the state. The moment demands that the right to freedom of expression be taken seriously, including the risks with lack of appropriate regulation of these privately-owned social platforms. The actions of large platforms are viewed with concern by

sectors that identify them as vectors of conduct and speech that undermines democracy. At the same time, certain demands for regulation of these platforms require them to take stringent actions against users and police public debate, which could incentivize the creation of mechanisms of private censorship. The perceived urgency to adopt measures that align the power of large platforms with their democratic responsibilities gives rise to demands that may consolidate private power and have disproportionate impacts on protected speech conveyed on these platforms. In this sense, while strengthening the regulation of major private platforms is important, regulatory frameworks must uphold procedural guarantees and avoid undue concentration of power.

17. The focus of public demands for advancements in recent and innovative topics on this digital agenda, including artificial intelligence, occur without similar and proportionate efforts to settle the country's long-standing challenges in the arena of freedom of expression. Among these challenges are the excessive use of force against protests; the persistence of the criminalization of *desacato*; the dissemination of discriminatory and violent speech; and the presence of crimes against honor in criminal legislation, including their use against human rights defenders and journalists. The Rapporteurship states that the existence of an enabling environment in which all people can express themselves without fear of violence or reprisals, including historically marginalized groups, is a priority agenda for the defense of freedom of expression in the region.

18. The Inter-American system can contribute to the recognition of progress in policies and practices that promote freedom of expression, as well as excessive restrictions on the right to freedom of expression, including those that may have occurred in the pursuit of legitimate objectives, such as the protection of democracy and the fight against discrimination. This report aims to provide tools so that the State and Brazilian society can achieve an appropriate balance between rights and possible limitations, and increasingly strengthen the democratic rule of law.

## II. METHODOLOGY

19. This report is the result of a working visit to Brazil by the Special Rapporteurship for Freedom of Expression, following an invitation from the Brazilian State in November 2024. The invitation comes in the context of numerous requests for public hearings during the IACHR's 191st Period of Sessions, to discuss the situation of freedom of expression in Brazil, including attacks on institutions, the role of the judiciary, and internet content governance. The IACHR decided to postpone this hearing, understanding that the visit would be a valuable opportunity to gather information. Historically, on-site visits by members of the Inter-American Commission on Human Rights are one of the most profound tools for analysis available to the Commission, as they allow for

verification of the situation on the ground and intensive active listening to the most diverse sectors of society.

20. The delegation, composed of the Special Rapporteur for Freedom of Expression, Pedro Vaca Villarreal, and experts from the Special Rapporteurship and the Executive Secretariat of the IACtHR, visited Brasília, Rio de Janeiro, and São Paulo between February 9 and 14, and enjoyed the highest guarantees and support from the State for the mission. The Commission and the Rapporteurship also express its gratitude to all participants in the working sessions, who presented reports and testimonies to the delegation, sharing their perspectives and experiences on the situation of the right to freedom of expression in Brazil. In addition, IACtHR and its RELE are grateful for the valuable support of civil society organizations in coordinating activities and meetings.

21. This Report is based on the observation of facts and the analysis of perspectives received from all sectors of society. The wide variety of actors heard highlights the diversity of interests, positions, and criteria that exists in Brazil, and was useful to formulate general conclusions about the situation of the right to freedom of expression in the country. This process was carried out in accordance with international human rights law, as provided for in Article 29 of the American Convention on Human Rights (hereinafter "American Convention" or "ACHR"), also following the practice established in more than a hundred reports on on-site visits to countries prepared by the Commission.

22. Without prejudice to the use of other sources, as authorized in Article 59.5 of the Rules of Procedure of the IACtHR, the main sources used in preparing this report were: the responses of the Brazilian State to the request for additional information made after the visit, based on Article 41 of the ACHR<sup>1</sup>; the information provided in meetings with authorities and representatives of civil society; and the reports and written documents received between January 30 and February 21, 2025.

23. During the visit, the team met with authorities from different levels and branches of government, including the Ministry of Foreign Affairs; the Ministry of Justice and Public Security; the Ministry of Health; the Ministry of Finance; the Ministry of the Environment and Climate Change; the Ministry of Women; the Ministry of Human Rights and Citizenship; the Secretariat for Social Communication of the Presidency of the Republic; the Attorney General's Office; the Federal Supreme Court; the Superior Electoral Court; the National Council of Justice; the National Congress; the Federal Prosecutor's Office for Citizens' Rights of the Federal Public Prosecutor's Office, and other

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<sup>1</sup> The State submitted information on May 20, June 12, and July 10, 2025. The State sent comments to this Report on December 19, 2025.

members of the Federal Public Prosecutor's Office; the National Council of the Public Prosecutor's Office; the Public Defender's Office of the State of São Paulo; the Federal Police; the National Telecommunications Agency; the National Human Rights Council; the Council for Sustainable Economic and Social Development; and the Internet Steering Committee.

24. In addition, the visit included opportunities for receiving information from organizations dedicated to the defense and promotion of human rights; entities that monitor the situation of freedom of expression on the internet; journalists; media outlets; think tanks; people who consider that their right to freedom of expression, and that of their families, has been affected; representatives of digital platforms; academics; and experts in freedom of expression and human rights. In addition, the delegation met with parliamentarians and public leaders from across the ideological spectrum, ensuring a pluralistic and inclusive perspective.

25. Between January 30 and February 21, 2025, RELE received a wide range of detailed and diverse information on the situation of freedom of expression and its impact on human rights, which was evaluated in its entirety, together with the documentation presented at the working meetings.

26. The timeframe covered by this report begins on October 20, 2020<sup>2</sup>, the date on which the last report on human rights in Brazil was transmitted to the Brazilian State<sup>3</sup>, and ends on July 10, 2025, when the Brazilian State sent its final response to the request for additional information made by the Rapporteur.

27. The Rapporteurship notes that, prior to the visit, people were encouraged to send messages to the official email address of the Rapporteurship, overwhelming its capacities, and affecting the time needed to process the information. The Rapporteurship emphasizes that its communication channels were open to receiving information and that relevant reports were taken into account.

28. The behavior of different sectors of society in either effusively celebrating the visit, or being skeptical and distrustful reflects the political polarization that hinders dialogue. The

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<sup>2</sup> Date on which the IACHR transmitted its latest report on the human rights situation in Brazil to the Brazilian State.

<sup>3</sup> IACHR, Situation of Human Rights in Brazil, OEA/Ser.L/V/II, February 12, 2021.

Rapporteur's visit aroused interest from high-level public authorities in Brazil<sup>4</sup>, as well as from actors with extensive experience in the Inter-American Human Rights System<sup>5</sup>.

29. In any case, the Rapporteurship is grateful for the organization of spaces for dialogue in which the visit was celebrated as an opportunity to observe the complexity of the Brazilian scenario and recent events which affect the development of democratic institutions. The Rapporteur clarifies that he was in Brazil at the direct invitation of the State, under the mandate established by the Inter-American Commission, observing the highest standards of autonomy, independence, and technical analysis of the situation<sup>6</sup>.

30. The Special Rapporteurship made efforts to instruct participants in the visits about the rules of participation, which include confidentiality of contributions and informed consent. However, there were instances of non-compliance with meeting protocols, in which those present chose to record the meetings despite the delegation's instructions to the contrary. These breaches created uncomfortable situations among those present, with some of them asking for the recording to be stopped when they approached the delegation to give their account. The Rapporteurship reaffirms that the IACHR's visit protocols are intended to protect the people who participate in the meetings and agree to be heard by the Inter-American Commission, so that their violation results in their undue exposure and a breach of the trust established during the visits, which could make it impossible to conduct open and genuine debates.

31. The following text begins with a chapter that summarizes the Brazilian legal framework regarding the right to freedom of expression, in response to the issues raised during the visit (chapter III). The report then presents a substantive chapter discussing the defense of democracy and the right to freedom of expression (chapter IV), divided into seven sections which, based on the information received by the Rapporteurship, summarize the main themes in freedom of expression and assess the situation of the right to freedom of expression in Brazil. Chapter V presents recommendations.

32. The first section discusses the State's role in defending democracy and the right to freedom of expression, based on information provided to the Rapporteurship on threats to the Brazilian constitutional order. The second section discusses the attribution of subsequent responsibilities for abuses of the right to freedom of expression, presenting Inter-American

<sup>4</sup> Social Communication Secretariat, [Brazil reaffirms its dedication to freedom of expression during working visit of OAS special rapporteur](#), February 19, 2025; STF, [Note on meeting of STF with IACHR special rapporteur for freedom of expression](#), February 10, 2025.

<sup>5</sup> Agência Pública, [Trump will attempt to use Inter-American Commission against Brazil, warns ex-secretary](#), January 28, 2025; Article 19 Brazil and others, [Joint Letter of Brazilian civil society organizations with material regarding the visit of the Special Rapporteur for Freedom of Expression, Mr. Pedro Vaca, to Brazil](#), February 6, 2025.

<sup>6</sup> From the time of the visit until the delivery of the first draft of this Report to the plenary of the IACHR, the Rapporteurship refrained from using resources donated by the United States of America, considering the assessments regarding the independence of the analysis.

parameters. The third section presents State initiatives to combat unprotected speech, such as that mentioned by Article 13.5 of the American Convention, and recounts the developments presented to the Rapporteurship during the visit. The fourth section discusses the fight against deliberate misinformation, analyzing the Brazilian State's initiatives in light of Inter-American parameters on the matter. The fifth section emphasizes the need to decriminalize *desacato* and crimes against honor, especially in matters of public interest, as well as strategic litigation against public participation. The sixth section discusses the regulation of the digital environment in Brazil, including the governance and regulation of platforms and the accountability of intermediaries, and offers recommendations to the State. The seventh section posits the importance of bringing parliamentary immunities into line with Inter-American standards, ensuring that political leaders speak out responsibly.

33. Each of these sections draws on reports received by the Commission, through its extensive and attentive listening, and on documents received as supplementary information, accompanied by Inter-American standards on the matter. The purpose of reviewing these standards, in addition to recalling Brazil's international obligations, is to guide public debate toward overcoming the challenges identified. The Rapporteurship clarifies that this report is not intended to determine individual or State responsibility for specific cases of possible human rights violations, nor to clarify facts under national investigation or submitted to international bodies. Individuals or groups who consider that their human rights have been violated and who wish to obtain specific declarations of international responsibility have at their disposal the contentious mechanism of the Inter-American system, as listed in Article 46b of the ACHR, the proceedings of which are subject to compliance with its own specific requirements.

### III. CURRENT LEGAL FRAMEWORK ON THE RIGHT TO FREEDOM OF EXPRESSION

34. Article 5, IV, of the Constitution of the Federative Republic of Brazil establishes the free expression of thought, prohibiting anonymity, while item IX affirms the free expression of intellectual, artistic, scientific, and communication activities, regardless of censorship or licensing. Article 220 of the Constitution enshrines the free expression of thought, expression, and information, prohibiting censorship of a political, ideological, and artistic nature. In the following paragraphs, the Special Rapporteurship highlights the main normative provisions and judicial precedents that were brought to its attention during the visit.

35. All parties with whom the Special Rapporteurship had contact were unanimous in affirming that freedom of expression is recognized as a fundamental value in Brazilian democracy and

is broadly protected in the Constitution. According to information provided by the State, freedom of expression occupies a "preferential" position in the Brazilian legal system. In this regard, the State highlighted the role of freedom of expression in enabling democracy, human dignity, personal development, and the collective search for truth, all of which require a plurality of information and points of view.

36. The Federal Supreme Court (STF) has precedents affirming the preferential position of freedom of expression, as in ADPF 130<sup>7</sup> (roughly Claim for the Inobservance of a Fundamental Precept), which declared the non-acceptance of a Press Law enacted during the Brazilian military dictatorship by the Constitution; in ADPF 187<sup>8</sup> and ADI 4.274<sup>9</sup> (roughly Request for the Declaration of Unconstitutionality), which recognized the right to hold demonstrations for the decriminalization of marijuana; and in ADI 4.815<sup>10</sup>, which affirmed the possibility of publishing biographies without authorization. The Rapporteurship also highlights the possibility of broad exercise of journalistic activity, in accordance with Advisory Opinion 5/85 of the Inter-American Court, based on the declaration of unconstitutionality of the requirement for a journalism degree in RE 511.691<sup>11</sup> (Extraordinary Recourse, roughly).

37. The RELE notes that the Brazilian military dictatorship<sup>12</sup> adopted many norms that regulate the right to freedom of expression, which are contrary to the parameters of the Inter-American human rights system. There exist broad efforts to repeal and change these norms, and one example of this practice is the previously mentioned ADPF 130 ruling by STF. On the other hand, telecommunications are regulated both by laws enacted after the 1988 Constitution and by laws enacted before and during the dictatorial period. Thus, for example, the Brazilian Telecommunications Code (Law 4.117/62), partially revoked by Law 9.472/97, remains in force in Brazil. In the area of radio spectrum management, Law 9,612/98 on community broadcasting is in force simultaneously with Decree 52,795/63 regulating broadcasting services.

38. The Rapporteurship positively highlights that the Brazilian State has specific legislation regulating the right of access to information (Law 12.527), which has already been considered by the Inter-American Commission on Human Rights as a significant advance, as it allows all citizens to request information produced under the tutelage of the State<sup>13</sup>. The State informed the

<sup>7</sup> STF, ADPF 130, April 30, 2009.

<sup>8</sup> STF, ADPF 187, June 15, 2011.

<sup>9</sup> STF, ADI 4.274, November 23, 2011.

<sup>10</sup> STF, ADI 4.815, June 10, 2015.

<sup>11</sup> STF, RE 511.961, June 17, 2009.

<sup>12</sup> This period is most commonly understood as lasting from April 1, 1964, to March 15, 1985.

<sup>13</sup> IACHR, Situation of human rights in Brazil, OEA/Ser.L/V/II, February 12, 2021, para. 480.

Rapporteurship that the ratification of the Escazú Agreement underwent its final proceedings in September 2023 and is awaiting deliberation by a thematic commission, the Commission on Foreign Relations and National Defense (CREDN). Nevertheless, the State reported that ratification of the agreement was a priority agenda item for 2024, with steps being taken to move the legislative process forward, which would still require review by two more committees in the Chamber of Deputies, approval by the Senate, and ratification by the Executive Branch. The Rapporteurship acknowledges the Brazilian State's efforts towards ratifying the Escazú Agreement.

39. Despite the importance that the State has attached to this preferential position, freedom of expression would encounter legal limits, especially when it could affect the effectiveness of other fundamental rights. In this regard, Brazilian law establishes criminal, civil, and administrative sanctions based on expression. For example, the Penal Code establishes criminal sanctions for crimes against honor (slander, defamation, and libel)<sup>14</sup>; crimes against public peace, such as incitement to crime and political and social animosity<sup>15</sup>; crimes against the administration of justice (false accusation)<sup>16</sup>; digital harassment<sup>17</sup>; psychological violence against women<sup>18</sup>; dissemination of nude images<sup>19</sup>; and the crime of *desacato*, defined as a crime "against the administration in general"<sup>20</sup>. In addition, other laws establish criminal penalties for the practice of prejudice or discrimination<sup>21</sup>; domestic violence<sup>22</sup>; acts against consumer relations, including the dissemination of false messages, misleading or abusive advertising, and misleading consumers<sup>23</sup>; sexual violence against children and adolescents<sup>24</sup>; offenses against the honor of elderly persons<sup>25</sup>; and discrimination against persons with disabilities<sup>26</sup>, as well as the existence of a criminal offense of disturbing the peace<sup>27</sup>. Article 5, XLII, of the Constitution establishes that the practice of racism constitutes a non-bailable and imprescriptible crime, with the Federal Supreme Court deciding in HC 154.248 (habeas corpus) that expressions considered racist should be imprescriptible.

40. In this context, the Rapporteurship highlights the 2003 judgment of HC 82.424/RS, cited on several occasions during the visit, in which the Federal Supreme Court presented an

<sup>14</sup> Articles 138, 139, and 140 of the Criminal Code.

<sup>15</sup> Article 286 of the Penal Code.

<sup>16</sup> Article 339 of the Penal Code.

<sup>17</sup> Article 147-A of the Penal Code.

<sup>18</sup> Article 147-B of the Penal Code.

<sup>19</sup> Article 218-C of the Penal Code.

<sup>20</sup> Article 331 of the Penal Code.

<sup>21</sup> Article 20 of Law 7,716/89.

<sup>22</sup> Articles 5 and 7 of Law 11,340/06.

<sup>23</sup> Articles 66 and 67 of the Consumer Protection Code, and Article 7 of Law 8,137/90.

<sup>24</sup> Article 241-A of the Statute of Children and Adolescents.

<sup>25</sup> Article 105 of Law 10,741/03.

<sup>26</sup> Article 88 of Law 13,146/15.

<sup>27</sup> Article 41 of Decree-Law 3.688/41.

understanding of the concept of racism. According to information provided by the State, this ruling is important in the State's understanding of the phenomenon of hate speech<sup>28</sup>.

41. The State indicated that the civil liability regime includes general provisions regarding the characterization of acts that cause harm to third parties as unlawful acts, as well as the duty to compensate persons harmed by the commission of unlawful acts<sup>29</sup>. The State indicated that the dissemination of misinformation may be included in this regime if it meets such requirements. Furthermore, the State reported the existence of specific regulations in electoral legislation. The Electoral Code would classify crimes that include "hindering the exercise of suffrage"<sup>30</sup>; disseminating known falsehoods in electoral propaganda<sup>31</sup>; committing crimes against honor (slander, defamation, or libel) in the electoral sphere<sup>32</sup>; giving cause for the initiation of State investigations against individuals for electoral purposes<sup>33</sup>; and embarrassing candidates because of their gender, color, race, or ethnicity<sup>34</sup>. Furthermore, other electoral laws would criminalize the dissemination of fraudulent polls<sup>35</sup>. The Rapporteurship notes that the Federal Supreme Court gave ample scope to the protection of humorous expressions in electoral contexts in its ruling on ADI 4.451, highlighting the possibility of humor criticizing, ridiculing, and valuing candidates positively or negatively<sup>36</sup>.

42. The Superior Electoral Court has legal authority to regulate the Brazilian legal framework on elections, which it exercises, among other activities, through the issuance of resolutions<sup>37</sup>. In this sense, the TSE has issued several resolutions regulating the use of digital platforms, artificial intelligence, and other technologies during the election period, which will be discussed in greater detail in item D of Chapter IV below. These resolutions impose specific transparency obligations on platforms that wish to offer electoral advertising services, making public consultation tools available. The resolutions impose duties on content moderation platforms, especially during election advertising periods, regarding expressions that could negatively interfere with the organization of elections. Furthermore, the use of so-called *deep fakes*, that is, realistic fabricated media for electoral purposes, is not permitted<sup>38</sup>.

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<sup>28</sup> Federative Republic of Brazil, State Response, in response to the Letter requesting information in light of Article 41 of CADH No. 04-2025/543, June 12, 2025, IACtHR archive.

<sup>29</sup> Articles 186 and 927 of the Civil Code.

<sup>30</sup> Article 297 of the Electoral Code.

<sup>31</sup> Article 323 of the Electoral Code.

<sup>32</sup> Articles 324 to 326 of the Electoral Code.

<sup>33</sup> Article 326-A of the Electoral Code.

<sup>34</sup> Article 326-B of the Electoral Code.

<sup>35</sup> Article 33, para. 4, of the Elections Law.

<sup>36</sup> STF, ADI 4.451, July 21, 2018.

<sup>37</sup> Articles 57-J and 105 of Law 9.504/97.

<sup>38</sup> TSE, Resolution 23,610.

43. The Rapporteurship was also informed that executive branch agencies, such as national secretariats and agencies linked to ministries, would also have the power to issue ordinances that could restrict the right to freedom of expression. For example, the Ministry of Justice and Public Security would have the power to issue regulations under the Consumer Protection Code, imposing on digital platforms the obligation to prevent the "dissemination of blatantly illegal, harmful, or damaging content by social media platforms"<sup>39</sup>, for content regarding violent attacks on schools.

#### IV. DEFENDING DEMOCRACY BY PROTECTING FREEDOM OF EXPRESSION

##### A. Acting in a timely manner, within the different spheres of the State, to defend democracy and the right to freedom of expression

44. *Freedom of expression does not seek to protect abuses of political, economic, and social power that undermine, without evidence, citizens' trust in democratic institutions. On the contrary, it would be incompatible with the very functions of freedom of expression, an essential element for the exercise of democracy in the Americas<sup>40</sup>, to use it as a basis for altering the democratic regime that it itself sustains.*

45. In recent years, the Inter-American Commission on Human Rights and its Special Rapporteurship for Freedom of Expression have noted a context of polarization in Brazilian public debate, questioning of democratic institutions, and hostility between the different branches of government. In 2020, the Commission recorded episodes of high-ranking executive officials participating in public demonstrations glorifying the period of Brazilian military dictatorship and calling for military intervention, speeches by high-ranking State officials suggesting the arrest of Supreme Court judges, and the dissemination of fake news with the aim of undermining Brazilian democratic institutions<sup>41</sup>. Notwithstanding, in 2021, the Inter-American Commission on Human Rights noted the strength of Brazilian democratic institutions.

46. In this regard, in 2021, the Special Rapporteurship noted an escalation of tensions between the executive and the other branches of government, especially the judiciary, which focused particularly on a debate regarding the electronic voting system<sup>42</sup>. The Rapporteurship notes that the

<sup>39</sup> Ministry of Justice and Public Security, [Ministerial Order No. 351/2023](#), April 12, 2023.

<sup>40</sup> Inter-American Court of Human Rights, Compulsory Professional Registration of Journalists (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, para. 70.

<sup>41</sup> IACHR, Annual Report 2020, Chapter IV.A, Development of Human Rights in the Region, paras. 151 and 152.

<sup>42</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Annual Report 2021](#), OEA/Ser.L/V/II Doc. 64 rev. 1, May 26, 2022, para. 145.

former President of the Republic claimed that there had been electoral fraud in the election he won<sup>43</sup>. In this context, the then President had begun to contest the 2022 election before it had even begun to be organized, indicating his intention not to accept the election results<sup>44</sup>. In addition, at public events, the then President stated on September 7, 2021, that he would only leave power "imprisoned, dead, or with victory," questioning the electoral system<sup>45</sup>.

47. The IACtHR also took note of speeches by the then President of the Republic that raised the possibility of "cancelling" the 2022 elections<sup>46</sup>. The Rapporteurship took note of statements by the President of the Republic who claimed that if his re-election was not confirmed in the first round, it would be a sign of manipulation of the election results<sup>47</sup>. Furthermore, the then President stated that the Armed Forces would not tolerate "fraud"<sup>48</sup>, and organized events with ambassadors in which he questioned the integrity of the electronic voting system<sup>49</sup>. The Rapporteurship also noted that, despite his continuous questioning of the electoral system, the then-President had been called on several occasions to present evidence of fraud, including through subpoenas from judicial authorities, and failed to do so<sup>50</sup>.

48. Thus, the Rapporteurship notes that, since before the 2022 presidential elections, there had been a circulation of discourse questioning the legitimacy of the organization of the Brazilian electoral system, raising the possibility of manipulation of the elections through improper access to the electronic voting system. These discourses were mainly distributed, without regulation or fact checking, on a massive scale on open social networks and private messaging services, and most of them lacked credibility. In this sense, messages were posted on social networks stating that the Electoral Court had implemented new features in the electronic voting machines that would annul certain votes<sup>51</sup>. In addition, untrue news was spread about Federal Police operations that had detected the presence of voting machines that recorded votes before the start of the elections<sup>52</sup>.

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<sup>43</sup> CNN Brasil, [Bolsonaro says he will prove there was fraud in the 2018 election](#), March 9, 2020; Folha de S. Paulo, [Bolsonaro returns to talk of fraud in the 2018 election without presenting evidence](#), January 14, 2022.

<sup>44</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Annual Report 2021](#), OEA/Ser.L/V/II Doc. 64 rev. 1, May 26, 2022, para. 145.

<sup>45</sup> BBC Brasil, [Bolsonaro's threats in speeches on September 7](#), September 7, 2021; G1, [Bolsonaro makes coup threat to the Supreme Court in speech to supporters in Brasília](#), September 7, 2021.

<sup>46</sup> IACtHR, Annual Report 2020, Chapter IV.A, Development of Human Rights in the Region, para. 179.

<sup>47</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Annual Report 2022](#), OEA/Ser.L/V/II Doc. 50, March 6, 2023, para. 229.

<sup>48</sup> Poder 360, [Read and watch Bolsonaro's speech at the PL convention](#), July 24, 2022; Gazeta do Povo, [Criticism of Lula and the STF, nod to women: what Bolsonaro said in his first speech as a candidate](#), July 24, 2022.

<sup>49</sup> Jota, [Bolsonaro's defense tells the TSE that attacking the ballot boxes is a 'debate of ideas'](#), July 28, 2022; Valor Econômico, [Bolsonaro's defense tells the TSE that attacking the ballot boxes is 'mere criticism' and a 'debate of ideas'](#), July 28, 2022.

<sup>50</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Annual Report 2022](#), OEA/Ser.L/V/II Doc. 50, March 6, 2023, para. 230.

<sup>51</sup> Electoral Court, [Video confuses by stating that the message "Check your vote" can invalidate a voter's vote](#), September 27, 2022.

<sup>52</sup> Electoral Court, [It is false to claim that the Federal Police \(PF\) checked ballot boxes and that votes had already been inserted in them](#), September 30, 2022.

49. The dissemination of these messages by an organized structure led certain sectors of the population to become intensely convinced by the assessment, without evidence, that the elections were being manipulated. According to the IACHR's description, there existed "constant attacks" on the STF and the TSE, as well as speech inciting violence and military interventions<sup>53</sup>. This movement had the stated goal of asking the Armed Forces to take a position on the integrity of the electoral process<sup>54</sup>, arguing that the Armed Forces were one of the entities responsible for ensuring the proper conduct of elections<sup>55</sup>. The movement also identified itself with strong criticism of the actions of the Federal Supreme Court and the Superior Electoral Court, which were perceived as usurping the powers of other State bodies<sup>56</sup> and as politically biased.

50. The Inter-American Commission condemned the existence of episodes of political violence and gender-based political violence in the period leading up to the elections. These episodes include at least two murders motivated by political disputes, as well as reports of assaults, including those committed by security forces officers. According to the IACHR, between January and October 2022, 9 murders, 25 attacks, 96 threats, and 63 assaults were defined as cases of political violence<sup>57</sup>.

51. Based on information about the election released by the Electoral Court, messages began to circulate on social media indicating the existence of fraud in the counting of the first-round results of the presidential elections. These accusations, defined by the Electoral Court as "rumors," include the discrepancy between the number of voters and those eligible to vote, which the Electoral Court does not indicate as being an irregularity<sup>58</sup>. The Electoral Court recorded further misleading content on social media, such as claims that the algorithms of the electronic voting machines "dictated" the presidential election<sup>59</sup>, with "programmed votes"<sup>60</sup>. Furthermore, according to information circulating on social media and classified by the State as rumors, foreign *hackers* allegedly "invaded" the TSE system with the aim of manipulating the election results<sup>61</sup>.

<sup>53</sup> IACHR, Annual Report 2022, Chapter IV.A, Development of Human Rights in the Region, para. 158.

<sup>54</sup> Jovem Pan, [Alleged organizer of 8/1 says group wanted Armed Forces to act as VAR for elections](#), September 28, 2023; Metrópoles, [A month at Army HQ: event has mobilized militants, fair, massage, and Eustáquio's speech about Bolsonaro](#), December 1, 2022.

<sup>55</sup> Gazeta do Povo, [Military will repeat ballot box checks in the second round and release data 30 days after analysis](#), October 29, 2022; TSE, [Armed Forces inspect ballot box source codes](#), August 3, 2022.

<sup>56</sup> Folha de S. Paulo, [Coup plotters stage demonstrations in São Paulo in front of military buildings and shout "Bolsonaro thief."](#) November 2, 2022; Jovem Pan, [Protesters demonstrate against the return of the PT and STF Justices in at least 12 states](#), November 15, 2022.

<sup>57</sup> IACHR, Annual Report 2022, Chapter IV.A, Development of Human Rights in the Region, para. 157.

<sup>58</sup> Electoral Court, [Discrepancy between the number of voters eligible to vote only for president and the total number of voters in the section is not evidence of fraud](#), October 5, 2022.

<sup>59</sup> Electoral Court, [It is false that the presidential candidate's comeback was "dictated by an algorithm," as the post claims](#), October 5, 2022.

<sup>60</sup> Agência Lupa, [It is false that the vote count shows programmed votes in the 2022 presidential election](#), November 1, 2023.

<sup>61</sup> Electoral Court, [Video lies about Russian hackers invading the TSE system and halting the receipt of votes for the presidential candidate](#), October 19, 2022.

52. The day of the second round of the 2022 presidential elections was marked by several clashes and situations of animosity. Among them, the Federal Highway Police carried out roadblock operations, described by the Attorney General's Office as aiming to prevent people in regions perceived as opposed to the then federal government from exercising their right to vote<sup>62</sup>.

53. After the second round of elections, the Armed Forces issued a report on the functioning of the electronic voting machines, stating that they had not observed any evidence of fraud, nor any conclusive evidence that there had been no fraud<sup>63</sup>. The then-President did not make a public statement immediately after the official announcement of the election results showing that he had not been re-elected, with reports in the Brazilian press about his "silence."<sup>64</sup> In his first public statements after the official announcement of the election results, the then President of the Republic did not directly acknowledge the results, instead defending the organization of "peaceful demonstrations" based on a "sense of injustice" regarding the election results<sup>65</sup>. The Federal Supreme Court released an official statement saying that the then President had recognized the election results through this statement, even though this message was not explicitly conveyed<sup>66</sup>.

54. The Rapporteurship received information that, during 2022, there was a mobilization of camps, especially in front of Armed Forces facilities, including its headquarters, questioning the legitimacy of the elections. After the second round of the presidential elections, the campers demanded an "intervention" by the Armed Forces to prevent the consolidation of the election results and the eventual inauguration of the President-elect<sup>67</sup>, without the Armed Forces having publicly taken a position on such requests. The demands of these groups were mainly disseminated through social networks, including monetized advertisements<sup>68</sup>.

55. On November 1 and 2, 2022, after the second round of elections, the movement contesting election results organized demonstrations in various Brazilian state capitals, with statements from the Ministry of Defense that peaceful demonstrations are a form of exercising

<sup>62</sup> O GLOBO, Attorney General's Office denounced police officers involved in roadblocks during the 2022 elections, February 18, 2025; Folha de S. Paulo, Attorney General's Office denounces suspects for blocking highways after Bolsonaro's defeat in 2022, May 20, 2024.

<sup>63</sup> Ministry of Defense, Armed Forces report did not rule out the possibility of fraud or inconsistency in electronic voting machines, November 10, 2022.

<sup>64</sup> CNN Brasil, Bolsonaro's silence after defeat to Lula reaches 32 hours, with no speech planned, October 31, 2022; G1, Forty-two hours after the result, Bolsonaro remains silent on Lula's election victory, November 1, 2022.

<sup>65</sup> G1, See and read the full text of Bolsonaro's first speech after defeat in the second round, November 1, 2022; CNN Brasil, Bolsonaro thanks voters and says he will continue to uphold the Constitution, November 1, 2022.

<sup>66</sup> O GLOBO, STF says Bolsonaro 'recognizes final election results' by authorizing transition to begin, November 1, 2022; CNN Brasil, STF sees recognition of election results in Bolsonaro's speech, November 1, 2022.

<sup>67</sup> Correio Braziliense, Military or State intervention: expert explains implications of terms, November 2, 2022; Folha de S. Paulo, Camp at HQ empties, and some Bolsonaro supporters leave site on Lula's inauguration day, January 1, 2023.

<sup>68</sup> Agência Pública, Paid ads on Facebook and Instagram call for coup attempts and lie about elections, November 25, 2022; O GLOBO, Facebook and Instagram authorize at least 185 ads with coup content, survey shows, February 5, 2023.

freedom of expression<sup>69</sup>. On November 11, the commanders of the Navy, Army, and Air Force issued a public statement, affirming that critical demonstrations or social protests did not constitute a crime, condemning "both any restrictions on rights by public officials and any excesses committed in demonstrations that may restrict individual and collective rights or endanger public safety"<sup>70</sup>.

56. The movement was also responsible for attacks on the electricity distribution network, with the destruction of transmission lines<sup>71</sup>. These strategies include an attempt to blow up a fuel supply truck at Brasília airport<sup>72</sup>. These acts were investigated by the Federal Police as part of the encamped movement<sup>73</sup>. At the time, the Federal Police took measures to seize weapons from people associated with the camps, with the Federal Supreme Court ruling that those who sought to "subvert the political order" should be held "fully accountable"<sup>74</sup>. These operations reportedly led to arrest warrants being issued for suspects in the violent attacks, who were then identified by the authorities as participants in the camps<sup>75</sup>. The Armed Forces allegedly planned operations to dismantle the camps, which were postponed more than once on the grounds of preserving the safety of participants and avoiding violent conflicts<sup>76</sup>. In addition, the Federal Supreme Court allegedly conducted investigations into the financing of the mobilizations as part of "coup attempts"<sup>77</sup>.

57. The Rapporteurship notes that Brazilian electoral processes are subject to international election observation, and elections are repeatedly assessed as smooth and successful. These observation missions have also concluded in favor of the electronic voting system's integrity. For example, the OAS Electoral Observation Mission (EOM) for the first round of the 2022 elections noted the "order and normality" in the conduct of the elections, having observed adequate verification and security measures<sup>78</sup>.

58. In addition, the EOM for the second round of the 2022 elections concluded that Brazilian electoral authorities demonstrated a "high level of professionalism and solidarity" in a context

<sup>69</sup> Correio do Povo, [Ministry of Defense says that demonstrations, if peaceful, are an "exercise of freedom."](#) November 2, 2022; Congresso em Foco, [Defense sees coup attempts as "freedom of expression"; legal experts disagree](#), November 7, 2022.

<sup>70</sup> Armed Forces, [Press Release – 11/11/22](#), November 11, 2022.

<sup>71</sup> Valor, [Aneel confirms seven attacks on power towers since coup attempts in Brasília](#), January 16, 2023; Metrópoles, [Incited by coup plotters, attacks on power towers reach highest number in six years](#), July 22, 2023.

<sup>72</sup> G1, [Military police detonate suspected explosive device found in truck near Brasília Airport](#), December 24, 2022; Metrópoles, [A year ago, coup plotters attempted to detonate a bomb at Brasília Airport](#), December 24, 2023.

<sup>73</sup> G1, [Understand how coup camps set up after the election resulted in acts of violence and terrorism in Brasília](#), December 30, 2022; Agência Brasil, [Bolsonaro-aligned camp was central in January 8 attacks](#), January 27, 2023.

<sup>74</sup> BBC Brasil, [The routine of the camp in São Paulo where Bolsonaro supporters call for military intervention](#), December 26, 2022; Jota, [Moraes: anti-democratic groups have been identified and will be held accountable](#), December 12, 2022.

<sup>75</sup> G1, [Understand how coup camps set up after the election resulted in acts of violence and terrorism in Brasília](#), December 30, 2022; BBC Brasil, [What is known about the mega-operation ordered by Alexandre de Moraes against anti-democratic acts](#), December 15, 2022.

<sup>76</sup> G1, [Army says it has decided to postpone the dismantling of the Bolsonaro camp in front of its headquarters in Brasília](#), December 29, 2022; Folha de S. Paulo, [Army canceled two operations to dismantle Bolsonaro camp](#), January 3, 2023.

<sup>77</sup> O GLOBO, [Targeted by the Supreme Court, financing of acts advocating a military coup continues on the internet](#), November 18, 2022; UOL, [Newspaper: Investigation reveals financing of anti-democratic acts](#), November 16, 2022.

<sup>78</sup> OAS EOM, [OAS Electoral Observation Mission to observe second round of elections in Brazil](#), October 3, 2022.

"marked by polarization, misinformation, and attacks on electoral institutions"<sup>79</sup>. The OAS organized a 2024 EOM, which also affirmed the "professionalism and organizational capacity of the Brazilian electoral authorities," with voting proceeding "peacefully and without major incidents"<sup>80</sup>. This Mission also participated in integrity tests of the electronic voting machines. Thus, the existence of movements contesting election results, especially when motivated by statements from high-ranking public officials, disregards the consensus regarding the integrity of the Brazilian electoral system and the fairness of the elections.

59. Although criticism of public activity is protected by the right to freedom of expression, the Rapporteurship recalls that the Inter-American System has already established that high-ranking public officials have special rights and duties in relation to the use of their freedom of expression, and that this situation requires them to speak out publicly to prevent social harm<sup>81</sup>, with reinforced duties of diligence in their statements<sup>82</sup>. After the organization of camps calling on the Armed Forces to intervene, the Rapporteurship considers that high-ranking officials, particularly those with power and authority over the Armed Forces, had a duty to express, publicly and emphatically, that the electoral process was not fraudulent, instructing the Armed Forces not to take into account the call made to them by the camps. In particular, the Rapporteurship notes that this special duty fell on the then President of the Republic, the highest-ranking officer in the Armed Forces, who had been defeated in the electoral process.

60. Given the specific call for a statement of support from the Armed Forces, the Rapporteurship considers that such a statement could have had an important effect in communicating to the protesters that the State authorities accepted the election results and would cooperate with the peaceful transition of power, thereby reducing tensions. The absence of such a statement perpetuated a situation of uncertainty, in which the encampments awaited a State demonstration of support for their movement, and did not disband<sup>83</sup>.

61. On December 30, 2022, two days before the inauguration of the president-elect, then-President Bolsonaro made a public statement expressing his desire to "seek alternatives" to the

<sup>79</sup> MOE OEA, [OAS Electoral Observation Mission presents its preliminary report after the second round of elections in Brazil](#), November 1, 2022.

<sup>80</sup> OAS EOM, [OAS Electoral Observation Mission congratulates Brazil on the successful completion of the second round of municipal elections](#), October 28, 2024.

<sup>81</sup> Inter-American Court of Human Rights, Case of Apitz Barbera vs. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, para. 131; UN, OSCE, OAS, ACHPR, [Joint Declaration on Political Leaders, Public Officials, and Freedom of Expression](#), October 20, 2021, point 3.iii.

<sup>82</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Special Report on the Situation of Freedom of Expression in Peru](#), OAS/SER.L/V/II, IAC<sup>HR</sup>/RELE/INF26/23, December 2023, para. 245.

<sup>83</sup> G1, [Only 72 hours left](#), 2023; Gazeta do Povo, ["No end in sight": a day among the protesters camped at Army HQ in Brasília](#), November 10, 2022.

presidential inauguration. The then president said that these alternatives would need to be "within the four lines of the Constitution" and that he would not do "anything wrong," but expressed a lack of "support" for the search for "alternatives."<sup>84</sup> The statement was perceived as not containing an explicit and unequivocal recognition of the election results, in a context of profound questioning of the integrity of the recently concluded electoral process. According to press reports, the statement was not interpreted by all those camped out as a message of demobilization, even though the number of people in the camps had decreased<sup>85</sup>.

62. On January 8, 2023, protesters aligned with the movement contesting the election results and supporting the former president organized a demonstration in Brasilia, demanding military intervention in the presidential transition<sup>86</sup>. In the early afternoon, those present violently invaded the headquarters of the three branches of government and vandalized public property<sup>87</sup>, resulting in injuries to dozens of people, including journalists covering the event, in what the IAC<sup>HR</sup> classified as "attacks against Brazilian democratic institutions"<sup>88</sup>. The IAC<sup>HR</sup> also defined these events as "attacks (...) motivated by the possibility of a military intervention to overthrow a legitimately elected government"<sup>89</sup>.

63. After the transition of power, the Brazilian government launched an investigation into the involvement of high-ranking public safety officials in the events of January 8. According to this line of investigation, the Federal District government was aware of the high probability of mass demonstrations in the Three Powers Plaza and other locations related to public authorities in Brasília. However, the government at the time allegedly deliberately failed to provide adequate policing to suppress acts of violence, and the public security infrastructure could not respond quickly<sup>90</sup>. On January 8 itself, the Federal Supreme Court issued a statement describing the events as organized by "anti-democrats" and contrary to the democratic rule of law<sup>91</sup>. Former President Bolsonaro, perceived as a leader by the people who organized the act, spoke out on the evening of the 8th to say that the demonstrations "break the rule" that allows peaceful demonstrations, and "repudiated" the allegation that he had "encouraged" the acts<sup>92</sup>. On January 10, the former President shared a video on his social

<sup>84</sup> EXTRA, Before revealing the draft, Bolsonaro said in his latest live broadcast on the elections: "I sought a solution within the four lines." January 13, 2023; Metrópoles, Bolsonaro's nuanced message to protesters at the barracks, December 30, 2022.

<sup>85</sup> G1, Only 72 hours left, 2023; UOL, Bolsonaro supporters cry, pray, and abandon Army HQ after speech, December 30, 2022.

<sup>86</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2023, OEA/Ser.L/V/II Doc. 386, December 6, 2023, para. 305.

<sup>87</sup> Agência Brasil, Protesters storm Congress, Planalto Palace, and Supreme Court, January 8, 2023; Estadão, January 8: What is known about the coup attacks in Brasília one month after the invasion, February 8, 2023.

<sup>88</sup> IAC<sup>HR</sup>, The IAC<sup>HR</sup> condemns the attacks against democratic institutions in Brazil, January 23, 2023.

<sup>89</sup> IAC<sup>HR</sup>, Annual Report 2023, Chapter IV.A, Development of Human Rights in the Region, para. 151.

<sup>90</sup> CPMI on the Acts of January 8, 2023, Final Report, October 17, 2023.

<sup>91</sup> STF, STF statement on vandalism and anti-democratic acts in Brasília, January 8, 2023.

<sup>92</sup> Agência Brasil, Bolsonaro says that vandalism and invasions are contrary to the rule of democracy, January 8, 2023; Gazeta do Povo, Bolsonaro condemns acts of vandalism and repudiates Lula's accusations, January 8, 2023.

media stating that the current President "was not elected by the people, he was chosen and elected by the STF and TSE"<sup>93</sup>. The video was quickly deleted.

64. The Rapporteurship was warned about the continuation of politically motivated violent attacks against Brazilian public institutions. In this regard, the Rapporteurship learned of a bomb attack in front of the Supreme Federal Court headquarters, accompanied by the detonation of a car in the parking lot of the Chamber of Deputies on November 13, 2024<sup>94</sup>. The State informed the Rapporteurship of several incidents perceived as threats to the life and safety of high-ranking public officials. For example, the Federal Supreme Court reportedly found individual threats to its Justices and possible threats to the integrity of the Court's headquarters, which are still under investigation. In addition, cyberattacks were reportedly carried out against servers of Brazilian public agencies, including the Federal Supreme Court, resulting in subsequent data leaks.

65. The Rapporteurship documented concerted actions by the Brazilian State, such as police action, legislative investigation, and trials, to detain, investigate and sanction what was described as a movement of "institutional rupture," <sup>95</sup> organized to promote "anti-democratic demonstrations in front of military installations"<sup>96</sup>. The demonstrations on January 8 are characterized by State authorities, such as the STF and the National Congress, as an attempted coup d'état<sup>97</sup>, due to express requests for "intervention" by the Armed Forces to prevent the regular presidential transition, and acts of violence directed against State powers. Investigations initiated immediately after the change in government are based on the hypothesis that the security forces deliberately avoided preventing the episodes of violence and destruction<sup>98</sup>. The Rapporteurship also documented concerns regarding excessive leniency by security forces, especially regarding the lack of attempts to prevent the invasion of public buildings. Regardless, after the invasion of public property, security forces acted against protesters camped out on January 9<sup>99</sup> and arrested more than 2,000 people<sup>100</sup>. The Rapporteurship recorded statements by Supreme Court justices that an agreement of

<sup>93</sup> Folha de S. Paulo, [Bolsonaro publishes and deletes video with fake news about elections](#), January 11, 2023; CNN Brasil, [Bolsonaro posts and deletes fake news questioning Lula's victory](#), January 11, 2023.

<sup>94</sup> UOL, [Man tries to invade STF with explosives and dies in Praça dos Três Poderes](#), November 13, 2024; Exame, [Man killed in Praça dos Três Poderes wore jacket with playing cards](#), November 13, 2024.

<sup>95</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 525.

<sup>96</sup> Federal Police, [Report No. 4546344/2024](#), p. 21.

<sup>97</sup> STF, [STF convicts 42 more people for participating in the anti-democratic acts of January 8](#), May 7, 2025.

<sup>98</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 687.

<sup>99</sup> Poder 360, [Police clear camp in Brasília; 1,200 taken to Federal Police headquarters](#), January 9, 2023; CNN Brasil, [Moraes orders clearing of camps in front of barracks](#), January 9, 2023.

<sup>100</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 688.

non-prosecution was offered to those who participated in the demonstrations, and that many refused<sup>101</sup>.

66. During the visit, the Rapporteurship heard allegations that criticized the security forces that repressed these demonstrations for acting in an unnecessarily violent manner. To this extent, Brazilian press published allegations of individuals wounded by police forces<sup>102</sup>, as well as police agents who were also wounded, including a demonstrator who lost his eyesight<sup>103</sup>. Regarding the detentions, the Rapporteurship received information suggesting the conditions of detention to which protesters were overcrowded and lacked adequate hygiene, which allegedly led to the death of a person in preventive detention<sup>104</sup>. According to public information, his conditional release was requested from the authorities on the basis of health conditions, this petition not being ruled on<sup>105</sup>. The Rapporteurship is aware that there exist ongoing investigations of this case<sup>106</sup>, and calls upon the State to continue them in a timely manner.

67. On April 19<sup>th</sup>, 2023, the Brazilian press reported that the head of the Institutional Security Office of the newly inaugurated government had been seen inside the Presidential palace while it was under invasion by demonstrators, which allegedly led to his departure from the government<sup>107</sup>. According to press reports, this episode prompted already existing proposals to create a Joint Parliamentary Inquiry Commission on the events of January 8 by the National Congress<sup>108</sup>, tasked with producing a Report on the demonstrations and episodes of violence. According to this Commission's Final Report, public authorities linked to the previous administration played a part in promoting illegal action, with the use of biased and unproven information as a way to challenge democratic institutions<sup>109</sup>.

68. According to the report produced by the Joint Parliamentary Inquiry Committee, the protesters directly called for the intervention of senior public officials in government institutions,

<sup>101</sup> UOL, [Understand the agreement offered to the defendants of January 8 to stay out of prison](#), February 4, 2024; InfoMoney, [Why did prisoners from January 8 refuse an agreement with the Public Prosecutor's Office?](#), March 17, 2025.

<sup>102</sup> Metrópoles, [Hospital de Base recebe mais de 40 feridos durante atos terroristas no DF](#), 08 de janeiro de 2023; UOL, [DF: PMs feridos em invasão afirmam ter enfrentado profissionais, diz interventor](#), 16 de janeiro de 2023.

<sup>103</sup> Conta de Instagram de Epaminondas Nunes (@epaminondaspatriotaoficial), [February 23, 2023](#); Claudio Dantas, [Mais um advogado denuncia violações de direitos humanos contra presos do 8/01 à CIDH](#), 11 de março de 2025.

<sup>104</sup> CNN Brasil, [January 8 prisoner dies in Papuda](#), November 20, 2023; Estadão, [Who was Cleriston Pereira da Cunha, the January 8 prisoner who died in Papuda](#), November 20, 2023.

<sup>105</sup> O GLOBO, [January 8 prisoner who died in Papuda reported fainting and shortness of breath; video](#), November 22, 2023; Gazeta do Povo, [Death of Clezão, January 8 prisoner, marks one year; family continues to seek justice](#), November 21, 2024.

<sup>106</sup> Revista Oeste, [Federal District Civil Police opens Inquiry to investigate the death of Clezão](#), December 13, 2023; Veja, [Family wants access to investigation on the death of an entrepreneur involved on January 8](#), May 18, 2025.

<sup>107</sup> CNN Brasil, [Exclusive: cameras show GSI minister at the Planalto Palace during the January 8 attacks](#), April 19, 2023; Poder360, [Gonçalves Dias leaves government due to involvement in January 8](#), April 19, 2023.

<sup>108</sup> Agência Brasil, [Pacheco reads request and creates CPMI for the coup acts of January 8](#), April 26, 2023; Metrópoles, [Congress creates joint CPI to investigate January 8](#), April 26, 2023.

<sup>109</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 93.

without such officials giving any public response<sup>110</sup>. The CPMI also notes that public figures, including high-ranking public authorities, such as parliamentarians and officials in the previous administration, allegedly encouraged protesters to try to prevent the "seizure of power" after the elections<sup>111</sup>.

69. These public authorities, including parliamentarians aligned with the exiting administration, together with communicators and other social leaders, allegedly played the role of "agitating"<sup>112</sup> and "manipulating"<sup>113</sup> people to join the movement. The Report further alleges that these authorities were part of a "structured network" for the propagation of "misinformation, hatred, attacks on the ballot boxes (...) and democratic institutions"<sup>114</sup>, causing those involved in the demonstration to cultivate "illusory beliefs and conspiracy theories about the electronic voting system" and the actions of the electoral justice system<sup>115</sup>. Opposition lawmakers presented a dissenting vote to the CPMI's report<sup>116</sup>.

70. According to investigative hypotheses that have not yet been clarified, high-ranking State authorities related to the previous administration allegedly intended to take advantage of the popular outcry of the camps to effectively carry out a coup d'état, based on what can be inferred from the so-called "coup draft"<sup>117</sup>, which would be a draft of a normative act establishing a state of siege in the country with the participation of the government at the time<sup>118</sup>. As noted by the IACHR<sup>119</sup>, the plan also allegedly involved instructions for the assassination of high-ranking public officials, including a Justice of the Supreme Court, the victorious presidential candidate, and his vice-presidential candidate<sup>120</sup>.

71. The report states that, up to January 2023, there was an escalation of demonstrations and movements contesting the presidential election results, and that the then federal government took an ambiguous position, without calling for self-restraint among demonstrators or urging acceptance of the results<sup>121</sup>. The final report of the CPMI qualifies the acts as criminal, stating that they constituted "crimes against the Democratic Rule of Law"; attempted coup d'état; passive corruption; and criminal association, among other crimes. The Report states that the acts are criminal offenses, under the Penal

<sup>110</sup> CPMI of the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 525.

<sup>111</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 527.

<sup>112</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 168.

<sup>113</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 85.

<sup>114</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 170.

<sup>115</sup> CPMI of the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 120.

<sup>116</sup> CPMI of the Acts of January 8, 2023, [Separate Vote](#).

<sup>117</sup> Senate News, [Draft in Torres' possession poses a risk to democracy, say senators](#), January 13, 2023; Valor Econômico, [What is the 'coup draft', a central point in the Federal Police's investigation against Bolsonaro](#), February 25, 2024.

<sup>118</sup> CNN Brasil, [See the full text of the coup draft presented by Bolsonaro to Freire Gomes](#), March 15, 2024; Estadão, [See the full text of the coup draft that Bolsonaro presented to the Armed Forces, according to a former commander](#), March 15, 2024.

<sup>119</sup> IACHR, Annual Report 2024, Chapter IV.A, Development of Human Rights in the Region, para. 161.

<sup>120</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Annual Report 2024](#), OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 223.

<sup>121</sup> CPMI on the Acts of January 8, 2023, [Final Report](#), October 17, 2023, p. 212.

Code, against electoral integrity, punishable by imprisonment. For example, Article 359-L criminalizes "attempts, through the use of violence or serious threats, to abolish the Democratic Rule of Law." The Report also mentions Article 359-N, which imposes imprisonment for preventing or disrupting the election by violating the electronic security of the electoral system. Both offenses were inserted into the Penal Code after the revocation of the National Security Law.

72. The Rapporteurship was informed that, in September 2023, the Superior Electoral Court changed the entities allowed to oversee elections. The resolution excluded the Supreme Federal Court and the Armed Forces from this role, with comments from TSE Justices regarding the importance of maintaining the "partnership" between the Armed Forces and election authorities. Despite this, Justices noted that, in the 2022 electoral process, the participation of the Armed Forces had not been "reasonable and efficient"<sup>122</sup>.

73. The Federal Supreme Court has released information showing that more than 2,000 people are investigated for participating in the "attacks on the buildings of the three branches of government" that occurred on January 8. As of January 7, 2025, 371 people have been convicted, and 527 entered into agreements with the Federal Public Prosecutor's Office<sup>123</sup>. Of the 371 people convicted, 225 received prison sentences ranging from 3 years to 17 years and 6 months, and the remaining 146 were not detained, but were required to wear electronic ankle bracelets, pay a fine, perform 225 hours of community service, and participate in a course on democracy, and were prohibited from using social media<sup>124</sup>. Among the 225 people convicted, 223 have been sentenced to prison, with 71 already serving their sentences on that date; 30 cases had not been finalized; and 122 were considered fugitives. The Rapporteurship notes that it met with the Federal Supreme Court after the disclosure of such public information. In this meeting, the State informed that the January 8 investigations involved approximately 1,900 people charged by the Attorney General's Office, approximately 450 people convicted, and approximately 600 people who entered into non-prosecution agreements.

74. Concerns were conveyed to the Rapporteurship regarding the alleged lack of individualization of the alleged crimes investigated by the Judiciary. According to this perception, people who were in the Three Powers Square on January 8, allegedly with the sole intention of participating in a demonstration, are being held accountable for crimes against the democratic rule of law. For this reason, the Rapporteurship recorded criticism of the sentencing of people who

<sup>122</sup> Poder360, [TSE removes Armed Forces from oversight of electronic voting machines](#), September 26, 2023; CNN Brasil, ["No problem" with Armed Forces leaving ballot box audit, says Army commander](#), September 27, 2023.

<sup>123</sup> STF, [In two years, STF held 898 people responsible for anti-democratic acts on January 8](#), January 7, 2025.

<sup>124</sup> STF, [In two years, STF held 898 people responsible for anti-democratic acts on January 8](#), January 7, 2025.

participated in the events of January 8, based on the perception that people who had only caused property damage were convicted of crimes related to the attempted violent abolition of the rule of law, resulting in sentences of more than 10 years of imprisonment<sup>125</sup>.

75. The Rapporteurship notes that several participants were held responsible for crimes classified by the State as "simple," such as incitement to crime and criminal association, and "serious," which include attempting to abolish the rule of law and aggravated damage to public property<sup>126</sup>. The Rapporteurship heard suggestions that these measures did not adequately individualize the perpetrators of each deed, with the possibility that there are cases where individuals were held accountable for the actions of others. In the view of the Rapporteurship, the large scale of the events of January 8 makes it possible to believe that some of the participants intended only to express their dissatisfaction with matters of public interest. In this sense, the Special Rapporteurship believes that the dissemination of disinformation and biased calls to action could have animated such participants into taking part in this movement without being aware of its ultimate goals.

76. For this reason, it is necessary to consider this hypothesis when investigating and attributing individual responsibilities to demonstrators. Still, the Special Rapporteur notes that the number of those who demonstrated across the country far exceeds those charged. Further, in relation to assessing the legitimate concern for disproportionate sentencing for those who were not the promoters of the violent demonstrations, the Special Rapporteur would not have access to the evidence before the Court to make an assessment. As the proceedings advance, this hypothesis should also be considered in the analysis of appeals.

77. In view of the information provided by the State and by organizations, the Rapporteurship noted that Brazil has strong democratic institutions and that the State has made clear its intention to guide its public policies in accordance with respect for human rights and rule of law. The Rapporteurship calls upon the Brazilian State to undertake efforts to guarantee democracy and hold those responsible for attempts to alter the democratic system fully accountable, without sacrificing freedom of expression as a right, and fully observing due process guarantees.

78. The Rapporteurship has already noted a phenomenon of declining public confidence in democratic institutions and the media, closely related to authoritarian tendencies and the backsliding of human rights in established democracies<sup>127</sup>. Democracy, the rule of law, and broad

<sup>125</sup> Migalhas, [STF sentences woman who spray-painted "you lost, fool" with lipstick to 14 years in prison](#), May 7, 2025; UOL, [STF has majority to deny appeal by woman who spray-painted statue with lipstick](#), June 11, 2025.

<sup>126</sup> STF, [Report from the Office of Justice Alexandre de Moraes](#), January 7, 2023.

<sup>127</sup> UN, OSCE, OAS, ACHPR, [Joint Declaration on Freedom of the Media and Democracy](#), May 2, 2023, preamble.

respect for freedom of expression, with extensive freedoms for the media, are mutually reinforcing and interdependent<sup>128</sup>. The role of freedom of expression in the proper functioning of a democratic society is a point widely explored by the Inter-American System, for which freedom of expression is the cornerstone of a democratic society<sup>129</sup>.

79. As stated by the Special Rapporteurs on Freedom of Expression, democratic societies are stronger when they have broad dissemination and critical discussion of matters of public interest<sup>130</sup>. On the other hand, the preservation of the democratic system is an important goal, also as a way of offering minimum guarantees for freedom of expression. In fact, the Inter-American System's standards for determining the conventionality of a restriction on freedom of expression include the necessity of the restriction in a democratic society<sup>131</sup>. The Inter-American Court has affirmed the need to respect freedom of expression as an essential element of representative democracy, referring to the provisions of the Inter-American Democratic Charter<sup>132</sup>. In addition, the Court emphasized the importance of maintaining pluralism, tolerance, and a spirit of openness as simultaneously fundamental to democracy and respect for freedom of expression<sup>133</sup>. Similarly, the Court has recalled statements by the OAS Permanent Council urging peace and tolerance, including requesting public actors to refrain from encouraging public confrontation and violence<sup>134</sup>. To this point, the development of democratic societies requires broad respect for freedom of expression, while restrictions on freedom of expression must incorporate the fair demands of a democratic society<sup>135</sup>.

80. The Rapporteurship understands that the Brazilian scenario is marked by deep tensions related to electoral politics and the proper management of the country. Election periods bring tensions, which are exacerbated by the spread of deliberate misinformation and manipulated information<sup>136</sup>. The Rapporteurship reiterates the statements of the IAC<sup>HR</sup> in repudiating attacks on democracy in Brazil<sup>137</sup>, also condemning episodes of violence that sought to undermine Brazilian democratic institutions.

<sup>128</sup> UN, OSCE, OAS, ACHPR, Joint Declaration on Freedom of the Media and Democracy, May 2, 2023, preamble.

<sup>129</sup> Inter-American Court of Human Rights, Compulsory Professional Registration of Journalists (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, para. 33.

<sup>130</sup> UN, OSCE, OAS, ACHPR, Joint Declaration on Freedom of the Media and Democracy, May 2, 2023, point b.

<sup>131</sup> Inter-American Court of Human Rights, Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004, Series C No. 107, para. 120.

<sup>132</sup> Inter-American Court of Human Rights, Case of Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment of January 28, 2009, Series C No. 194, para. 140.

<sup>133</sup> Inter-American Court, Case of Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment of January 28, 2009, Series C No. 194, para. 141.

<sup>134</sup> Inter-American Court of Human Rights, Case of Granier et al. (Radio Caracas Televisión) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment of June 22, 2015, Series C No. 293, para. 122.

<sup>135</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression, OEA/Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2009, para. 66.

<sup>136</sup> UN, OSCE, OAS, ACHPR, Joint Declaration on Freedom of Expression and Elections in the Digital Age, April 30, 2020, preamble.

<sup>137</sup> IAC<sup>HR</sup>, The IAC<sup>HR</sup> condemns attacks against democratic institutions in Brazil, January 23, 2023.

81. The Rapporteurship states that the defense of freedom of expression must be understood in a manner compatible with the maintenance of a democratic regime, and that, as the Inter-American System often states, the needs of democracy may justify limitations on freedom of expression<sup>138</sup>. Freedom of expression is the cornerstone of the development of democracy<sup>139</sup>; without vigorous respect for freedom of expression, democratic principles are not observed. At the same time, the rights preserved by the American Convention cannot be interpreted to the detriment of the democratic representative form of government, as established in Article 29 of the Convention<sup>140</sup>. Similarly, the Court has stated that the Convention must be interpreted in accordance with the “just demands of democracy”<sup>141</sup>, and that, in general, the harmonization of freedom of expression with other rights obliges States to establish sanctions for certain expressions<sup>142</sup>. For all these reasons, freedom of expression must find limits in the defense of the democratic system.

82. In any case, all actions by public authorities must respect fundamental rights and freedoms. Democratic institutions must also make explicit their commitment to respect human rights, always implementing restrictions in accordance with the international commitments made by the Brazilian State. Any restriction on freedom of expression, even if justified and applied to unprotected speech, must be within these limits, so that freedom of expression can flourish and perform its functions of public criticism. In the face of circumstances of unprecedented volume, scale, and impact, the Rapporteurship emphasizes the importance of strict adhesion to the requirements for restrictions on freedom of expression, rather than the adoption of formulas and processes that relax such requirements. In other words, the seriousness of the events that threatened democracy reinforces the need for any restrictions on freedom of expression to be more, not less, compliant to the international parameters of protection and restriction of freedom of expression.

83. In this regard, the Rapporteurship emphasizes that restrictions on protests are exceptional in nature. Part of the right to organize a protest lies in the possibility of freely choosing its messages<sup>143</sup>, and any restriction must comply with the three-part test<sup>144</sup>. The three-part test is the Inter-American System's standard of evaluating restrictions to expression, based on Article 13.2 of the

<sup>138</sup> IAC<sup>HR</sup>, Annual Report 1994, Chapter V: Report on the Compatibility of *Desacato* Laws with the ACHR, OEA/Ser.L/V/II.88, doc. 9 rev. 17, February 17, 1995.

<sup>139</sup> Inter-American Court of Human Rights, Compulsory Professional Registration of Journalists (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, para. 70.

<sup>140</sup> IAC<sup>HR</sup>, Annual Report 1994, chap. V: report on the compatibility between *desacato* laws and the ACHR, OEA/Ser.L/V/II.88, doc. 9 rev. 17, February 17, 1995, p. 331.

<sup>141</sup> IAC<sup>HR</sup>, Compulsory Professional Registration of Journalists (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, para. 44.

<sup>142</sup> Inter-American Court of Human Rights. Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2022, Series C No. 481, para. 108.

<sup>143</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Annual Report 2022](#), OEA/Ser.L/V/II Doc. 50, March 6, 2023, para. 244.

<sup>144</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Protest and Human Rights, OEA/Ser.L/V/II, CIDH/RELE/INF.22/19, September 2019, para. 37.

Convention. The first step is to assess whether the restriction is previously established by law, both in a formal and material sense. The second step is whether the restriction pursues a purpose authorized by the American Convention, as respect for the rights or reputation of others, or the protection of values such as public safety and public order. The third step consists of whether the restriction is necessary in a democratic society, which means being suitable, necessary, and proportionate<sup>145</sup>. Even if the restrictive measure is suitable for pursuing a legitimate purpose, it must meet an urgent social need, and the State must seek the least harmful measure among the existing alternatives<sup>146</sup>. The last stage of this assessment is whether the measure is proportional in the strict sense; that is, whether the restriction of rights caused by the measure is not excessive in view of the advantages obtained<sup>147</sup>.

84. However, even after considering the exceptional nature of restrictions to public demonstrations, and the need for strict requirements to the States, the events in Brasília on January 8, 2023, could justify stricter measures of restriction, due to the presence of a real and imminent possibility of crimes being committed. For this reason, exceptional action by the State was necessary to ensure the safety of demonstrators and journalists covering these events, preventing the possible commission of crimes, within the limits of the actions of State security forces. However, this evaluation must be made independently whenever restrictions are to be imposed; such measures cannot be applied by analogy to this grave event.

85. Finally, the Rapporteurship notes that the movements of January 8, 2023, and other demonstrations that preceded them were profoundly influenced by the dissemination of unverified information about the electoral system and the judiciary, with the participation of high-ranking public officials and other politically motivated influential figures. The Rapporteurship recalls that those who hold public office, including as members of the legislature, have duties regarding their statements on matters of public interest, such as the duty to reasonably investigate the facts on which their statements are based<sup>148</sup>. In addition, public authorities must not contribute to exacerbating social tensions or public hostilities<sup>149</sup>.

86. The Rapporteurship has also highlighted the central role that digital platforms play in public debate, and the profound consequences of the use of social media on the circulation of

<sup>145</sup> Inter-American Court of Human Rights, Capriles v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of October 10, 2024, Series C No. 541, para. 160.

<sup>146</sup> Inter-American Court of Human Rights, Case of Moya Chacón et al. v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 23, 2022, Series C No. 451, para. 72.

<sup>147</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2022, Series C No. 481, para. 105.

<sup>148</sup> Inter-American Court of Human Rights, Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

<sup>149</sup> Inter-American Court of Human Rights, Case of Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment of January 28, 2009, Series C No. 194, para. 148.

information and misinformation in society, from the perspective of the collective dimension of freedom of expression<sup>150</sup>. For these reasons, the Rapporteurship views with concern reports that high-ranking public officials, in the lead up to and after the elections, have directly participated in the dissemination of misinformation and incited the mobilization of demonstrations aimed at rejecting election results. Therefore, to prevent such events from recurring, in addition to assigning responsibility, political leaders must be aware that the role of their discourse is to combat, among other things, misinformation, and promote intercultural understanding.

## **B. Diligently judge abuses of the right to freedom of expression, assigning proportional responsibility**

87. *The events of January 8 posed an extraordinary threat to Brazilian democracy. In this sense, the important efforts by the Judiciary to combat these threats, by extraordinary means, are duly recognized. This response has involved orders of restrictions to freedom of expression. The agents responsible for orchestrating the concrete threats to democracy must be brought to account, in a manner consistent with the State's duties to investigate crimes, and also its duties to conduct fair and impartial trials. At the same time, there are concerns regarding the need to direct the most severe punishments to those with the highest degrees of responsibility. The State must also observe the application of its extraordinary precedents, for them to serve their purpose in preventing further crimes, without unduly limiting legitimate debates and criticisms of public authorities.*

### **1. Institutional context and the creation of the inquiries**

88. The Federal Supreme Court is composed of eleven magistrates, called “ministers”. Their appointment to the Court is made by the President of the Republic, and they must be approved by the Legislative Branch. Within the internal structure of the Court, one of its members occupies the Presidency of the STF, while the other magistrates are divided into two panels, each composed of five Justices. In addition to decisions made in the Panels, cases may be reviewed by the Plenary, with the participation of all 11 members of the Court, or by a single judge. The Internal Rules of Procedure of the STF establish the powers of the Plenary and the Panels and dictate rules regarding decisions made by a single judge. The Rules of Procedure provide that cases have a Reporting Justice, who is chosen by random draw, as a rule, or by prevention, when it is necessary to combine a new case with an existing one. The Reporting Justice, under the terms of the Rules of Procedure, has the responsibility of directing the case and has important powers for this purpose.

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<sup>150</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Annual Report 2024, OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 229.

89. In 2019, the Federal Supreme Court initiated Inquiry 4,781, known as the "fake news inquiry." According to Ordinance 69/2019 of the Presidency of the STF, the inquiry was based on the need to investigate "fraudulent news (*fake news*), slanderous accusations, threats, and offenses (...) that affect the honor and security of the Federal Supreme Court, its members, and their families"<sup>151</sup>. This Ordinance states that the investigation was based on Article 43 of the STF's Internal Regulations<sup>152</sup>, which establishes the jurisdiction to initiate an investigation into "violations of criminal law at the Court's headquarters or facilities." The reporting judge for the investigation was appointed without a random draw<sup>153</sup>, and there were disagreements regarding the permissibility of this appointment, which would be provided for in Article 43 itself.

90. In 2019, the Attorney General's Office (PGR) requested that the investigation be closed, which was not done, along with statements by the Attorney General's Office that it did not intend to file charges based on the findings of the investigation<sup>154</sup>. In 2020, the next Attorney General stated that Inquiry 4.781 was not adequately restricted to the objective stated in the case files, and would "periodically change its object, as a way to affect new persons and facts"<sup>155</sup>.

91. The ADPF 572 petition questioned alleged irregularities in the initiation of Inquiry 4.781, including the Attorney General's participation. The STF concluded that Inquiry 4.781 was legal and constitutional, given the seriousness of the threats to the Federal Supreme Court and its members<sup>156</sup>. The original ADPF argued that internet publications are not part of the STF's jurisdiction under Article 43 of the Rules of Procedure, as they do not occur at the "headquarters" of the court. However, the Reporting Justice's vote states that "the diffuse nature of crimes committed via the internet, whose global scale has been legally recognized (...), allows for the extension of the concept of the court's headquarters, since the STF exercises its jurisdiction 'throughout the national territory'"<sup>157</sup>. The Justice emphasizes that, in addition to crimes against the rule of law, this understanding should apply to crimes against honor<sup>158</sup>. The ADPF ruling also established the need for PGR to monitor the investigation, as well as the observance of guarantees of freedom of expression. However, it

<sup>151</sup> STF, [Ordinance GP No. 69](#), March 14, 2019.

<sup>152</sup> STF, [Ordinance GP No. 69](#), March 14, 2019.

<sup>153</sup> STF, [Ordinance GP No. 69](#), March 14, 2019.

<sup>154</sup> This PGR was appointed by ex-President Temer, and served between 2017 and 2019. G1, [Raquel Dodge requests closure of investigation into offenses against the STF: Justice maintains investigation](#), April 16, 2019. O GLOBO, [Alexandre de Moraes ignores Dodge's dismissal and keeps open investigation into attacks on the STF](#), April 16, 2019; Consultor Jurídico, [Alexandre rejects dismissal of investigation into threats to the Supreme Court](#), April 16, 2019.

<sup>155</sup> Agência Brasil, [Aras defends PGR's participation in STF investigation into fake news](#), June 4, 2020; CNN Brasil, [MP should participate in investigations into fake news, says PGR](#), June 4, 2020.

<sup>156</sup> STF, ADPF 572, June 18, 2020.

<sup>157</sup> STF, ADPF 572, June 18, 2020, p. 42

<sup>158</sup> STF, ADPF 572, June 18, 2020, p. 43.

emphasized that exceptional action based on Article 43 of the Internal Regulations continued to be necessary even when the PGR failed to fulfil its duties<sup>159</sup>.

92. One month after the approval of Ordinance 69/2019, the Supreme Court ordered restrictive measures against a magazine report that indicated possible links between a Supreme Court justice and members of a construction company. This report was taken down, under penalty of a daily fine of R\$ 100,000.00<sup>160</sup>, on the grounds that the documents mentioned were not included in the proceedings described by the magazine. At the time, this decision generated significant criticisms by diverse media companies<sup>161</sup>, political parties<sup>162</sup>, lawyers and professors<sup>163</sup>, State authorities, including in the Judiciary<sup>164</sup>, professional associations<sup>165</sup>, and human rights defenders<sup>166</sup>, with many of these sources classifying the decision as “censorship”. After these public criticisms, the President of the Court stated that the articles “have to be taken down. Period.”<sup>167</sup>, as they contained untruthful comments. The decision was later reversed, with the reporting Justice noting that the document had been located<sup>168</sup>, so that the report is now available.

93. As reported in section A above, there existed a process in Brazil, before 2023, of mounting challenges to institutions and calls for military intervention. The Rapporteurship received the perception that the bodies responsible for investigating and initiating proceedings against the actors responsible for attempting to destabilizing the democratic system, such as the Federal Police and the Attorney-General’s Office (PGR), had not adequately performed their duties<sup>169</sup>. This alleged

<sup>159</sup> STF, ADPF 572, June 18, 2020, p. 43.

<sup>160</sup> Approximately 18,500 USD.

<sup>161</sup> Crusoé, [Urgent: STF Justice censors Crusoé](#), April 15, 2019; G1, [STF censors websites and orders removal of article linking Toffoli to Odebrecht](#), April 15, 2019; GZH, [STF proves gag orders still exist and censors Crusoé magazine and O Antagonista](#), April 15, 2019; Folha de S. Paulo, [STF Minister censors websites and orders takedown of article against Toffoli](#), April 15, 2019; The Intercept Brasil, [We have published the Crusoé article the STF censored](#), April 15, 2019; Estadão, [STF censors Crusoé](#), April 15, 2019; Congresso em Foco, [Alexandre de Moraes censors website and orders takedown of article against Toffoli](#), April 15, 2019; UOL, ["IN" accuses STF of censorship and prioritizes this case over Notre-Dame fire](#), April 16, 2019.

<sup>162</sup> Istóe Dinheiro, [Rede asks Fachin 'cease mounting censorship' against 'Crusoé' magazine](#), April 16, 2019; Rede Sustentabilidade, ADPF 572, [Document dated April 15, 2019](#).

<sup>163</sup> Folha de S. Paulo, [The return of Crusoé](#), April 19, 2019; JOTA, [Toffoli's inquiry, censorship and 'general duties of caution'](#), April 25, 2019; El País, ["STF attitude with 'Crusoé' can be seen as intimidation of media companies"](#), April 18, 2019.

<sup>164</sup> JOTA, [Judicial censorship is intolerable, illegitimate and autocratic, claims Celso de Mello](#), April 18, 2019; Valor Econômico, [Senate: Censorship of article by STF makes 'Robe-Wash CPI' urgent](#), April 15, 2019; BBC Brasil, [Why Alexandre de Moraes revoked own decision to censor article](#), April 18, 2019.

<sup>165</sup> Abraj, [Brazilian Supreme Court inquiry against fake news attacks press freedom](#), April 17, 2019; OAB, [Official Note from the Directorate of the OAB Federal Council and the College of Presidents](#), April 16, 2019; Sindicato dos Jornalistas Profissionais do Distrito Federal, [Union repudiates censorship against Crusoé magazine](#), April 16, 2019; Migalhas, [Entities speak on censorship to websites which divulged article on Toffoli](#), April 16, 2019.

<sup>166</sup> Committee to Protect Journalists, [Brazilian court orders online magazine Crusoé to remove article about judge](#), April 16, 2019; Crusoé, [Human Rights Watch asks STF to revoke Crusoé censorship](#), April 17, 2019.

<sup>167</sup> Folha de S. Paulo, [Facts are against Toffoli, who attempts to stimulate censorship](#), April 18, 2019; Metrópoles, [Dias Toffoli denies censorship and claims magazine wanted to embarrass STF](#), April 18, 2019.

<sup>168</sup> Veja, [Alexandre de Moraes backs down and revokes censorship of report on Toffoli](#), April 18, 2019; G1, [Alexandre de Moraes revokes decision that censored reports by 'Crusoé' and 'O Antagonista'](#), April 18, 2019; Jota, [Moraes backs down and reverses own decision taking down articles on Toffoli](#), April 18, 2019.

<sup>169</sup> Brasil de Fato, [After four years, Augusto Aras leaves the Attorney General's Office marked by his failure to act during the Bolsonaro administration](#), September 26, 2023; Gazeta do Povo, [Aras responds to criticism of his failure to act during his tenure as Attorney General](#), February 25, 2025.

inertia on the part of investigative bodies, is understood as motivating the Judiciary to take exceptional measures to enable the prosecution and eventual punishment of said attempts to destabilize the State. This response by the Supreme Federal Court to act *ex officio* to ascertain accountability is viewed by some as resulting in a concentration of powers.

94. In response to the criticism of alleged overreach by the Court, the State informed the Rapporteurship that Article 43 of the Internal Regulations, which is referenced as giving the Supreme Federal Court this authority, has "the force and effectiveness of a legal norm," as the Regulations were deemed compatible with the 1988 Constitution<sup>170</sup>. The State also reported that the application of Article 43 was motivated by the "serious and exceptional" nature of "incitement to close the STF, death threats or threats of imprisonment against its members, and proclaimed disobedience to judicial decisions." On the other hand, the interpretation given by the Federal Supreme Court to this article, in order to exercise its jurisdiction over internet publications as if they were included in the concept of "the seat of the Court", generated controversy in Brazil<sup>171</sup>. Although this interpretation may be justified by the exceptional gravity invoked by the State, the Rapporteurship emphasizes the need to ensure that the use of these extraordinary coercive mechanisms does not restrict legitimate citizen criticism of the Court nor interpret and treat such criticism as an attack on the institution. In this regard, authorities who exercise significant powers must demonstrate a particularly high degree of tolerance for criticism, with attention to proportionality. This duty is accentuated when matters of prime importance are being decided by the Court.

95. After the opening of Inquiry 4.781, other inquiries were established in the Federal Supreme Court, with the objective of investigating "anti-democratic acts", its organizers, and the sources of its funding, throughout the years of 2020, 2021 and 2022. After the demonstrations on January 8, 2023, the Court opened specific inquiries to investigate acts related to the demonstrations, and expanded the scope of previously existing inquiries, such as 4.781, to include in them these new facts<sup>172</sup>. Other inquiries are focused on attempts to attack the State and the organized dissemination of prohibited content on social media.

96. In this sense, the Special Rapporteurship documented the establishment of the following inquiries, related to the events discussed in this report: Inquiry 4.828 (April 2020), to investigate demonstrations in front of military barracks calling for military intervention, at the request

<sup>170</sup> STF, Recurso Extraordinário 1.047.578/DF, December 14, 2018.

<sup>171</sup> Jota, [Legislative support for ex officio investigations in the STF](#), July 18, 2023; Zero Hora, [Legal experts disagree on whether the STF has the autonomy to open an investigation without hearing the PGR, which is being questioned by Bolsonaro](#), August 20, 2021.

<sup>172</sup> Jota, [Alexandre de Moraes annexes CPMI report on January 8 to STF inquiries](#), October 25, 2023; CNN Brasil, [Inquiries, criminal case, sentences: what STF still needs to analyze on January 8](#), January 8, 2025.

of the Attorney General<sup>173</sup>, which was concluded in July 2021<sup>174</sup>; Inquiry 4.874 (July 2021), to investigate a "criminal organization" responsible for anti-democratic acts, at the initiative of the reporting justice of the previous inquiries<sup>175</sup>; Inquiry 4.879 (August 2021), to investigate antidemocratic acts, expanded to include possible omissions by authorities responsible for public security in the events of January 8, at the request of the Attorney General's Office<sup>176</sup>; Inquiries 4.920, 4.921, and 4.922 (January 2023), which refer to the financing and intellectual authorship of anti-democratic acts, at the request of the Attorney General's Office (PGR)<sup>177</sup>; and Inquiry 4.995 (May 2025), to investigate a congressman, at the request of the Attorney General's Office (PGR)<sup>178</sup>. The Special Rapporteurship notes that the "prevention" mechanism was applied to the inquiries listed above, which means that they were deemed materially similar to Inquiry 4.781 and, for this reason, assigned to the same Reporting Justice<sup>179</sup>.

97. The STF inquiries are supplemented by Federal Police operations investigating anti-democratic acts. Among the operations carried out by the Federal Police are investigations into the blocking of highways during the elections<sup>180</sup> and into anti-democratic acts in general, especially acts of vandalism and attacks<sup>181</sup>, with reports of arrests and the seizure of electronic devices and documents<sup>182</sup>. The Rapporteurship was informed that the Federal Police is an autonomous body under the Ministry of Justice, and also carries out investigations at the request of other public authorities, such as the Federal Supreme Court, despite not being subordinated to the Judiciary.

98. Besides the inquiries and the Federal Police investigations, there exist judicial proceedings against specific individuals in the Supreme Court. One notable proceeding is AP 2668, against 8 defendants who were high-level public authorities of the Federal government before 2024, accusing them of having leadership roles in the attempts of institutional destabilization<sup>183</sup>. When the inquiries and the police investigations are deemed to have collected enough evidence to indict a

<sup>173</sup> STF, Minister Alexandre de Moraes lifts secrecy on investigation into anti-democratic acts, June 7, 2021.

<sup>174</sup> STF, Inquiry INQ 4828/DF, decision of October 13, 2021.

<sup>175</sup> STF, Inquiry INQ 4828/DF, decision of October 13, 2021.

<sup>176</sup> STF, Inquiry INQ 4879/DF, petition AJCRIM-STJ/PGR No. 9214/2023, January 10, 2023.

<sup>177</sup> STF, At the request of the PGR, STF opens three inquiries and expands investigation into terrorist acts of January 8, January 23, 2023.

<sup>178</sup> STF, STF opens investigation into Congressman Eduardo Bolsonaro for coercion and attempted obstruction of justice, May 26, 2025.

<sup>179</sup> Folha de S. Paulo, Moraes accumulates reports in the STF five years after the start of the fake news investigation, March 9, 2024; Estadão, Moraes is the Rapporteurship for more than half of the STF's public inquiries, which take up to five years to process, January 1, 2025.

<sup>180</sup> Agência Brasil, Federal Police arrest suspects in Rio for participating in anti-democratic acts, January 16, 2023; Brasil de Fato, Federal Police indict Anderson Torres and Silvinei Vasques for blocking roads and preventing Lula voters from traveling in the second round in 2022, August 16, 2024.

<sup>181</sup> CNN Brasil, Lesa Pátria: operation investigating the events of January 8 extended until 2025, July 2, 2024; Federal Police, PF launches 29th phase of Operation Lesa Pátria, August 29, 2024.

<sup>182</sup> Federal Police, PF launches Operation ULYSSES against anti-democratic acts, January 16, 2023.

<sup>183</sup> STF, Ação Penal AP 2668.

person, the findings of the inquiry are presented to a Prosecutor, who may charge this person; if the charges are accepted, a judicial proceeding is created against them<sup>184</sup>.

99. The STF inquiries, the Federal Police investigations, and the specific judicial proceedings give rise to measures, both interim and final, which limit the exercise of the right to freedom of expression<sup>185</sup>. Such measures must be evaluated through the three-part test. These measures have included, among others: (i) the suspension of social media accounts<sup>186</sup>, including at the global level<sup>187</sup>, of persons under investigation; (ii) the prohibition of access to social media by the person under investigation<sup>188</sup>; (iii) preventive detention<sup>189</sup>; (iv) red alert orders to INTERPOL<sup>190</sup>; (v) the prohibition of giving interviews<sup>191</sup>; (vi) a ban on communication with other persons under investigation<sup>192</sup>; and (vii) a ban on communication with the "outside world"<sup>193</sup>. Such measures may be decreed individually by the reporting judge of STF proceedings<sup>194</sup>, and the State supplied information that some of them were reviewed by the Plenary of the Court<sup>195</sup>.

100. The measures are seen as generally compatible with Brazilian criminal law. Notwithstanding their legality, the Rapporteurship was made aware during the visit of public contestations regarding the impositions of such measures, especially by opposition actors but also by independent human rights defenders. The Rapporteurship notes that some of the complaints heard originate from persons under investigation, or targeted by restrictive measures. This perspective is important for the Rapporteurship's assessment, but this status also means that these persons have particular interests in the presentation of such complaints and the characterization of State action. At the same time, there are clashing perspectives presented to the Rapporteurship stemming from deeply held individual beliefs, which may not always align with Inter-American standards. It must be noted that it falls outside of the scope of this report to reach any conclusions about specific cases, as this is

<sup>184</sup> The Rapporteurship has not compiled a list of all such judicial proceedings, but for one example that illustrates the powers of the Federal Police to request the opening of specific judicial proceedings, STF, [Ação Penal 2508](#).

<sup>185</sup> The Inter-American Court has stated that not only final decisions, but also interim measures, including ones that restrict personal liberty, can have, in some cases, effects on the enjoyment of the right to freedom of expression (Inter-American Court of Human Rights, Case of Usón Ramírez v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 20, 2009, para. 81).

<sup>186</sup> STF, Pet 10.543/DF, [Decision of August 19, 2022](#).

<sup>187</sup> El País, [Pressured by STF, Facebook blocks globally accounts of Bolsonaro supporters](#), August 1, 2020; CNN Brasil, [Facebook follows Moraes' order and blocks globally bolsonarista accounts](#), August 1, 2020.

<sup>188</sup> STF, [STF determines reactivation of social media accounts of elected congressman Nikolas Ferreira](#), January 26, 2023.

<sup>189</sup> STF, [STF determines preventive detention of former Federal District Security Secretary and former General Commander of PMDF](#), January 10, 2023; STF, [Minister Alexandre de Moraes maintains preventive prison of Zé Trovão](#), September 21, 2021.

<sup>190</sup> CNN Brasil, [Moraes determines inclusion of Oswaldo Eustáquio in Interpol wanted list](#), July 31, 2023; Poder360, [Interpol and USA challenge Moraes on Allan dos Santos](#), March 23, 2025.

<sup>191</sup> Abraji, [Abraji questions the prohibition of interviews by target of investigations to Folha](#), August 28, 2024; STF, Pet. 12.100, [Decision of July 3, 2025](#).

<sup>192</sup> O GLOBO, [Moraes prohibits communication between targets of Abin inquiry and attempted coup inquiry](#), July 16, 2024; Migalhas, Tempus Veritatis: [Moraes clarifies he did not prohibit communication between lawyers](#), February 16, 2024.

<sup>193</sup> O GLOBO, [In house arrest, Roberto Jefferson receives visitations and directs manager change in PTB; listen to audio](#), August 4, 2022; Folha de S. Paulo, [Understand Roberto Jefferson's prison and Moraes' orders against him](#), October 24, 2022.

<sup>194</sup> As one example, STF, Pet. 10.391, [Decision of February 28, 2023](#).

<sup>195</sup> STF, Pet. 10.391 AgR, November 11, 2022.

the purview of the system of individual petitions and cases, which can only act after the Brazilian courts have been able to analyze the cases. In any case, the Rapporteurship considers that, under the rule of law, there is no better organ to conduct analyses of limitations than the Judiciary.

101. In any case, the Rapporteurship will analyze some of the main complaints levied against the restrictions in this context. The report will discuss the applicable international standards regarding limitations to freedom of expression. To this extent, the Rapporteurship will first discuss features present generally across all of the measures which include: (i) the secrecy and availability of information on these measures; (ii) the extension of precautionary measures that limit freedom of expression; and (iii) restrictions to being interviewed by media. This will be contextualized in accordance to milestones in the judiciary's approach to freedom of expression. The report will then discuss specific features of limitations related to social media accounts, especially (i) disputes over the volume of people impacted; (ii) notifications to the persons targeted by limitations; and (iii) the possibility of platforms to intervene in these restrictions. Each section also provides specific standards which are applicable to the topics discussed. Finally, there exists a section on generally applicable standards, including a detailed explanation of the three-part test, which the Rapporteurship reiterates must ground limitations to expression under the Convention.

## 2. General discussion of the measures adopted

### a. Limitations to the publicity of information on investigations

102. During the visit, the Rapporteurship was informed that the Federal Supreme Court conducts investigations in a confidential manner, as a way to preserve these investigations<sup>196</sup>. For example, the Rapporteurship documented that Investigations 4.781 ("fake news")<sup>197</sup> and 4.784 ("digital militias")<sup>198</sup> are still ongoing, in whole or in part, in a confidential manner. The restriction on publicity would prevent the public from knowing about precautionary measures limiting expression, including the amount of people impacted by such measures, affecting the possibility of public scrutiny of the processes. Specific ramifications of these allegations regarding social media platforms are discussed below.

103. The Rapporteurship notes that part of these claims involves an alleged unavailability of information to persons under investigation, which would generate obstacles to their right of defense. These claims are outside of the scope of this report and will not be analyzed, being under the

<sup>196</sup> Article 20 of the Penal Process Code.

<sup>197</sup> STF, Inquiry INQ 4781.

<sup>198</sup> STF, Inquiry INQ 4784.

purview of Brazilian courts, and, eventually, of the petitions and cases systems of the IACtHR. In any case, the State provided information affirming that, even when inquiries or investigations are not available to the public, all persons under investigation receive full access to pertinent documents. The judgment of ADPF 572 also states the respect for "the right of the defense attorney, in the interest of the client, to have full access to the evidence that, already documented in an investigative procedure carried out by an agency with judicial police powers, concerns the exercise of the right of defense"<sup>199</sup>.

104. During the visit, the Rapporteurship took note of criticism regarding the lack of publicly available information on the inquiries and other investigative mechanisms surrounding the attempts to destabilize the constitutional order. This criticism refers to the challenges that this secrecy imposes on public scrutiny of these measures, which concern events of paramount importance for Brazilian society. In this sense, given the lack of public information, Brazilian society would often learn of restrictive measures on public content through "leaks" and informal disclosures of orders, which are also, at times, made available in a polarized and confrontational manner<sup>200</sup>. The Rapporteurship notes that there is considerable controversy regarding the legality of such informal disclosures, with ongoing investigative proceedings on whether some disclosures stem from possible criminal intrusions into the Judiciary's systems<sup>201</sup>.

105. The Rapporteurship was alerted to the disclosure of audio recordings between former advisors to the Reporting Justice of the inquiries detailing an alleged strategy to push forward investigations and legal proceedings even without the participation of agencies such as the Attorney General's Office and the Federal Police<sup>202</sup>. According to the material disclosed, the Justice's team allegedly informally requested agencies involved in the investigation to include certain individuals or content published in the investigation, including journalists, so that the Justice could then issue restraining orders. The material also included the opinion of the individuals portrayed that the procedures carried out were irregular<sup>203</sup>.

106. The Rapporteurship notes that the Justice's office issued an official statement affirming that all procedures carried out "were official, regular, and are duly documented in the

<sup>199</sup> STF, ADPF 572, June 18, 2020.

<sup>200</sup> G1, [Social network X is suspended in Brazil after order by Moraes](#), August 31, 2024; BBC, [Moraes determines X be blocked in Brazil after Elon Musk fails to comply with judicial decision](#), August 30, 2024.

<sup>201</sup> Agência Brasil, [Minister opens investigation into alleged disclosure of confidential data](#), August 12, 2021; Jota, [Moraes orders investigation into leak of inquiry related to Bolsonaro](#), September 28, 2022; Migalhas, [Moraes orders investigation into leak of Justices' data](#), February 3, 2021.

<sup>202</sup> Folha de S. Paulo, [Moraes used TSE outside of procedure to investigate Bolsonaro supporters in the Supreme Court, messages reveal](#), August 13, 2024; BBC Brasil, [The main controversies involving Justice Alexandre de Moraes in recent years](#), August 14, 2024.

<sup>203</sup> Folha de S. Paulo, [Moraes' aide suggests strategy in audio recordings to avoid blatant use of the TSE; listen](#), August 13, 2024; InfoMoney, [Moraes' aide suggested strategy to avoid "blatant" use of the TSE, says newspaper](#), August 14, 2024.

inquiries and investigations"<sup>204</sup>. The Rapporteurship was informed that the former advisor allegedly responsible for disclosing the material is being indicted to investigate the commission of illegal acts in the alleged leak, and it has been determined that the confidentiality between him and his lawyer be breached<sup>205</sup>. The Rapporteurship notes that public officials who disclose information about alleged violations of the law should be protected from sanctions whenever they have acted in good faith, reasonably believing such violations to have passed<sup>206</sup>, and any sanctions against them should be based on proceedings that guarantee the requirements of due process, with impartial and independent bodies<sup>207</sup>. Such protections are important to prevent the intimidation of future disclosures<sup>208</sup>.

107. According to a joint statement with the United Nations Special Rapporteurship on Freedom of Expression, access to information held by public authorities is a right that can only be restricted under a strict regime of exceptions<sup>209</sup>. The Inter-American Court has also established standards regarding the power of judicial authorities to limit the publicity of cases. Article 8.5 of the American Convention establishes the general rule of publicity of proceedings, which can be restricted to protect the interests of justice. The need to preserve a functional administration of justice can allow judicial authorities to undertake proceedings under reserve, as, in certain cases, publicity may hinder an effective investigation<sup>210</sup>. In any case, this power must respect the right to defense of the accused<sup>211</sup>, who must be able to know the charges presented against themselves<sup>212</sup>. As the status of a person as “investigated” or “accused” can change suddenly, States should not wait until persons are formally accused to supply them with the information necessary for their defense<sup>213</sup>.

108. The regime for access to information on active judicial cases must be distinguished from the more general standards on the right of access to information. Under the Inter-American System, access to information is a fundamental tool for citizen control of State action and for the

<sup>204</sup> STF, Note from the office of Justice Alexandre de Moraes, August 13, 2024.

<sup>205</sup> CNN Brasil, Federal Police indict Moraes' former advisor in investigation into the Justice's conversations, April 2, 2025; UOL, Federal Police investigated even conversations between Moraes' former advisor and his lawyer, April 2, 2025.

<sup>206</sup> Inter-American Court, Case of Viteri Ungaretti and others v. Ecuador, Judgment of November 27, 2023, Preliminary Exceptions, Merits, Reparations and Costs, para. 96.

<sup>207</sup> OAS, UN, Joint Statement on WikiLeaks by the Special Rapporteurs for Freedom of Expression of the IACtHR and the United Nations, 2010, para. 3.

<sup>208</sup> Inter-American Court, Case of Viteri Ungaretti and others v. Ecuador, Judgment of November 27, 2023, Preliminary Exceptions, Merits, Reparations and Costs, para. 96.

<sup>209</sup> OAS, UN, Joint Statement on WikiLeaks by the Special Rapporteurs for Freedom of Expression of the IACtHR and the United Nations, 2010, para. 1.

<sup>210</sup> Inter-American Court of Human Rights, Case of Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, para. 45.

<sup>211</sup> Inter-American Court of Human Rights, Case of Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, paras. 45-46.

<sup>212</sup> Inter-American Court of Human Rights, Case of Girón et al. v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment of October 15, 2019, Series C No. 390, para. 45.

<sup>213</sup> Inter-American Court of Human Rights, Case of Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, para. 46.

informed participation of citizens in political life<sup>214</sup>. The Rapporteurship has already stated that the availability of information should be the rule, and its restriction, the exception<sup>215</sup>. In any case, States may restrict the disclosure of information for-reasons such as the harm it can present to privacy and safety<sup>216</sup>, and the Rapporteurship has warned of the importance of these reasons being clearly and precisely defined in national legislation<sup>217</sup>. In this regard, the Inter-American Model Law on Access to Public Information establishes categories of information that should be subject to "active transparency" by States, meaning that States should proactively collect and disclose it<sup>218</sup>.

109. The Rapporteurship notes that data on judicial investigations and inquiries are not deemed to require active transparency from States by the Model Law. Furthermore, the Rapporteurship emphasizes that the Model Law recognizes the possibility of restricting information whose disclosure could cause harm to privacy, public safety, and the confidentiality of communications, among other communications, and that these hypotheses can reasonably allow the State to withhold information on investigations.

110. With these considerations in mind, during the visit, the Rapporteurship was able to verify the existence of much public interest in information regarding State mechanisms for preventing and responding to attempts to alter the constitutional order, including the number, and permanence or otherwise, of restrictions imposed. The absence of information from the State facilitates perceptions of possible misuse of authority. In this regard, the Rapporteurship therefore urges the State to make available appropriate information on investigations and inquiries, whether completed or ongoing, that does not harm the continuity of the investigations, does not infringe on the rights of others, and is not otherwise subject to restrictions on disclosure.

111. To this end, the State may resort to partial disclosures or aggregated information when this allows for greater disclosure. As the STF has, at times, made available aggregate information on the number of restrictions<sup>219</sup>, the continuation of this strategy, at regular intervals, could prove to be fruitful. The Rapporteurship also notes that the Manila Principles request governments to publish reports on content orders that it issues to online intermediaries. As the Inter-American Court has

<sup>214</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, The Right of Access to Public Information in the Americas: Inter-American Parameters and Comparison of Legal Frameworks, OEA/Ser.L/V/II, CIDH/RELE/INF. 7/12, December 30, 2011, para. 3.

<sup>215</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, The Right of Access to Information in the Inter-American Legal Framework, OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 1/09, December 30, 2009, §12.

<sup>216</sup> OAS, Inter-American Model Law on Access to Public Information, OEA/Ser.D/XIX 12 2020, Chapter IV.

<sup>217</sup> IAC<sup>HR</sup>, Special Rapporteur for Freedom of Expression, The Right to Information and National Security, OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 24/20, July 2020, para. 7.

<sup>218</sup> OAS, Inter-American Model Law on Access to Public Information, OEA/Ser.D/XIX 12 2020, Chapter II.

<sup>219</sup> STF, Note on STF meeting with IAC<sup>HR</sup> special rapporteur on freedom of expression, February 11, 2025.

noted, the publicity given to the administration of justice is a way to bolster public confidence in the courts<sup>220</sup>.

### b. Extension of precautionary measures

112. As noted in subtitle 1 above, in the context of ongoing inquiries and investigations, the Judiciary has imposed precautionary or interim measures which limit freedom of expression. As has been previously noted, the Supreme Court and other authorities can expand the scope of these mechanisms, also extending their conclusion, due to the complexity of the facts under investigation<sup>221</sup>. An evaluation of due process elements related to the duration of these investigations is outside of the scope of this report. However, the Rapporteurship heard criticisms that the interim measures, once imposed, are not necessarily periodically reviewed to assess their necessity. For this reason, extensions to the investigations would also extend the interim measures affecting expression, which may result in extended durations that may reasonably be seen as excessive. In effect, temporary measures may take on the characteristic of measures of definitive sanctions, even though the hearing of the substantive charge has not concluded.

113. Among the measures listed as continuing in an excessive manner are the “freezing” of bank accounts and assets; the retention of seized electronic devices, allegedly after the relevant information has been extracted; the retention of passports and documents; and restrictions to social media accounts, discussed in further detail below. The Rapporteurship notes that, according to information provided by the State, the Judiciary would initially determine less restrictive measures, resorting to more severe measures only in cases of non-compliance and repeated violations. The Rapporteurship also notes that, in response to a request for clarification, the State did not provide information regarding the legal regime on the deadlines for inquiries, its periodic review, on the extension of these deadlines, and on whether there are limits to this extension.

114. The Rapporteurship understands that the inquiries, investigations, and judicial proceedings mentioned in this section deal with a complex subject matter and impact many persons. Furthermore, the inclusion of complex issues to the scope of the inquiries, such as the events of January 8<sup>th</sup>, can reasonably be expected to impact their duration, as this would mobilize additional investigative efforts. To this end, the Rapporteurship does not undertake to evaluate whether the

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<sup>220</sup> Inter-American Court of Human Rights, Case of Palamara Iribarne v. Chile, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 68.

<sup>221</sup> Correio Braziliense, [Moraes postpones for the 9<sup>th</sup> time inquiry on ‘digital militias’ that affects Bolsonaro](#), January 22, 2024; Gazeta do Povo, [Moraes postpones inquiry that looks into alleged authors of the acts of January 8, 2023](#), February 6, 2024.

inquiries or any other investigative mechanisms comply with Inter-American standards for reasonable delay.

115. The Rapporteurship also notes that, as with every measure that limits expression, interim measures must also be applied in accordance with the three-part test developed by the Inter-American System, explained in full detail below, which includes an evaluation of its necessity<sup>222</sup>. As these measures can result in significant impacts to the affected individuals' right to freedom of expression, State authorities tasked with imposing these limitations must analyze, in each case, whether such measures are needed for the continuation of investigations.

116. In any case, precautionary measures should be imposed with due attention to their duration. This determination must consider the impact that the measures, and their duration, have over the targeted individuals' right to freedom of expression and whether extended restrictions are necessary and have a legitimate purpose. To this effect, the Inter-American Court has previously warned against precautionary measures being extended indefinitely and replacing duly established sanctions<sup>223</sup>. For this reason, the Rapporteurship urges the State to ensure that precautionary or interim measures limiting expression are not in force for longer than is necessary and especially so if there is no evidence of a legitimate cause for such restrictions. This determination must be made in accordance with the demands of each specific case and measure, and can take the form of periodic reviews of such measures, or the determination of specific temporal limits for their effect.

### **c. Restrictions to journalistic interviews**

117. The Rapporteurship is aware that one contentious measure imposed in relationship with the inquiries is the prohibition for specific persons to give interviews, even in cases where such interviews were formally requested by journalistic channels<sup>224</sup>. The Rapporteurship was made aware of notes from mainstream publications and media associations claiming that such interviews are matters of public interest, precisely because of the investigated persons' alleged involvement in serious crimes and threats to institutions<sup>225</sup>. During the visit, the Rapporteurship also received feedback from civil society that measures such as the prohibition of interviews could unduly restrict

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<sup>222</sup> Inter-American Court of Human Rights, Capriles v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of October 10, 2024, Series C No. 541, para. 160.

<sup>223</sup> *Mutatis mutandis*, Inter-American Court of Human Rights, Case of Mémoli v. Argentina, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 22, 2013, Series C No. 265, para. 183.

<sup>224</sup> Abraji, Abraji questions the prohibition of interviews by target of investigations to Folha, August 28, 2024; STF, Pet. 12.100, Decision of July 3, 2025.

<sup>225</sup> Folha de S. Paulo, Moraes' censorship of interview to Folha violates freedom of expression, according to specialists, August 28, 2024; Abraji, Abraji questions STF veto to interview with former Bolsonaro aide, July 7, 2025.

the expression of individuals under investigation, as they do not only prohibit discussion of specific subjects, but restrict expression generally.

118. The State informed the Rapporteurship of the existence of restrictions provided for in Brazilian law on the ability of persons under investigation to comment on their own cases. These restrictions are intended to preserve the effectiveness of investigations and protect the regular functioning of institutions, and do not impede the general exercise of freedom of expression, but rather conduct that could compromise ongoing investigations. In the State's assessment, the need to preserve investigations would allow measures such as prohibiting the use of social media and the granting of interviews without judicial authorization by individuals under investigation.

119. The Rapporteurship understands, as noted above, that the preservation of investigations and administration of justice is a viable motive for restricting the exercise of the right to freedom of expression. The Rapporteurship notes that accused persons in Brazil are not automatically barred from discussion of *sub judice* matters, and such prohibitions to interviews are imposed in a case-by-case basis. With this in mind, the Rapporteurship emphasizes the need for any restrictions to expression – including these restrictions to interviews – to be imposed only as subsequent liabilities, and in accordance to the three-part test; as this is a particularly severe restriction to expression, it must be justified in a stringent manner.

120. The Rapporteurship recalls that it has previously called upon Brazilian authorities to consider the valuable public interest that stems from declarations by individuals under investigation or effectively serving a sentence, and that restrictions on these individuals' speech should consider the collective interest in their expression<sup>226</sup>. While remarks by individuals in this position may be inflammatory or controversial, journalists may legitimately believe that informing the public of such views held by an authority is a newsworthy practice.

### 3. Freedom of expression milestones in the Judiciary

121. During the visit, the Rapporteurship documented the perception that, given the significant threats existing against democratic institutions, the Brazilian Judiciary has played an important role in safeguarding their defense. On the other hand, the Rapporteurship documented concerns regarding historic patterns of excessive resistance from public criticism from judges across the country. The report will briefly discuss certain specific criticisms of the current STF investigations.

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<sup>226</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Annual Report 2018](#), OEA/Ser.L/V/II, Doc. 30, March 17, 2019, para. 177.

Then, it will discuss two historical concerns presented in the visit: procedures adopted by magistrates, in different levels of the State, to curb criticisms; and the allegation of misapplication of legislation that is also used in the context of combatting threats to democratic institutions.

### a. Criticisms related to the impartiality of the judges

122. This report will not fully analyze allegations regarding due process in the ongoing investigations. In any case, the Rapporteurship observes the existence of debates on the impartiality of the Supreme Court justices in investigations related to freedom of expression. To this extent, there exist criticisms which claim that the Court, or its justices, are not truly impartial, because they are "victims" and "judges" of the facts under analysis<sup>227</sup>. According to this view, as expressed in the initial petition that gave rise to ADPF 572 – filed by a political party – the Federal Supreme Court had assumed jurisdiction over an indeterminate number of facts, without clearly demonstrating compliance with Article 43 of its Internal Regulations. Furthermore, the terms in which Ordinance 69/2019 would not observe the special protection afforded to expressions of public criticism of the actions of all State authorities.

123. In this context, the Rapporteurship takes note that the former President of the Republic presented before the Court the Impeachment Motion 165. This petition aimed to bar the Reporting Justice from participating in trials relating to an attempted coup, since this Justice was alleged to be the direct victim of some facts included in the investigation. According to this view, the Justices would be direct victims of crimes such as threats, which would then be included in the investigations under their judgment, and the alleged victim of the facts should not be responsible for its judgment. The Rapporteurship emphasizes that ADPF 572 was decided by the STF to reject the alleged irregularities and affirm the validity of the invocation of Article 43 of the STF's Internal Regulations. Impeachment Motion 165 also rejected the former president's claims, affirming that there was no such conflict of interest.

124. The State did not provide specific information on the legal framework regarding such alleged conflicts of interest. In any case, State authorities consulted during the visit noted that magistrates involved in a case may be mentioned by name in offensive and even threatening content, and that this should not necessarily mean their exclusion from this case. Thus, a general rule which would bar any magistrate named by a person under investigation from participating in this case could have negative consequences; as the persons under investigation could influence the distribution of

<sup>227</sup> Revista Oeste, [Moraes is investigator, accuser, and judge, says Folha columnist](#), August 13, 2024; Migalhas, [Moraes denies being "rapporteur, judge, and victim" in attempted coup case](#), April 22, 2025.

cases in this manner. During the visit, the State also pointed out that opening investigations into offences to magistrates would, in all cases, require a complaint to be filed by the Public Prosecutor's Office, the prosecuting authority par excellence in Brazil, in order for criminal proceedings to be initiated.

125. In addition, the State affirmed that Justices do not participate in trials when the subject matter of the action relates to their individual rights, such as honor or freedom, but emphasized that personal attacks should not be confused with attacks on the democratic institutionality and the Court as a whole. In the latter cases, there would be no impediment to the participation of Justices. State authorities also informed the Rapporteurship that there existed approximately 75 appeals against arrest warrants issued in different investigations by the Court, all of which have been later upheld by the Court.

### **b. Concerns over the defense of the honor of judges and broad applications of “defense of democracy”**

126. Allegations about the initiation, by judges and other public authorities, of lawsuits meant to discourage public participation, are discussed in further detail in section E of this report. In any case, the Rapporteurship was made aware of allegations of (i) statements that unfairly characterize NGOs and human rights defenders; (ii) initiations of proceedings against persons engaging in legitimate criticism; and (iii) sentences that effectively sanction legitimate criticism. As an example of the first trend, the Inter-American Commission recently noted “criminal charges aimed at directly penalizing” the activities of human rights defenders in the case of an NGO involved in anti-corruption measures<sup>228</sup>. In this instance, after a Supreme Court justice ordered an investigation against the NGO, the Attorney General requested the closure of said investigation for lack of evidence. However, this request was not complied with<sup>229</sup>.

127. The second trend (ii) includes lawsuits initiated by judges, in different levels of the State, against journalists who published investigations related to them, including those based on public information<sup>230</sup>. As the third trend (iii) suggests, these allegedly abusive lawsuits, both initiated by judges and by other persons, often result in significant punishments. One such case refers to a journalist and a newspaper who were sentenced to pay 600,000 reais<sup>231</sup> after publishing public

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<sup>228</sup> IAC<sup>HR</sup>, Third Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc 119/25, April 15, 2025, para. 154.

<sup>229</sup> IAC<sup>HR</sup>, Third Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc 119/25, April 15, 2025, para. 154.

<sup>230</sup> IAC<sup>HR</sup>. Report 8/25. Petition 2247-21. Admissibility Report. Rubens Valente Soares. Brasil. March 10, 2025.

<sup>231</sup> Approximately 120,000 USD.

information regarding a judge's compensations, in the State of Rio Grande do Sul<sup>232</sup>. In another case, a news portal reported threats to its initiatives on women's rights; although the legal proceedings against it did not move forward, the journalists continued to report threats to their work<sup>233</sup>.

128. The Rapporteurship was also made aware of apprehensions regarding the use of tools devised to combat threats to democracy in a way that may be seen as targeting legitimate public criticisms, and other public interest speech. One such case, mentioned in section C below, refers to the takedown of articles by major newspapers describing allegations of sexual violence against a politician by his ex-wife; the decisions ordering the takedown allude to the prohibition of "hate speech" and the abolition of the State as legal bases<sup>234</sup>. The Rapporteurship was also informed of the application, in the State of São Paulo, of charges of "attempting to overthrow the State" to student protests about public transportation pricing, which was considered an overreach<sup>235</sup>.

129. The Rapporteur was unable to ascertain whether these are atypical cases in a context of more general compliance with human rights obligations or whether there is a trend of the judiciary using its authority to limit dissent. In any event, the Judiciary must be vigilant to protect and respect public interest statements, such as citizen commentary on the Judiciary, as, in general, speech specially protected by the American Convention. The Rapporteurship is also aware of a perception of self-censorship by journalists, as a part of a chilling effect generated by this context. On this point, the Rapporteurship notes that the Superior Court of Justice has stated that generic criticism of the Judiciary is permitted by freedom of expression, while personal offenses against magistrates constitute "abuse of rights"<sup>236</sup>.

130. In this context, the Rapporteurship notes that a concept discussed by both the State and different sectors of Brazilian society was that of "anti-democratic acts." This concept also frequently grounds orders in investigations conducted by the Federal Supreme Court. The State provided information to the Special Rapporteurship regarding the legal basis for the application of the concept of "anti-democratic acts." According to this information, Law 14.197/21, which replaced the National Security Law, from 1983, classified so-called "crimes against the democratic rule of law," including violent abolition of the State, attempted coup d'état, and incitement of animosity between

<sup>232</sup> GZH, The sentence against Zero Hora and Rosane de Oliveira, May 23, 2025; Consultor Jurídico, Newspaper and columnist sentenced to pay R\$ 600 thousand to judge in RS, May 23, 2025.

<sup>233</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2023, OEA/Ser.L/V/II Doc. 386, December 6, 2023, para. 324.

<sup>234</sup> Folha de S. Paulo, Moraes censors reports on assault allegations made by Arthur Lira's ex-wife, June 19, 2024; CNN Brasil, Moraes orders removal of reports with allegations by Lira's ex-wife, June 19, 2024.

<sup>235</sup> Folha de S. Paulo, Protecting the protection of democracy, January 31, 2024; Ponte, How one of the January 8 crimes is being used against the right to protest, January 18, 2024.

<sup>236</sup> STJ, Special Appeal 1.593.873/SP, 2017.

constitutional powers and the Armed Forces. Furthermore, the Brazilian Penal Code includes a section on "crimes against the democratic rule of law," subdivided into five chapters, which classify crimes against national sovereignty; against democratic institutions; against the functioning of democratic institutions in the electoral process; against the functioning of essential services; and a final chapter on common provisions.

131. According to the information received, the National Security Law represented an excessive restriction on political demonstrations opposing the government, while the new law 14.197/21 allows an adequate level of protection of freedom of expression. An example of this protection would be the legal provision that political criticism, journalistic activity, and the peaceful organization of collective interests do not constitute a crime, under the terms of Article 359-T of the Penal Code.

132. At the same time, the IACHR and RELE have already stated that States cannot sanction opinions or expressions because they are severely critical of public authorities, including those that, like anarchism or other positions radically opposed to the existing order, question the current institutional framework<sup>237</sup>. For the State to sanction expression under the charge that it incites violence, or calls for a rupture of public order, it must demonstrate that such expression has a current, real and effective possibility of leading to the commission of crimes, and is not merely an opinion, even if harsh or disturbing<sup>238</sup>. Arguably, the events leading up to and including on January 8, 2023, can receive such a treatment, whenever clear evidence exists to involve such restrictions. In a democratic society, institutions are strengthened by vigorous public debate about their functioning, not by the suppression of these opinions<sup>239</sup>. When prominent voices participate in public debate in a fact-based manner, they ensure its high quality; in contrast, when this public debate is driven by disinformation, its quality decreases<sup>240</sup>. While disinformation affects public deliberation, its presence is a consequence of plural and open debate, and undertaking to fully contain disinformation can have serious consequences to freedom of expression<sup>241</sup>. Having said that, when public debate is driven by misinformation, with incitement to violence and illicit challenges to institutionality, the issue must be viewed as both one of freedom of expression and of preserving democracy. For this reason, the

<sup>237</sup> IACHR, Report No. 27/18, Case 12.127. Merits. Vladimiro Roca Antunes et al. Cuba. February 24, 2018, para. 95.

<sup>238</sup> IACHR, Special Rapporteurship for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression: 2025 Update, OEA/Ser.L/V/II IACHR/RELE/INF. 29/25, para. 132.

<sup>239</sup> IACHR, Special Rapporteurship for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression: 2025 Update, OEA/Ser.L/V/II IACHR/RELE/INF. 29/25, para. 132.

<sup>240</sup> *Mutatis mutandis*, IACHR, Special Rapporteurship for Freedom of Expression, Guide to guaranteeing freedom of expression in the face of deliberate misinformation in electoral contexts, OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 46; IACHR, Special Rapporteurship for Freedom of Expression, Disinformation, Pandemic, and Human Rights, OEA/Ser.L/V/II, IACHR/RELE/INF. 25/23, December 2022, para. 34.

<sup>241</sup> Botero, C., *La regulación estatal de las llamadas "noticias falsas" desde la perspectiva del derecho a la libertad de expresión*, In: Alvarez, I. et al., *Libertad de Expresión: A 30 años de la Opinión Consultiva sobre la colegiación obligatoria de periodistas*, OAS General Secretariat, 2017.

Rapporteurship calls on the State to interpret concepts such as "anti-democratic acts," when used to restrict freedom of expression, strictly and only to combat expressions that have a current, real, and effective possibility of leading to the commission of crimes, but not as a way to shield institutions from criticism, even if it is forceful.

#### 4. Limitations on the use of social media accounts

133. As part of the restrictive measures imposed in an interim fashion, across inquiries, investigations and judicial proceedings, Brazilian authorities have determined limitations to the use of social media accounts. These limitations include the takedown of specific publications<sup>242</sup>; the takedown of accounts<sup>243</sup>; the prohibition of disseminating future, potentially unlawful publications<sup>244</sup>; and the prohibition of the creation of further accounts<sup>245</sup>. There also exist limitations that target individuals with close relations with defendants, under the understanding that defendants may continue to commit illicit acts through these individuals' accounts, after their own accounts have been restricted<sup>246</sup>.

134. The report will discuss three concerns related to such measures: (i) disputes over the number of affected persons and accounts; (ii) an alleged lack of notification to the persons whose content is restricted; and (iii) discussion over the ability of digital platforms to directly intervene in these proceedings. The report will then present standards which are applicable to the regulation of social media.

##### a. Dispute over number of persons affected by limitations

135. During the visit, the Rapporteurship received information from State authorities regarding the restrictions imposed on social media. This information accounts for the continued blocking of 28 profiles: 8 for threats against members of the STF, 10 for promoting anti-democratic acts, and 10 for investigations into attempted coups. No information was shared by the State on the specific investigations to which restrictions on use of social media were related. In addition, the Rapporteurship received complaints that the number of people sanctioned was unknown because of the confidential nature of the proceedings, as well as of the nature of the orders themselves.

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<sup>242</sup> STF, Inq 4.781/DF, Decision of May 2, 2023.

<sup>243</sup> STF, Pet 10.543/DF, Decision of August 19, 2022.

<sup>244</sup> STF, Inq 4.923/DF, Decision of June 13, 2023.

<sup>245</sup> STF, Pet 9.935/DF, Decision of March 19, 2022.

<sup>246</sup> UOL, Moraes prohibits Silveira's wife from creating new profiles in social networks for her husband, August 26, 2022; InfoMoney, Carla Zambelli's family has social networks taken down after orders by STF, June 5, 2025.

136. For these reasons, the Rapporteurship requested additional information from the Brazilian State regarding the number of people investigated in the inquiries conducted by the STF and the duration of these individual investigations; the number and identity of people subject to precautionary measures in the inquiries, as well as the duration and persistence of these measures; the number of social media accounts suspended, as well as the information supplied to social media companies for such suspensions; the number of arrest warrants issued, and which of these were in force or resulted in arrests; and the number of final judgments and pending judgments, indicating whether there is a deadline for their completion. The State did not provide additional information.

137. In this regard, the Rapporteurship notes that the number of profiles or individuals affected by decisions was disputed, with information received during the visit disputing the numbers presented by the State, and claims that, as far as available information would allow an estimate, the amount of accounts still suspended would range in the hundreds. Similarly, the Rapporteurship received credible information, under reserve, which plausibly estimates the number of orders to take down specific content, as part of both the inquiries and specific electoral determinations, to be substantial.

138. The Rapporteurship recalls that, as analyses of restrictions to expression require the three-part test to be undertaken, it is not possible to reach any definite conclusions solely by discussing how many such orders existed. In any case, the Rapporteurship believes, as noted above, that the availability of public information could help bolster the understanding of the Court's efforts in combatting illicit content. For this end, the Rapporteurship encourages the State, observing hypotheses in which secrecy is important for the investigations, to make available aggregated data on such orders.

#### **b. Alleged lack of notification**

139. As previously noted, the determination of orders that restrict the usage of social networks is often subject to confidentiality. In this context, the Rapporteurship was made aware of allegations to the extent that confidentiality negatively impacts the exercise of the rights to a defense by the persons targeted by such orders. This would occur in two manners: first, the person directly targeted by the order would not be notified by judicial authorities; and second, the social network

itself would not have access to the justification and motivation for such restrictions, being thus unable to relay the motivations to the affected persons<sup>247</sup>.

140. The State reported that, since takedown orders are reserved only for especially harmful content, the need for prompt removal results in the State directly ordering the social media platforms to take infringing content down. The State has also indicated that it may not always be possible to previously notify the user responsible for content deemed infringing, as the accounts may be inauthentic or anonymous. Still according to the State, such decisions are taken by the judicial authority responsible for each case, as there exist no laws that mandate or regulate explicitly such notification.

141. The Rapporteurship received complaints that orders restricting the use of social media may not always fully state the specific legal bases behind their restrictions. This omission was criticized to the Rapporteurship as not allowing the platforms to better develop their content moderation systems. In addition, the Courts are critiqued for not making it clear whether platforms may notify affected users that restrictions originate from court orders, given secrecy requirements. The State did not clarify whether platforms may inform the users of such orders or of their reasoning. The State also communicated that whether the orders present their reasoning to the platforms is also left to the discretion of each magistrate. The Rapporteurship notes that State authorities have also reported that measures restricting publicity are based on preserving the image and reputation of those under investigation, as such proceedings may involve sensitive topics<sup>248</sup>.

### **c. Ability of platforms to intervene**

142. The Rapporteurship was made aware of complaints relating to digital platforms' alleged inability to intervene in proceedings determining restrictions to their users. According to this complaint, platforms are generally not allowed to intervene in such proceedings, and would not generally have their participation allowed. The reasoning behind the demand for participation is that the restrictive orders would also impact the platform itself, not only the user or the allegedly infringing content, as the orders not only mandate specific actions out of the platforms, but also have effects on their content moderation policies.

<sup>247</sup> Folha de S. Paulo, [From censorship to secrecy, see series of controversies surrounding fake news investigation in the Supreme Court](#), February 17, 2021; UOL, [Musk's X says Moraes removed accounts without reason, but those affected received justification](#), September 3, 2024.

<sup>248</sup> Federal Republic of Brazil. Reply of the State to the Letter requesting information under article 41 ACHR n° 04-2025/543, June 12, 2025, IAC<sup>HR</sup> archive.

143. The State did not clarify whether platforms may participate in such proceedings in this capacity. In any case, the Rapporteurship is aware of specific cases in which platforms were not allowed to participate in proceedings before the Supreme Court, with the reasoning that this mechanism was not available<sup>249</sup>.

#### **d. Standards applicable to restrictions of social media usage**

144. The Rapporteurship emphasizes that all decisions by the Judiciary regarding digital content must comply with the principles of legality, legitimate purpose, necessity, and proportionality, being fully substantiated and in accordance with the requirements of due process of law<sup>250</sup>. The Rapporteurship has already established that States should avoid disproportionate sanctions on digital content, and that sanctions involving the closure of profiles and accounts will often be disproportionate as a means of combating specific publications and content<sup>251</sup>. To this point, it must be recalled that productive access to social networks has become an essential tool in participating in public debate<sup>252</sup>, so that restrictions to this access constitute meaningful limitations of the right to freedom of expression.

145. The Rapporteurship recalls that content moderation decisions made by digital platforms and States may be subject to different obligations, such that moderation measures that are permitted for platforms may not be permitted for States, and that platforms may decide to remove content that is not considered illegal by States<sup>253</sup>. In this sense, public authorities cannot pressure intermediaries to implement filtering or blocking systems as an alternative form of censorship<sup>254</sup>.

146. In general, as the blocking of *websites*, platforms, domains, or IP addresses constitutes a severe restriction on freedom of expression, they must be fully justified in accordance with the three-part test, which includes the absence of less burdensome alternative measures<sup>255</sup>. This means, for example, that the Judiciary must avoid disproportionate sanctions, with the Rapporteurship calling special attention to significant fines, orders to close profiles or accounts on social networks, and custodial sentences as measures that are usually considered disproportionate, and are only

<sup>249</sup> Agência Brasil, [STF judges social networks' appeal against Moraes decisions](#), August 30, 2024.

<sup>250</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 216.

<sup>251</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 216.

<sup>252</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 22.

<sup>253</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 218.

<sup>254</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 210.

<sup>255</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 215.

permissible in exceptional circumstances under article 13<sup>256</sup>. Even if the removal of data or publications is considered necessary, the Rapporteurship reiterates that the complete blocking of accounts or IP addresses is a severe measure, as it prevents future expressions by the user.

147. In this regard, the Manila Principles indicate that content restriction orders issued to digital platforms should, at a minimum, precisely indicate the content to which they apply; indicate the determination that the content is illegal; demonstrate the legal basis on which the decision was made; and, where applicable, indicate the duration of the restrictive measure. The Manila Principles also reinforce the importance that not only the user, but also the intermediary services, be heard before orders are issued and be able to challenge them, except in exceptional situations, where there should be a subsequent review<sup>257</sup>.

148. The Rapporteurship considers that, as a general rule, content restriction orders should clearly inform platforms of the legal basis for each request, the determination of the illegality of the content, the entity responsible for the order, and, where applicable, the duration of the order, observing requirements of legality, legitimacy, and necessity. Even in exceptional situations, where the circulation of content may cause immediate and serious harm<sup>258</sup>, removal orders must still contain the legal grounds for each request and the entity responsible for the order<sup>259</sup>.

## 5. Relevant Inter-American standards

149. Considering the points made in this section, the Rapporteurship now highlights Inter-American standards that can contribute to a collective reflection by Brazilian society, in its different sectors, including the State itself.

150. Article 13.2 of the American Convention on Human Rights makes it clear that the right to freedom of expression is not absolute. However, restrictions on this right must be established as a subsequent responsibility, and prior censorship is prohibited. The Inter-American System has a widely established standard for assessing the conventionality of a restriction on freedom of expression, known as the "three-part test," based on the provisions of Article 13.2 of the American Convention. The first step of the test is to assess whether the restriction is previously established by

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<sup>256</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 216.

<sup>257</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 206.

<sup>258</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 212.

<sup>259</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, CIDH/RELE/INF. 28/24, June 2024, para. 322.

law, both in a formal and material sense. The second step is to assess whether the restriction pursues a purpose authorized by the American Convention; as established in Article 13.2, these purposes are respect for the rights or reputation of others, or the protection of values such as public safety and public order. The third step consists of assessing whether the restriction is necessary in a democratic society, which means assessing whether it is suitable, necessary, and proportionate<sup>260</sup>. The Inter-American Court has already stated that, for a restriction to be necessary in a democratic society, the principle of proportionality of the measure must prevail. Thus, even if the restrictive measure is suitable for pursuing a legitimate purpose, it must meet an urgent social need, and the State must seek the least harmful measure among the existing alternatives<sup>261</sup>. The last stage of this assessment consists of judging whether the measure is proportional in the strict sense; that is, whether the restriction of rights caused by the measure is not excessive in view of the advantages obtained<sup>262</sup>.

151. The Inter-American Court has already affirmed that statements regarding the integrity of public officials and the exercise of public functions "enjoy greater protection," in accordance with the need to guarantee democratic debate<sup>263</sup>. The Court emphasizes that public officials voluntarily expose themselves to public scrutiny because of the function they perform. Therefore, greater tolerance for expressions that discredit them is considered a requirement of democratic pluralism, even if the expressions are shocking or disturbing<sup>264</sup>. In contexts related to public service, the Rapporteurship has stated that it is necessary for all persons to be able to question and inquire about the capacity and suitability of persons who hold such positions or who are candidates for them<sup>265</sup>. For the Court, criticism of the actions of public officials in the exercise of their duties is of "notorious public interest"<sup>266</sup>, which restricts the limitations that the State may place on such expression.

152. As stated in the Joint Declaration of the Rapporteurs on Freedom of Expression, the promotion of a free and pluralistic press and spaces for the exercise of freedom of expression are essential factors in promoting tolerance and easing social tensions. Therefore, States should refrain from seeking to sanction expressions that merely exacerbate social tensions, which tend to become an

<sup>260</sup> Inter-American Court of Human Rights, Capriles v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of October 10, 2024, Series C No. 541, para. 160.

<sup>261</sup> Inter-American Court of Human Rights, Case of Moya Chacón et al. v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 23, 2022, Series C No. 451, para. 72.

<sup>262</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2022, Series C No. 481, para. 105.

<sup>263</sup> Inter-American Court of Human Rights, Case of Kimel v. Argentina, Merits, Reparations and Costs, Judgment of May 2, 2008, Series C No. 177, para. 86.

<sup>264</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2022, Series C No. 481, para. 118.

<sup>265</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Hemispheric Agenda for the Defense of Freedom of Expression](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 4/09, February 25, 2009, para. 39.

<sup>266</sup> Inter-American Court of Human Rights, Case of Kimel v. Argentina, Merits, Reparations, and Costs, Judgment of May 2, 2008, Series C No. 177, para. 89.

abusive limitation of dissident or minority voices, preventing the full realization of public debate as a space for discussing major social tensions<sup>115</sup>. The Rapporteurs emphasized that freedom of expression is not an impediment to tolerance, but rather an essential requirement for its realization.

153. In the situation under analysis in Brazil, there are three additional variables that need to be considered. First, public authorities always have the possibility to correct, complement, and respond to the discourses that challenge them. Solutions that add information, rather than suppress it, are always preferable in situations involving citizens' right to freedom of expression regarding public authorities, regardless of which public authorities are involved. Second, the reserve applied to official information, which could provide explanations to society about the State's actions, means that it is not available for public debate. Third, the massive social impacts of misinformation arise from complex networks, with different responsibilities for the various actors involved. Actors who deliberately generate distorted information about reality play a leading role, to be distinguished from the level of responsibility of those actors who receive and are persuaded by such content and join political actions on the basis of such persuasion, but may not all be equally aware of the intention to destabilize the State.

154. As the Rapporteurship has already stated, measures taken to regulate the public sphere should not be structured around an ideal of "organized" public debate, which only allows criticism that is perceived as constructive. Thus, States must take the necessary measures to foster a public sphere based on the presence of a deliberative citizenry that is willing to engage in communicative processes to make decisions and form opinions, even if this results in the dissemination of harsh criticism and radical questioning<sup>267</sup>.

155. Furthermore, the use of criminal law to punish expressions of public interest is generally incompatible with the American Convention, constituting a disproportionate sanction. This is because people who hold public office must tolerate a higher degree of criticism due to their position<sup>268</sup>, and criminal sanctions discourage public debate and generate self-censorship<sup>269</sup>. As will be discussed in section E below, States should promote legislative changes to prevent the very initiation of proceedings aimed at applying criminal law to criticism of public authorities, since the possibility of such proceedings has a chilling effect on public debate<sup>270</sup>.

<sup>267</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Hemispheric Agenda for the Defense of Freedom of Expression](#), OEA.Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 4/09, February 25, 2009, paras. 53 to 55.

<sup>268</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Annual Report 2024](#), OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 272.

<sup>269</sup> IAC<sup>HR</sup>, Arguments before the Inter-American Court in the case of Palamara Iribarne v. Chile. Transcribed at: Inter-American Court, Case of Palamara Iribarne v. Chile, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 64.e).

<sup>270</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2022, Series C No. 481, para. 130.

156. In any case, when criminal sanctions are applied to expression, they must comply with the three-part test, in addition to meeting the strict requirements of legality specific to criminal law<sup>271</sup>. This includes defining prohibited conduct in an unambiguous manner, differentiating it from conduct that is subject only to civil sanctions<sup>272</sup>, as well as formulating offenses in a strict, express, precise, and prior manner, in accordance with the role of criminal law as the most extreme means of restricting rights<sup>273</sup>. Like all sanctions on freedom of expression, criminal sanctions must be strictly proportional to the seriousness of the conduct and imposed only as necessary to protect the legal rights in question<sup>274</sup>. Thus, the Rapporteurship emphasizes that it is essential to verify the proportionality of criminal sanctions, including custodial sentences, with the conduct assessed, and consider the possibility of imposing less severe means of punishment.

157. The Inter-American Court understands that an important procedural guarantee is that everyone has the right to be judged by impartial persons and courts, which means that judges will assess the matters before them objectively and without previously taken positions or preferences for the outcome of the proceedings<sup>275</sup>. Although impartiality is presumed, requiring proof that the judge is biased, judges must offer objective guarantees to the community regarding their impartiality, to eliminate suspicions that they are acting under influence or pressure<sup>276</sup>. The Rapporteurship is aware that the contestation of the 2022 electoral processes and all their ramifications, including so-called anti-democratic acts, are an issue that deeply mobilizes different sectors of Brazilian society. In this regard, the Rapporteurship urges State agents, especially judges, to analyze facts within their jurisdiction that are related to the deep social tensions existing in Brazil in an impartial manner, making decisions based on the law<sup>277</sup>, and considering that the widespread opacity surrounding their actions, the extended validity of precautionary measures that impact freedom of expression, and the lack of conclusive decisions contribute to a scenario of uncertainty.

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<sup>271</sup> IACtHR, Special Rapporteur for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression, OEA/Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2009, para. 72.

<sup>272</sup> Inter-American Court of Human Rights, Case of Usón Ramírez v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 20, 2009, Series C No. 207, para. 55.

<sup>273</sup> Inter-American Court of Human Rights, Case of Palamara Iribarne v. Chile, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 63; Inter-American Court of Human Rights, Case of Kimel v. Argentina, Merits, Reparations, and Costs, Judgment of May 2, 2008, Series C No. 177, para. 55.

<sup>274</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression: Update 2025, OEA/Ser.L/V/II CIDH/RELE/INF. 29/25, para. 151.

<sup>275</sup> Inter-American Court, Case of Huilcamán Paillama et al. v. Chile, Merits, Reparations and Costs, Judgment of June 18, 2024, Series C No. 527, para. 121.

<sup>276</sup> Inter-American Court of Human Rights, Case of Apitz Barbera et al. v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 56.

<sup>277</sup> Inter-American Court of Human Rights, Case of Amrhein et al. v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of April 25, 2018, Series C No. 354, para. 385.

## 6. Conclusion on limitations to freedom of expression in the Brazilian context

158. The Rapporteurship reiterates that Brazil is a democratic State, holding free and fair elections, with institutions that adhere to the democratic rule of law. Under grave threats to this institutionality, the Judiciary played an important role in combating movements contesting the election results and Brazilian democratic institutions themselves. These extraordinary threats demanded from the Judiciary tools which, according to its own decisions, are extraordinary. According to credible accounts, this was paramount in safeguarding Brazil's institutionality. Even if this is so, the Rapporteurship urges all State bodies to ensure that extraordinary initiatives implemented to defend democracy, or any other legitimate objective do not continue longer than necessary.

159. Although the organization of serious crimes, such as acts that sought to disrupt institutions, requires a response from the State, the Judiciary must be careful not to expand the scope of limitations designed for extraordinary moments to legitimate political opinions. In this context, the Rapporteurship must call into focus Brazil's longstanding challenges, across distinct bodies of the Judiciary, regarding restrictions to the expression of human rights defenders, journalists, and political activists. These challenges predate the investigation into a possible coup and the overthrow of Brazilian institutions. The Judiciary should strive to create precedents which actively seek to differentiate between these illicit behaviors and legitimate criticisms. Extraordinary tools and restrictions on expression and speech should be used only where compliant with the three-part test.

160. In considering speech restriction measures in the context of criminal proceedings, the Court should take into account that the movements which organized threats to Brazilian institutionality are composed of participants with distinct levels of command, responsibility and participation. The accountability of persons who occupy leadership roles should be distinguished from that of the persons who were called to demonstrate by such leaders. To this extent, the Rapporteurship welcomes recent advancements<sup>278</sup> in the APs 2668 and 2694, which investigate alleged leaders, and urges the State to bring it to completion in a timely manner.

161. As a positive example, the Rapporteurship highlights the information made available to it regarding the final conviction, related to the Fake News Inquiry, of a former congressman. In February 2021, the congressman released a video with statements described by Senate channels as

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<sup>278</sup> STF, STF enters the final allegations stage in penal case about attempted coup d'état, June 27, 2025; STF, AP 2.694, Decision of July 7, 2025.

"[defense] of Institutional Act No. 5"<sup>279</sup>, previously described by the IAC<sup>HR</sup> as a "grave setback (...) to fundamental rights"<sup>280</sup>. The congressman's arrest was ordered by the Federal Supreme Court, which deemed the statements not to be protected by parliamentary immunity<sup>281</sup>. In accordance with the Constitution, the Chamber of Deputies also approved the arrest<sup>282</sup>. Restrictive measures were imposed on his wife in 2022, despite her not being directly involved in any proceedings or investigations, on the understanding that the congressman could use such channels<sup>283</sup>.

162. As further discussed in section G below, public authorities have special duties regarding freedom of expression, which include undertaking reasonable efforts to verify the facts that support their statements, and the protections afforded to public authorities should not be seen as absolute. With this in mind, this case exemplifies a restriction on freedom of expression applied because of comprehensive judicial proceedings, with ample possibility for the participation of the defendant, requiring also the cooperation of other State organs. The ample availability of public information regarding the restriction allowed Brazilian society to vigorously debate it, with the persistence of criticisms and beliefs of its overreach. In this sense, this case is representative of the importance of reaching definitive sentencing regarding the imposition of limitations to expression, as well as of the positive impacts fostered by publicity.

163. While investigations into attempts to destabilize the constitutional order continue, the State must continuously evaluate the importance of maintaining interim measures that limit freedom of expression, taking account the current degree of risk and the impact of these measures on the rights of the affected persons. Judicial authorities must continuously evaluate whether precautionary measures that limit freedom of expression are indispensable to preserve investigations, or whether such limitations can be relaxed.

164. State authorities, especially the Judiciary, should also strive to notify users and platforms of limitations placed on the use of social networks and other channels of freedom of expression. Except for very urgent cases, users and platforms should be able to contest them before they begin to take place. While exceptional circumstances can modify this notification, it should, as a general rule, contain an explanation of the order adopted and the illegality of the specified content.

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<sup>279</sup> Chamber of Deputies, [Congressman Daniel Silveira arrested by order of Justice Alexandre de Moraes](#), February 17, 2021.

<sup>280</sup> IAC<sup>HR</sup>. Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97, Doc. 29 rev.1, September 29, 1997, Chapter I.B, para.

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<sup>281</sup> Supreme Court, [Unanimously, Plenary upholds arrest of federal congressman Daniel Silveira \(PSL-RJ\)](#), February 17, 2021.

<sup>282</sup> UOL, [Chamber decides to uphold Daniel Silveira's arrest as determined by the STF](#). February 19, 2021; Metrópoles, [Chamber upholds Daniel Silveira's arrest for attacks on democracy](#), February 19, 2021.

<sup>283</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Annual Report 2022](#), OEA/Ser.L/V/II Doc. 50, March 6, 2023, para. 233.

165. The Rapporteurship understands that the attempts to destabilize Brazilian democracy still generate consequences, and its investigations are crucial in enabling Brazilian society to fully understand the risks and overcome the threats. The prolongation of investigations and the adoption of secrecy may be legitimate and useful; at the same time, they can also contribute to the uncertainty experienced in Brazil regarding the judicial mechanisms. To this extent, the Rapporteurship notes the importance of wide-ranging public discussion. Since the events deeply concern many sectors of society, the State should endeavor to make available to society the most information possible, facilitating public debates across the deep political and social divide currently existing in Brazil.

### C. Combating unprotected speech, including hate speech

166. *The right to freedom of expression is also protected by the appropriate attribution of subsequent responsibilities. The American Convention on Human Rights imposes the duty to sanction certain speech, as provided for in Article 13.5. This provision prohibits propaganda in favor of war and advocacy of national, racial, or religious hatred that constitutes incitement to violence.*

167. The Rapporteurship was informed of a longstanding absence of measures to combat unprotected speech, such as discriminatory remarks related to historically vulnerable groups. During the visit, the reports received are consistent with the pattern already identified by the IACHR, of an increase in speech that incites violence for "discriminatory reasons in the public space and on social media, especially in relation to women, LGBTI persons, Afro-descendants from urban sectors, or social movements fighting for land, housing, and the environment."<sup>284</sup> In 2021, the Commission also found that "many of these comments on social media originated from or were endorsed by officials or candidates for elected public office"<sup>285</sup>. The Special Rapporteurship has also recorded threats to the life and integrity of persons belonging to vulnerable groups. This context includes reports of episodes of political violence, regional prejudice, and threats to journalists<sup>286</sup>. Another point of particular concern relates to speeches that incite violence against members of African-based religions, with the Rapporteurship recording episodes it has previously defined as "religious racism"<sup>287</sup>.

168. The Rapporteurship has documented the growth of neo-Nazi movements in Brazil, with studies recording more than 500 active cells<sup>288</sup>. The phenomenon of forming closed communities

<sup>284</sup> IACHR, Situation of Human Rights in Brazil, OEA/Ser.L/V/II, February 12, 2021, para. 493.

<sup>285</sup> IACHR, Situation of Human Rights in Brazil, OEA/Ser.L/V/II, February 12, 2021, para. 493.

<sup>286</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2022, OEA/Ser.L/V/II Doc. 50, March 6, 2023, para. 256.

<sup>287</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2022, OEA/Ser.L/V/II Doc. 50, March 6, 2023, para. 321.

<sup>288</sup> G1, Neo-Nazi groups grow 270% in Brazil in 3 years; scholars fear that online presence will spill over into violent attacks, January 16, 2022; Piauí, Neo-Nazi cells proliferate in Santa Catarina, May 5, 2023.

to spread extreme content is also used to organize Nazi communities<sup>289</sup>. This has resulted in the creation of a National Plan to Combat Neo-Nazi Cells and Hate Speech in Brazil, which includes the creation of an observatory<sup>290</sup>. This plan would aim to map such cells and neo-Nazi manifestations, articulating strategies to combat them and seeking dialogue with multilateral organizations. The State reported that it is in ongoing dialogue with specialized United Nations agencies regarding the fight against the neo-Nazi movement.

169. The Rapporteurship was alerted to the organization of campaigns to create and disseminate extremist and violent discourse on social media through coordinated and inauthentic behavior. The Rapporteurship notes the perception that the absence of clear regulation on the matter, coupled with a perceived incentive for social media platforms to promote controversial content due to its high engagement, facilitates the spread of such violent discourse.

170. The Rapporteurship was alerted to incidents of armed violence in schools, allegedly motivated by incitement to crime on social media. This phenomenon includes attacks with knives and firearms on schools, partly caused by the spread of hate speech on the internet<sup>291</sup>. The Rapporteurship was alerted to the use of digital platforms based on the formation of closed groups for sharing content that depicts episodes of extreme violence, as well as the planning of such episodes. Furthermore, these communities are allegedly used to organize harassment campaigns and to disseminate intimate material without consent, including minors.

171. The Rapporteurship notes that the State reported the opening and maintenance of a channel for reporting threats to schools<sup>292</sup>. In addition, there is a strategic plan for the prevention of so-called extreme violence in schools, as part of the School Protection Program, which includes in its mission the prevention of technology-facilitated violence<sup>293</sup>. The Rapporteurship documented that, as part of the Program, the Ministry of Justice issued Ordinance 351, which establishes obligations for social media platforms to cooperate with Operation Safe School<sup>294</sup>. These obligations include the adoption of measures to "monitor, limit, and restrict" content related to extreme violence, including "limiting the spread of such content"<sup>295</sup>. In addition, platforms must share with public authorities the

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<sup>289</sup> Gazeta do Povo, [How the criminal network led by teenagers that promoted barbarism live worked](#), May 15, 2025; Agência Gov, Rio de Janeiro Police and Ministry of Justice arrest group that would attack homeless men to broadcast online, April 20, 2025.

<sup>290</sup> National Council on Human Rights. Summary of the Institutional Mission of the Special Rapporteurship on Hate Speech. Growth of Neo-Nazi Cells. November 2024. IACHR Archive.

<sup>291</sup> Jornal da USP, [There were 36 attacks on schools in Brazil between 2002 and 2023](#), February 19, 2024; G1, [In 3 years, Brazil has had 27 attacks of extreme violence in schools: why so many cases?](#), June 3, 2025.

<sup>292</sup> Gov.br, [Operation Safe School](#), October 21, 2024.

<sup>293</sup> Gov.br, [School that Protects](#), June 6, 2025.

<sup>294</sup> Ministry of Justice and Public Security, [Ordinance n. 351/2023](#), April 12, 2023.

<sup>295</sup> Ministry of Justice and Public Security, [Ordinance n. 351/2023](#), April 12, 2023.

identification data of the people responsible for such types of content, and platforms are instructed to adopt security measures based on *the hash* identification of illegal content.

172. The State relayed information documenting the actions of the National Attorney General's Office for the Defense of Democracy against Meta, through extrajudicial notifications<sup>296</sup>. The motivation for this was the announcement of changes in content moderation policies that, for the Attorney General's Office, would no longer guarantee an adequate level of protection against hate speech. The State also reported that digital platforms must ensure terms of use that prohibit hate speech and other illegal practices<sup>297</sup>. In addition, various State agencies, such as the Citizen Rights Prosecutor's Office, have issued extrajudicial notifications and initiated civil lawsuits against television presenters who have expressed hate speech on their programs. On at least one occasion, these actions have resulted in compensation for collective moral damages<sup>298</sup>.

173. However, the Rapporteurship's view is that the Brazilian strategy to combat unprotected speech is not based on sufficiently specific definitions of the types of speech to be combated. Thus, more generally, the Rapporteurship has expressed concerns that vagueness in legal definitions of unprotected speech creates a risk of unwarranted limitations on public debate on issues of public interest. Even where the criteria for limitations are clear, the risks remain of judicial overreach in their application. One example brought to the Rapporteur's attention is the Federal Supreme Court order to remove journalistic articles on allegations of sexual violence against a high-ranking public official, on the grounds that hate speech and subversion of the democratic order are not protected by freedom of expression<sup>299</sup>. After widespread public outcry, the content was restored<sup>300</sup>, amid criticism that this was "censorship" and that the change in the court's position was due to the negative repercussions<sup>301</sup>.

174. The State informed the Rapporteurship that there is no legal definition for "hate speech," but that there are judicial decisions that regulate unprotected speech, including hate speech. One such decision is the "Ellwanger case", which defines hate speech as outside the acceptable limits of freedom of expression. In addition, the fight against hate speech would stem from constitutional

<sup>296</sup> Federal Republic of Brazil. Reply of the State to the Letter requesting information under article 41 ACHR n° 04-2025/543, June 12, 2025, IACHR archive.

<sup>297</sup> Federal Republic of Brazil. Reply of the State to the Letter requesting information under article 41 ACHR n° 04-2025/543, June 12, 2025, IACHR archive.

<sup>298</sup> CNN Brasil, "[Raça desgraçada": apresentador Sikêra Jr é condenado por falas contra LGBTI](#)", 20 de novembro de 2024; Veja, [RedeTV! e Sikêra Jr são condenados por homofobia em valor milionário](#), 28 de janeiro de 2025.

<sup>299</sup> Folha de S. Paulo, [Moraes censors reports on assault allegations made by Arthur Lira's ex-wife](#), June 19, 2024; CNN Brasil, [Moraes orders removal of reports with allegations by Lira's ex-wife](#), June 19, 2024.

<sup>300</sup> Folha de S. Paulo, [Report cannot be equated with hate speech cited by Moraes, say experts](#), June 19, 2024; O GLOBO, [Entities criticize Moraes' decision to order the removal of reports about Lira's ex-wife](#), June 19, 2024.

<sup>301</sup> Piauí, [Censorship under the pretext of democracy](#), June 24, 2024; DW, [Who are the targets of profile blocking orders on X](#), September 3, 2024.

mandates to protect human dignity and from laws such as the so-called Racism Law (Law 7,716). The State also reported that the Federal Supreme Court ruled in 2021 that the crime of racial slurs is not subject to a statute of limitations.

175. In the electoral context, the Rapporteurship documented initiatives by the Superior Electoral Court to present a list of speeches that, in its opinion, pose a "risk" to the electoral process, with digital application providers being obliged to remove them "immediately" during the electoral period, under penalty of being jointly liable for the content. According to Article 9-E of TSE Resolution 23,610, such speech includes "hate speech, exemplified by racism, homophobia, Nazi or fascist ideologies, or hatred against individuals or groups on the basis of race, color, origin, sex, age, religion, or any other form of discrimination." Other provisions of electoral law contain similar prohibitions, such as Article 243 of the Electoral Code, which prohibits war propaganda and propaganda that disparages women or race, color, or ethnicity.

176. The Rapporteurship noted criticism that, despite the legal classification of forms of unprotected speech, its judicial application would at times be nonspecific. This allegedly results in a lack of explanation of the specific prohibition used to limit expression, with episodes of the same expression being classified as falling under several prohibitions. In this sense, the prohibition of hate speech could be invoked as a basis for restricting disparate expressions, without demonstrating why each conduct constitutes hate speech.

177. The Rapporteurship recorded two prominent cases in Brazilian society that bring attention to the role of the judiciary in balancing the right to non-discrimination and freedom of expression, including the limits of academic and artistic expression. The Rapporteurship noted a decision by the Federal Supreme Court that ordered the seizure and destruction of legal books where the material was assessed by the STF as "homophobic, prejudiced, and discriminatory towards the LGBTQIA+ community and women." The available copies of the books were collected, with orders for their destruction, in addition to the imposition of compensation for collective moral damages<sup>302</sup>.

178. The Rapporteurship was also alerted to the imposition of prison sentences of more than 8 years on a comedian based on remarks made during a comedy show, which were characterized as hate speech, racism, and discrimination against different vulnerable groups. The Rapporteurship was informed that, according to Brazilian law, the classification of crimes of discrimination considers their commission through "social media" or "for entertainment purposes" as aggravating factors. The imposition of these restrictive measures on freedom of expression has been questioned by those who

<sup>302</sup> STF, Extraordinary Appeal with Appeal 1.513.428/PR, October 31, 2024.

consider that the expressions under consideration could not be characterized as hate speech and that the restrictions imposed were disproportionate and may have a chilling effect.

179. The Rapporteurship reiterates that States must combat hate speech as a way of guaranteeing the protection of human rights and promoting an environment conducive to freedom of expression<sup>303</sup>. Even in contexts of public interest, where vigorous political debate must be preserved, fostered, and expanded, the Rapporteurship has already expressed concern about statements that may generate violence, discrimination, or human rights violations<sup>304</sup>. A defense of the right to freedom of expression that ignores the duty to combat such discourse is not only contrary to Article 13.5 of the American Convention, but also fails to recognize that hatred also generates silence by excluding vulnerable people from public debate<sup>305</sup>.

180. Without prejudice to the foregoing, the Rapporteurship emphasizes that all restrictions on freedom of expression must comply with the three-part test established by the Inter-American Human Rights System, which involves legality, the pursuit of objectives authorized by the American Convention, and the necessity in a democratic society<sup>306</sup>. The legality of restrictions on freedom of expression requires specificity and precision in defining what conduct is prohibited<sup>307</sup>. The Rapporteurship has previously recognized the particular importance of combating hate speech through specific rules, since vagueness in this area can compromise the exercise of freedom of expression on matters of public interest<sup>308</sup>.

181. For the fight against hate speech to be effective, it is important to clearly define this concept. Thus, the Rapporteurship recommends that strategies to combat hate speech follow the parameters defined in the United Nations Rabat Action Plan<sup>309</sup>. Otherwise, vague definitions may give rise to interpretations that compromise the exercise of freedom of expression on matters of public interest<sup>310</sup>. According to this instrument, the characterization of expression as hate speech should occur in a contextual, rather than semantic, manner, based on six factors: (1) social and political

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<sup>303</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2024, OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 440.

<sup>304</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Press Release R126/21, The Special Rapporteurship for Freedom of Expression calls on persons who hold or aspire to hold elected office in Peru to contribute with their discourse to the protection of human rights, May 17, 2021.

<sup>305</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Special Report on the Situation of Freedom of Expression in Peru, OEA/SER.L/V/II, CIDH/RELE/INF26/23, December 2023, para. 270.

<sup>306</sup> Inter-American Court of Human Rights, Case of Tristán Donoso v. Panama, Preliminary Objection, Merits, Reparations and Costs, Judgment of January 27, 2009, Series C No. 193, para. 56.

<sup>307</sup> Inter-American Court of Human Rights, Case of Moya Chacón et al. v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of May 23, 2022, Series C No. 451, para. 72.

<sup>308</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression and Rapporteurship on the Rights of LGBTI Persons, Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas, November 12, 2015, para. 3.

<sup>309</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2024, OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 442.

<sup>310</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression and Rapporteurship on the Rights of LGBTI Persons, Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas, November 12, 2015, para. 3.

context; (2) the position or *status* of the speaker; (3) intention to incite the audience against a particular group; (4) the content and form of the speech; (5) the extent of its dissemination; and (6) the likelihood of causing harm, especially imminent harm<sup>311</sup>. Speech that is considered hate speech according to these dimensions should be sanctioned by the State, under penalty of violating the conventional obligation imposed by Article 13.5 of the ACHR. In turn, intolerant expressions and comments that do not strictly constitute "incitement to violence" may – in light of Article 13 of the ACHR, this is not mandatory – be subject to the establishment of further responsibilities, in accordance with Article 13.2 of the American Convention.

182. However, a legal framework focused solely on repressive strategies against hate speech will not be able to address the cultural roots of discriminatory practices. In Brazil, the Rapporteurship welcomes the existence of the National Plan for Human Rights Education as a public policy that influences the fight against hate speech. Under the National Plan, specific courses would be conducted on confronting and preventing hate speech and extremism, as well as courses that teach how to deal with violence and digital attacks. These courses would be partially organized in cooperation with civil society and would have frequent activities. In addition, the Ministry of Human Rights and Citizenship launched the portal "Opinion or Hate?" to raise awareness in society about combating extremism<sup>312</sup>. The Federal Prosecutor's Office for Citizens' Rights would also hold courses and seminars with the participation of civil society, dealing with the regulation of unprotected speech and freedom of expression.

183. The Rapporteurship insists that effectively combating hate speech requires a comprehensive and continuous approach that includes but goes beyond legal measures. States must adopt preventive and educational mechanisms. Thus, the State should encourage greater participation by people in vulnerable situations in institutional and formal channels for exercising the right to freedom of expression, including the media. These measures are in line with the observation that "in the face of unequal opinions, there is no better response than the justice of arguments, and this requires more and better discourse, not less"<sup>313</sup>. The promotion of *counter-speech* measures is another example of measures that combat hate speech by increasing the circulation of complementary information around illegal expression.

<sup>311</sup> UN, Annual Report of the United Nations High Commissioner for Human Rights, Report on the expert meetings on the prohibition of incitement to national, racial, or religious hatred, A/HRC/22/17/Add.4, January 11, 2013.

<sup>312</sup> Ministry of Human Rights, Hate or Opinion?, 2024.

<sup>313</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Annual Report 2010, Chapter II, OEA/Ser.L/V/II, Doc. 5, March 4, 2011, para. 50.

## D. Combating deliberate misinformation

184. *Deliberate misinformation, which has been understood by the Rapporteurship as "the massive dissemination of false information with the intention of misleading the public and with the knowledge of its falsity," is not a new phenomenon, but it has taken on new contours in the digital age. Concerns about this phenomenon are legitimate, as it constitutes an obstacle to the functions that the right to freedom of expression should perform in a democratic society. Combating misinformation requires a comprehensive perspective on the phenomenon, including initiatives that empower citizens to discern true from false information and that may include sanctions. However, blanket bans on "fake news," based on vague or ambiguous concepts, do not comply with international human rights standards.*

185. The Rapporteurship has taken note of growing concerns about the phenomenon of disinformation in Brazil. The Rapporteurship has been informed that there have been organized campaigns of deliberate disinformation on topics of public interest, which have had negative effects in the country.

186. Thus, the Rapporteurship has registered concerns about disinformation regarding the COVID-19 pandemic, which aims to discredit scientific evidence and recommend ineffective or dangerous treatments to combat the disease. On this point, in 2022, the Inter-American Commission affirmed the existence of cases of "dissemination of information with no scientific basis (...) by high-level authorities" in Brazil, in relation to the COVID-19 pandemic<sup>314</sup>. The Rapporteurship was informed that communicators dedicated to combating misinformation about health had encountered restrictions on their activities, including the filing of lawsuits<sup>315</sup>.

187. The Rapporteurship also recorded descriptions of disinformation campaigns organized around issues of access to sexual and reproductive health, including the discrediting of sex education initiatives, which included false allegations of the distribution of material to children by the public education system<sup>316</sup>. Misinformation also affected the organization of the Brazilian economic and tax system. Similarly, there were disinformation campaigns regarding the organization of Brazilian elections, spreading the message that votes were not being counted properly and that the Brazilian system allowed for widespread fraud through electronic voting machines. The Rapporteurship documented episodes of disinformation regarding the floods in Rio Grande do Sul, with stigmatizing

<sup>314</sup> IAC<sup>HR</sup>, Pandemic and Human Rights, OEA/Ser.L/V/II, Doc. 396, September 9, 2022, , para. 86.

<sup>315</sup> STF, STF suspends ruling against scientists who explained that diabetes is not caused by a parasite, 30 de setembro de 2024.

<sup>316</sup> Agência Lupa, Video about sex education "primer" for children is old; book was never distributed in public schools, July 7, 2021; Piauí, From the penis-shaped baby bottle to the unisex bathroom, October 28, 2022.

statements against journalists and hostilities during reporting by members of the public<sup>317</sup>, which hindered the population's access to reliable data on what happened<sup>318</sup>.

188. Concerns were expressed that misinformation reaches a wider audience on social media than reliable news, especially in matters relating to human rights, which would make it difficult to organize rectification campaigns. The Rapporteurship notes reports that public authorities, including members of the National Congress, were allegedly involved in the planning and execution of these campaigns and used the wide reach afforded by their position to deliberately spread misinformation. In addition, the Rapporteurship notes concerns about the growing use of artificial intelligence tools to generate manipulated images and videos for the purpose of misinformation.

189. The Rapporteurship noted the organization of State campaigns aimed at addressing topics targeted by misinformation, circulating complementary information to citizens. In this sense, the Ministry of Health organized several initiatives related to misinformation in the area of health, such as the provision of public health data and the dissemination of data from the Ministry<sup>319</sup>. In addition, the Ministry's communications office was responsible for preparing material for the public on campaigns to provide vaccines and medicines, seeking to refute false information disseminated<sup>320</sup>. Furthermore, the Ministry is part of an interministerial initiative called "Health with Science," which aims to combat misinformation about health by responding to misleading content. The initiative includes the Presidency's Social Communication Secretariat, the Attorney General's Office, the Comptroller General's Office, the Ministry of Justice and Public Security, and the Ministry of Science, Technology, and Innovation<sup>321</sup>. The program gave rise to the Committee to Combat Misinformation about the National Immunization Program and Public Health Policies<sup>322</sup>. In addition, the State reported that Empresa Brasil de Comunicação manages the National Public Communication Network, which would establish partnerships with public universities and federal institutes for the operation of media outlets, which could help combat misinformation. CGI.br has developed informational material on misinformation campaigns on social media, with a section designed to educate users on how to avoid misinformation and verify sources<sup>323</sup>.

<sup>317</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2024, OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 240.

<sup>318</sup> IAC<sup>HR</sup>, Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights, Impacts of Floods in Rio Grande do Sul: Observations and Recommendations for Guaranteeing Economic, Social, Cultural, and Environmental Rights, OEA/Ser.L/V/III, Doc. 50, March 31, 2025, para. 105.

<sup>319</sup> Ministry of Health, DataSUS, TabNet.

<sup>320</sup> Ministry of Health, It's a rumor: ivermectin is not effective in combating dengue, February 5, 2024.

<sup>321</sup> Ministry of Health, About the Ministry of Health's project to combat misinformation, 2024.

<sup>322</sup> Secretariat of Social Communication, Committee to Combat Misinformation about the National Immunization Program and Public Health Policies, 2025.

<sup>323</sup> CGI.br, Internet, Democracy, and Elections Guide, Chapter 4: What can I do?, 2018.

190. The State has announced the creation of agencies specifically tasked with combating misinformation in recent years. In this regard, the National Attorney General's Office for the Defense of Democracy was created within the structure of the Attorney General's Office, with the institutional objective of "combating misinformation." The entity defines disinformation as content "intentionally disseminated with the aim of causing harm or obtaining undue advantage," which causes "negative impact on public policy or damage to the legitimacy of the role of public officials," and has "achieved wide reach or repercussion"<sup>324</sup>. In this context, an especially important norm is Ordinance PGU/AGU No. 16, which establishes the Office for the Defense of Democracy. This Ordinance also defines the scope in which this organ can act, stating that cases of disinformation that are not subject to "wide reach or repercussion" should not be considered potentially harmful<sup>325</sup>. Furthermore, the Attorney General's Office could not act in cases of "statements typical of political rhetoric"<sup>326</sup>, including cases that would challenge parliamentary immunity. The Attorney General's Office has acted in 153 cases, including judicial and extrajudicial proceedings, according to information from the State<sup>327</sup>. The entity emphasizes that it does not proactively monitor social networks and that it does not have police powers.

191. According to information presented by the State, the agency has the unique distinction of managing the fight against disinformation independently of intelligence agencies, addressing the public damage caused by disinformation judicially and extrajudicially. The AGU also created the "Observatory of Democracy," described as "an institutional environment"<sup>328</sup> designed to support the development of public policies on disinformation. The Rapporteurship learned of Federal Police operations aimed at investigating the occurrence of organized disinformation campaigns, such as those concerning false news about the floods in Rio Grande do Sul<sup>329</sup> and about the economic system<sup>330</sup>. The breadth of the AGU's mandate raises concerns about the existence of an institutional framework that is broad and at times vigilant of expressions that are part of the public debate. According to the State, this appraisal "is not supported in practice"<sup>331</sup>, as the Office for the Defense of Democracy must respect freedom of expression and the plurality of ideas. The State noted that the

<sup>324</sup> Attorney General's Office, National Prosecutor's Office for the Defense of Democracy, 2024.

<sup>325</sup> PGU/AGU Ordinance No. 16, Art. 7, para. 2.

<sup>326</sup> PGU/AGU Ordinance No. 16, art. 12.

<sup>327</sup> Attorney General's Office, PNDD Monitoring Panel, 2025.

<sup>328</sup> Attorney General's Office, Democracy Observatory, 2025.

<sup>329</sup> Government of Rio Grande do Sul, Information circulating in audio about flood levels in Rio Grande do Sul is fake, May 13, 2024; G1, Federal Police opens investigation into dissemination of fake news about floods in RS, May 8, 2024.

<sup>330</sup> UOL, What is behind the Pix fake news and other lies about the economy, January 16, 2025; G1, AGU asks the Federal Police to open a police investigation into fake news about PIX, January 15, 2025.

<sup>331</sup> Federal Republic of Brazil, Verbal Note 386/25, December 19, 2025, IACtHR archive.

Office must also act in accordance with parliamentarian immunities, and that the Office has deemed 34,7% of the cases presented before it to be inadmissible, for not complying with these norms<sup>332</sup>.

192. One of the main complaints registered during the visit was the spread of disinformation about Brazilian democratic institutions, particularly regarding the integrity of elections. In 2021, Law 4,737, known as the "Electoral Code," was amended to impose criminal penalties to combat disinformation in digital environments. Article 323 imposes a prison sentence, which can be replaced by a fine, for the dissemination of facts known to be "untrue in relation to parties or candidates" that may influence the electorate, and the 2021 reforms added higher penalties if the facts occur through social media. The Rapporteurship notes that the State investigates complaints that there existed a "misinformation center" linked to the events of January 8, 2023, and that this could have contributed to the organization of such acts<sup>333</sup>.

193. The Joint Parliamentary Commission of Inquiry into these acts considered that the possibility of spreading disinformation about elections is a "major global risk" and that special attention should be paid to investments in boosting the reach of such disinformation, including the hiring of inauthentic engagement<sup>334</sup>. Its report points out that, even if the creation of content classified as disinformation does not have the original purpose of deceiving, such publications can be shared like a "contagion," causing impressions that are detached from reality, which would constitute "information disorder"<sup>335</sup>. All of this would have the effect of "diminishing society's ability to discern," negatively interfering with the effective exercise of the right to vote and freedom of expression itself, by disregarding the need for accurate information in the exercise of citizenship<sup>336</sup>. A different CPMI, called the "CPMI das Fake News" (Fake News CPMI), was created to investigate "cyber-attacks" that could possibly occur in a coordinated manner<sup>337</sup>. This commission was closed before the regulatory deadline, without producing a report<sup>338</sup>. The Legislative Branch also established a Parliamentary Inquiry Commission to investigate the response to the pandemic, especially possible failures and fraud in the organization of the government's response to the spread of the disease<sup>339</sup>. This CPI signed

<sup>332</sup> Federal Republic of Brazil, Verbal Note 386/25, December 19, 2025, IACHR archive.

<sup>333</sup> O GLOBO, Federal Police points out that Bolsonaro and allies divided themselves into groups such as 'disinformation' and 'parallel intelligence': understand, November 21, 2024; BBC Brasil, How the organization that planned the coup worked and what was Braga Netto's participation, according to the Federal Police, November 21, 2024.

<sup>334</sup> CPMI on the Acts of January 8, 2023, Final Report, October 17, 2023, p. 123.

<sup>335</sup> CPMI on the Acts of January 8, 2023, Final Report, October 17, 2023, p. 124.

<sup>336</sup> CPMI on the Acts of January 8, 2023, Final Report, October 17, 2023, p. 125.

<sup>337</sup> Senate News, Fake News CPMI is established in Congress, September 4, 2019.

<sup>338</sup> CNN Brasil, Without concluding investigations, Fake News CPI is expected to end its work, May 9, 2022; Veja, Much ado about nothing: how the last CPMI opened in Congress ended, April 25, 2023.

<sup>339</sup> Federal Senate, Legislative Activity - CPI on the Pandemic, 2021.

a technical cooperation agreement with the “Fake News Commission”, with the aim of investigating false news about the contagion and the fight against the pandemic<sup>340</sup>.

194. Considering the specificity of electoral matters in this context, in addition to the Federal Supreme Court, various sectors of civil society and parliamentarians highlighted the role that the Superior Electoral Court has been playing in shaping the fight against disinformation in Brazil.

195. The Superior Electoral Court, using its authority to issue regulations applicable to elections, has issued resolutions defining some authorized causes for limiting freedom of expression, such as "notoriously untrue or seriously decontextualized facts," threats to the "integrity of the electoral process" and the "Democratic Rule of Law," and "hate speech"<sup>341</sup>. The understanding of these causes as grounds for restricting freedom of expression was applied in the judgment of electoral propaganda prior to the 2022 election, resulting in the restriction of propaganda that the Court deemed inappropriate, with the need to preserve public criticism affirmed in some cases.

196. In 2019, the TSE issued Resolution 23,610, which underwent successive amendments, especially through Resolution 23,732. The consolidated text of Resolution 23,610 includes a section on "misinformation in electoral propaganda," establishing that misinformation is subject to the right of reply, as regulated by the so-called Election Law, "without prejudice to any criminal liability"<sup>342</sup>. The Resolution specifies that "notoriously untrue or decontextualized facts" cannot be used in electoral advertising, and that internet application providers must "prevent or reduce" the circulation of this type of content<sup>343</sup>. The Court provides further details on this obligation, stipulating that application providers cannot "make available" boosting services for such illegal content. The State reiterated that Article 9 of the Resolution does not establish a duty of "truthfulness," but rather of "reliability," which would amount to a lesser requirement. Furthermore, for the State, the mention of untrue "facts" "excludes subjective statements, especially the expression of opinions, from the notion of misinformation." In addition, the requirement that the content be "notoriously" untrue "reserves the application of the rule to cases of unequivocal and categorical falsehoods, giving priority to freedom of expression in borderline cases or those subject to some level of doubt," requiring a "careful examination of the harmfulness." The State also reported that the Resolution provides a rule prohibiting anonymity, consisting of the possibility of identifying the author of a publication after the adoption of certain technical measures. According to the information provided, the absence of

<sup>340</sup> Senate News, [CPI on the Pandemic and CPMI on Fake News begin technical cooperation in August](#), July 22, 2021.

<sup>341</sup> ZINGALES, Nicolo et al., [TSE and Disinformation: Comments on TSE Resolutions](#), vol. 2, October 2024.

<sup>342</sup> TSE, Resolution 23.610, art. 9.

<sup>343</sup> TSE, Resolution 23,610, arts. 9º-C and 9º-D.

immediate identification of the author does not constitute "anonymity" for the purposes of the prohibitive rule<sup>344</sup>.

197. Furthermore, Article 9-D, para. 2, of Resolution 23,610 requires application providers that "detect illegal content" to "take immediate measures" to prevent its monetization and impede access to this content. If the content is not "immediately made unavailable," Article 9-E establishes the joint civil and administrative liability of application providers. The Electoral Court may order the removal of such content in the exercise of its police power (i.e., *ex officio*) pursuant to Article 41 of Law 9,504; and this order may require platforms to remove the content within less than 24 hours, pursuant to Article 9-F, para. 3, of Resolution 23,610. The Rapporteurship recorded criticism of this system of possible liability for digital platforms for not "immediately" removing content considered illegal, based on the perception that this liability violated the then-current rule of Article 19 of the Brazilian Civil Rights Framework for the Internet, a law discussed in detail in Section F of this Report. Furthermore, the Rapporteurship noted criticism regarding an alleged lack of public consultation in the drafting of these rules, especially in the context of few legislative developments. In addition, by requiring platforms to make content "immediately" unavailable, under penalty of liability, these rules could be interpreted as a general obligation to monitor third-party content, which was described as contrary to international platform regulation standards. In general, the TSE expresses concern about the potential for "misinformation" to affect "the legitimacy of the electoral process"<sup>345</sup>.

198. The Superior Electoral Court also issued Resolution 23.714/22, which establishes rules regarding misinformation in the electoral process. The Resolution prohibits "the dissemination or sharing of facts known to be untrue or seriously decontextualized that affect the integrity of the electoral process." Under these terms, the TSE has the power to order the removal of such content within two hours, under penalty of fines ranging from R\$ 100,000.00<sup>346</sup> to R\$ 150,000.00<sup>347</sup> for each subsequent hour. In addition, the TSE Presidency may order the removal of "identical" content by providing its identification to the platforms, under penalty of the same fines. "Repeated non-compliance" with TSE orders may result in the suspension of the platform in the national territory for up to 24 hours. Furthermore, the Resolution prohibits the dissemination of boosted or monetized political advertisements between 48 hours before the election and 24 hours after. The State reported that a preliminary injunction in ADI 7261 affirmed the constitutionality of Resolution 23,714, ruling that "it does not constitute prior censorship." This decision also affirms that the exercise of the

<sup>344</sup> Federal Republic of Brazil. Reply of the State to the Letter requesting information under article 41 ACHR n° 04-2025/543, June 12, 2025, IACtHR archive.

<sup>345</sup> ZINGALES, Nicolo et al., *TSE and Disinformation: Relevant Concepts and Their Understanding in Brazil*, vol. 1. October 2024, p. 25.

<sup>346</sup> Approximately 18,500 USD.

<sup>347</sup> Approximately 27,700 USD.

regulatory power of the Superior Electoral Court does not "usurp the legislative competence of the Union, since the Specialized Court has been dealing with the issue of combating disinformation through repeated jurisprudential precedents and normative acts, edited over the last few years." The decision is based on the possibility that fake news restricts the circulation of ideas and that disinformation restricts the free formation of voters' will.

199. Resolution 23,610 prohibits the use of generative artificial intelligence without explicit warnings. The Resolution also imposes sanctions for acts of electoral propaganda that amount to "abuse of economic power," according to its Article 10, para. 3<sup>348</sup>. Complementary Law 64 establishes consequences for the abuse of economic power that can lead to the ineligibility of candidates, but does not provide a definitive definition of this term. The State did not provide information on the number of candidates tried for alleged abuse of the right to freedom of expression in recent election periods, or on the number of electoral complaints received with requests for the removal of content and social media accounts, including electoral propaganda.

200. The Rapporteurship was informed of the existence of Administrative Inquiry 0600371-71.2021.6.00.0000, which would be conducted by the Superior Electoral Court. This inquiry would aim to investigate the existence of a "network (...) focused on the dissemination of false news or news presented in a deliberately biased manner, with the intention of influencing the population"<sup>349</sup>. In the context of this investigation, there would be requests for the application of precautionary measures such as the suspension of monetization of certain social media channels, as well as requests for the "prohibition of the use of algorithms that suggest or indicate other channels and videos with political content." The Rapporteurship requested further information from the State regarding this investigation, including the number of people affected, the legal framework for its initiation, and any relevant internal rules of the Electoral Justice system, such as the mandate of the Court's Inspector General and the establishment of competences among electoral authorities. The State did not provide this information.

201. The Rapporteurship documented that the Superior Electoral Court entered into agreements with digital social media platforms for the 2022 and 2024 elections, committing the platforms to combat electoral disinformation<sup>350</sup>. For the 2024 elections, the agreements would involve integrating the platforms' measures with the Court's Integrated Center for Combating Disinformation and Defending Democracy<sup>351</sup>. The State did not provide further details about these partnerships or its

<sup>348</sup> Ministry of Justice and Public Security, [Ordinance No. 351/2023](#), April 2023.

<sup>349</sup> TSE, [Administrative Inquiry 0600371-71.2021.6.00.0000](#), August 16, 2021.

<sup>350</sup> TSE, [2022 Elections: TSE and digital platforms sign partnership to combat misinformation](#), February 7, 2022.

<sup>351</sup> TSE, [Access the full text of the agreements with digital platforms to combat lies in the 2024 Elections](#), August 7, 2024.

assessment of their functioning. The Center would rely on the participation of various State agencies in managing a channel open to the public for reporting "false" content about electoral candidates and the organization of elections, allowing the agencies in charge of investigation to take action. The Rapporteurship requested information from the State regarding non-regulatory measures adopted by electoral authorities to combat deliberate misinformation during elections, which was not provided.

202. The Federal Supreme Court expresses the understanding that disinformation is beyond the protected limit. In this sense, the Court has already expressed concerns about the spread of information known to be false, which would be intended to "mislead"<sup>352</sup>. In addition, as described in section A above, the Federal Supreme Court included investigations into "*fake news*" in its inquiries. The purpose of the inquiries was to investigate the possible dissemination of "fraudulent news," which could potentially affect the rule of law. The STF expresses the understanding that "*fake news*" can destabilize the democratic system, and that the State has a constitutional duty to protect the system.

203. The Rapporteurship documented reports that State institutions responsible for combating disinformation applied unspecific definitions of the term in their actions, which raises concerns about the scope of State action to moderate content in relation to expressions that may be considered legitimate. In this sense, the terminology used to combat "disinformation" and other causes of designated expression limitations, such as "information disorder" and the presence of "seriously decontextualized" facts, would not meet the requirements of legality, specificity, and typicity. In this regard, the United Nations Special Rapporteurship on the Right to Freedom of Thought and Expression has recorded reports that "the guidelines for social media established by the Brazilian judiciary after the 2022 elections, while helping to curb anti-democratic elements, raised concerns in civil society about excesses, including the forced removal of numerous posts and the blocking of social media profiles ex officio and confidentially by the electoral court."<sup>353</sup>.

204. According to critics, judicial authorities often justify restrictions on freedom of expression by referring to different forms of illegal speech, without clarifying which concepts apply directly to the specific case. In addition, court decisions make generic references to the non-absolute nature of the right to freedom of expression, without subsequently presenting the arguments on which the restriction is based in view of this non-absolute nature.

205. In addition, the Rapporteurship recorded criticisms that the system developed by the State to combat disinformation could be used to limit legitimate discourse on the organization of the

<sup>352</sup> STF, MC-Ref ADI 7261/DF, 2024.

<sup>353</sup> UN, Report of the Special Rapporteurship on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, Freedom of expression and elections in the digital age, A/HRC/59/50, June 11, 2025, para. 53.

electoral process and strong criticism of candidates, which would qualify as specially protected speech. According to this perception, the State would develop initiatives aimed at combating disinformation that would amount to moderating public debate, with the aim of avoiding "informational disorder" or electors being "misled," even if by true information<sup>354</sup>, which would result in undue restriction of expression. One case described to the Rapporteurship in this way was the imposition of fines on a book written under the pseudonym Eduardo Cunha, in reference to a former parliamentarian, for misleading the public into believing the true Eduardo Cunha was the author<sup>355</sup>. The book could only be put back on sale if the author's pseudonym was removed<sup>356</sup>. The Rapporteurship requested information from the State regarding the interpretative criteria that would identify "false" or "seriously decontextualized" information from criticism considered inherent to public scrutiny, including the legal framework for this conceptualization, which was not provided.

206. One episode described to the Rapporteurship as prior censorship concerns restrictive measures imposed on content published by a media company<sup>357</sup>. This company had the stated intention of publishing a documentary about the attack suffered by the previous President, while still a candidate, on October 24, 2022, one week before the second round of the presidential elections.

<sup>358</sup>The Superior Electoral Court ruled that the release of the production should be postponed until after the polls closed, due to the possibility that the documentary could generate "informational chaos," stating that this was an exceptional measure. The measure was accompanied by the suspension of monetization of the media company's channels and other communication channels. Other productions by this company were also restricted by the Superior Electoral Court for causing "informational disorder."<sup>359</sup>

207. Among the cases cited as representative is that of a magazine, whose channels were demonetized without specific reasons being given. According to leaks of internal discussions, this restriction was allegedly adopted because it was a "coup-mongering magazine"<sup>360</sup>. In addition, the

<sup>354</sup> TSE, [TSE determines takedown of ads which offend Bolsonaro and Lula](#), October 13, 2022; Agência Brasil, [TSE orders takedown of post linking candidate Lula to corruption cases](#), October 13, 2022; Conjur, [Ill-intentioned ambiguity which confuses electors justifies suppression](#), October 14, 2022; Gazeta do Povo, [TSE and Anatel unite to expedite takedown of contents that Electoral Justice deems false](#), December 6, 2023; Estadão, [Understand "informational disorder", term used by Lewandowski and USAID](#), February 18, 2025;

<sup>355</sup> STF, [Extraordinary Appeal with Appeal 1.516.984/RJ](#), January 13, 2025.

<sup>356</sup> G1, [Moraes orders the withdrawal of the book 'Diário da cadeia' \(Prison Diary\), in which the author uses the pseudonym 'Eduardo Cunha'](#), January 16, 2025; Consultor Jurídico, [Alexandre orders the withdrawal of the book 'Diário da cadeia', signed with the pseudonym Eduardo Cunha](#), January 16, 2025.

<sup>357</sup> UOL, [TSE demonetizes Brasil Paralelo and subpoenas Carlos Bolsonaro for fake news](#), October 18, 2022; Nexo Jornal, [Against fake news, TSE demonetizes pro-Bolsonaro channels](#), October 18, 2022.

<sup>358</sup> TSE, [TSE demonetizes four channels and suspends release of documentary](#), October 20, 2022.

<sup>359</sup> Folha de S. Paulo, [TSE orders removal of post against Lula, and Moraes sees traditional media renting space for fake news](#), October 13, 2022; Gazeta do Povo, [TSE has already censored 60 pieces of content linking Lula to corruption, PCC, Ortega, and topics sensitive to the PT](#), October 20, 2022.

<sup>360</sup> Poder360, [YouTube demonetizes Revista Oeste channel](#), January 12, 2023; Folha de S. Paulo, [Moraes picked targets and asked for adjustments in reports against bolsonaristas, messages show](#), August 14, 2024.

case of a radio and television network was perceived as an undue restriction on freedom of expression, with the broadcaster being sanctioned after commentators expressed that the current President presented untrue information, during his campaign, about cases in which he was a defendant<sup>361</sup>. The Rapporteurship notes that the TSE issued a public statement regarding this case, stating that its decision should not be classified as undue, as it grants the right of reply to the parties offended by the illicit statements<sup>362</sup>. However, the Rapporteurship also notes that the measures included an order that the media outlet "refrain from promoting new insertions and statements about the facts dealt with"<sup>363</sup> under penalty of a fine.

208. Another case pointed out to the Rapporteurship as censorship has to do with the suspension of at least 11 online publications, including those of a newspaper. These publications criticized the current President, then a candidate, for his relationship with the President of Nicaragua<sup>364</sup>, and were taken down based on the notion that, even if the content was true, it could not be circulated in a "decontextualized" manner. According to the criticisms, this criterion could open the door to judgments about the editorial lines of the sanctioned media outlets. The finding of allegedly misleading content and the determination to remove it would be accompanied by very high daily fines if the content were not removed, which, if applied, would allegedly make it impossible to sustain journalistic activity. Another case reported to the Rapporteurship was the order to remove a publication from a news portal about the acquisition of real estate by the then President of the Republic and candidate for re-election<sup>365</sup>. The order was lifted by a decision made by the STF<sup>366</sup>.

209. The Rapporteurship was alerted to an alleged inhibitory effect on journalistic activity arising from the sanctions described. The possibility of fines being imposed would discourage public discussion of the actions of the Judiciary, which would be at odds with the essential functions of freedom of expression. The context was described to the Rapporteurship as one of discrediting, by public authorities, of media outlets whose editorial lines were more closely identified with opposition to the current government. In this regard, the Rapporteurship notes that the Joint Parliamentary

<sup>361</sup> UOL, [What the TSE decided about Jovem Pan](#), October 20, 2022; CNN Brasil, [Experts criticize TSE decision against Jovem Pan](#), October 19, 2022.

<sup>362</sup> TSE, [TSE did not censor radio station Jovem Pan](#), October 23, 2022.

<sup>363</sup> TSE, [Appeal in DR No. 0600922-17.2022.6.00.0000](#), decision of October 18, 2022.

<sup>364</sup> UOL, [TSE prohibits Zambelli and Bolsonaro supporters from associating Lula with Ortega: 'Untrue'](#), October 19, 2022; G1, [TSE Justice suspends 11 posts by Bolsonaro supporters linking Lula to Daniel Ortega](#), October 19, 2022.

<sup>365</sup> G1, [Judge orders removal of UOL reports on properties purchased with cash by the family](#), September 23, 2022; Gazeta do Povo, [Federal District court orders UOL to remove reports on property purchases by the Bolsonaro family](#), September 23, 2022.

<sup>366</sup> CNN Brasil, [Mendonça overturns decision ordering UOL to remove reports against the Bolsonaro family](#), September 23, 2022; Gazeta do Povo, [Mendonça approves UOL report on real estate purchases by the Bolsonaro family](#), September 23, 2022.

Commission on January 8<sup>th</sup> noted that certain media outlets were not "committed to the ethical principles of the profession"<sup>367</sup>, and the definition of such media as "supposed journalists"<sup>368</sup>.

210. Considering the essential role that access to public information plays in combating misinformation, the Rapporteurship recorded complaints of abuses in relation to the decree on the confidentiality of information related to the President and the federal executive branch in different terms of office. In previous annual reports, the Rapporteurship recorded practices of adopting secrecy for up to 100 years on information that would appear to be of public interest, on the grounds that it was private information of mandated persons<sup>369</sup>. The State informed the Rapporteurship of the existence of criteria to differentiate "private information" from "public information" for the purposes of the transparency mechanisms established by the Access to Information Law. According to the State, "personal information that must be protected is that related to the intimacy, private life, honor, and image of individuals, as well as individual freedoms and guarantees." This information would have a maximum restriction period of 100 years, and the agency denying the information must provide the period of its restriction. This restriction rule could be relaxed in cases of "general and overriding public interest." However, the State reported that "to date, there are no criteria or procedures defined in the LAI or Decree No. 7,724/12 for the agency or entity to carry out this type of public interest assessment." The State stated that, in the absence of specific regulations, some informational materials would be produced by the Federal Internal Affairs Office<sup>370</sup> to provide guidance, in addition to the preparation of "LAI statements"<sup>371</sup>. The CGU would also monitor denials of requests for access to information by public bodies and analyze cases where there was a high number of denials. In addition, the State reported the availability of a portal with information on requests for access to information<sup>372</sup>.

211. In view of the above and considering what was documented during the visit, the Rapporteurship reiterates that the phenomenon of disinformation is dynamic and cannot be restricted to a single, permanent definition<sup>373</sup>. The Inter-American Commission has previously offered a definition of disinformation as the mass dissemination of information known to be false, with the intention of misleading the public<sup>374</sup>. Although the dissemination of information known to be false is

<sup>367</sup> CPMI of the Acts of January 8, 2023, Final Report, October 17, 2023, p. 152.

<sup>368</sup> CPMI on the Acts of January 8, 2023, Final Report, October 17, 2023, p. 168.

<sup>369</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2019, OEA/Ser.L/V/II, Doc. 5, February 24, 2020, para. 229.

<sup>370</sup> Gov.br, CGU publishes the first edition of the newsletter Por Dentro da LAI (Inside the LAI), February 20, 2025.

<sup>371</sup> Gov.br, LAI Statements.

<sup>372</sup> Office of the Comptroller General, Access to Information Act Panel.

<sup>373</sup> IACHR, Special Rapporteurship for Freedom of Expression, Disinformation, Pandemic, and Human Rights, OEA/Ser.L/V/II, IACHR/RELE/INF. 25/23, December 2022, p. 15.

<sup>374</sup> IACHR, Special Rapporteurship for Freedom of Expression, Guide to guaranteeing freedom of expression in the face of deliberate misinformation in electoral contexts, OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 13.

not a new phenomenon, the speed of propagation conferred by the internet, as well as the use of the internet by users as their primary means of information, gives new attributes to the problem<sup>375</sup>. Although there is no consensus on the precise effects of disinformation, the phenomenon can cause damage to the legal rights listed in Article 13.2 of the American Convention: respect for the rights or reputation of others, protection of national security, public order, public health, and public morals<sup>376</sup>.

212. The Rapporteurship emphasizes that, according to the three-part test widely developed in the Inter-American system, restrictions on freedom of expression must be provided for by law, in both a formal and material sense, which includes the specificity and precision of the restrictions<sup>377</sup>. For this reason, the Rapporteurship recommended that States not adopt criminal offenses criminalizing "misinformation," which could result in vague and ambiguous criminal offenses<sup>378</sup>.

213. Regarding the coronavirus pandemic, the Rapporteurship opined that the spread of the pandemic is a phenomenon in which the lack of complete scientific knowledge leads to the dissemination of opinions and advice whose qualification as "true" or "false" is complex, except in extreme cases with clearly false recommendations. Thus, the Rapporteurship recommended that States avoid adopting direct restrictions on expression as a means of curbing misinformation about the pandemic, since such measures are likely to be disproportionate or unnecessary in a democratic society<sup>379</sup>.

214. The Rapporteurship recalls that States are obliged to adopt the least burdensome measures available to achieve the purposes intended by the restriction of freedom of expression<sup>380</sup>. With regard to the organization of elections, the Rapporteurship has already stated that, since the organization of elections is a matter of public interest, the expression of opinions on this subject falls, in principle, within the category of specially protected speech, and that this presumption remains valid if it is not possible to determine the veracity or falsity of the information<sup>381</sup>. Thus, the determination

<sup>375</sup> IACHR, Special Rapporteurship for Freedom of Expression, Disinformation, Pandemic, and Human Rights, OEA/Ser.L/V/II, IACHR/RELE/INF. 25/23, December 2022, paras. 20 et seq.

<sup>376</sup> IACHR, Special Rapporteurship for Freedom of Expression, Guide to guaranteeing freedom of expression in the face of deliberate disinformation in electoral contexts, OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 22.

<sup>377</sup> Inter-American Court of Human Rights, Case of Kimel v. Argentina, Merits, Reparations, and Costs, Judgment of May 2, 2008, Series C No. 177, para. 63.

<sup>378</sup> IACHR, Special Rapporteurship for Freedom of Expression, Guide to guarantee freedom of expression in the face of deliberate misinformation in electoral contexts, OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 23.

<sup>379</sup> IACHR, Special Rapporteurship for Freedom of Expression, Disinformation, Pandemic, and Human Rights, OEA/Ser.L/V/II, IACHR/RELE/INF. 25/23, December 2022, para. 29.

<sup>380</sup> IACHR, Special Rapporteurship for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression: 2025 Update, OEA/Ser.L/V/II IACHR/RELE/INF. 29/25, para. 158.

<sup>381</sup> IACHR, Special Rapporteurship for Freedom of Expression, Guide to Guaranteeing Freedom of Expression in the Face of Deliberate Disinformation in Electoral Contexts, OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 26.

that information about matters of public interest is false must be made by an authority that offers guarantees of independence, autonomy, and impartiality<sup>382</sup>.

215. The Rapporteurship emphasizes that persons in positions of public leadership, including candidates for public office and persons who hold such positions, are subject to special duties because of their position. These duties include taking reasonable measures to verify the facts underlying their statements and ensuring that such statements do not constitute human rights violations<sup>383</sup>. It is therefore particularly worrying that political leaders use their position to exploit the phenomenon of disinformation, spreading information that is known to be false through targeted advertising or institutional channels<sup>384</sup>.

216. In a Joint Declaration, the rapporteurs for freedom of expression reiterated that protecting public health and organizing democratic elections are legitimate objectives, as required by the three-part test, for restricting freedom of expression. However, any restriction on freedom of expression must be accompanied by the prior existence of a law that expressly and exhaustively defines the specific conduct that will be limited by the State, and must comply with the other requirements of the test.

217. The Rapporteurship urges the State to adopt clear and precise definitions of the causes for restricting freedom of expression. In this regard, the Rapporteurship notes that the global debate on authorized restrictions on freedom of expression uses various concepts to identify certain phenomena that should be given special attention. These concepts are not developed with the aim of immediate application in the legal sphere. While it is important for State authorities to keep up to date with international discussions on the subject, it is important to note that understandings developed outside formal legislation should not be directly applied as causes for restricting freedom of expression, since they are not the product of State bodies empowered to do so. For the Rapporteurship, concepts such as "information disorder" and "seriously decontextualized information" are not sufficiently explicit categories to meet the requirements of legality in restricting freedom of expression, as they do not provide clear and predictable boundaries between lawful and unlawful expressions. The Rapporteurship has already stated that states should avoid establishing criminal offenses based on terms such as "disinformation," since the ambiguous nature of the phenomenon may mean that this classification does not meet the necessary requirements of

<sup>382</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Parameters for a free, open, and inclusive internet, OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 17/17, March 15, 2017, para. 92.

<sup>383</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression: Update 2025, OEA/Ser.L/V/II IAC<sup>HR</sup>/RELE/INF. 29/25, paras. 417 et seq.

<sup>384</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Guide to guaranteeing freedom of expression in the face of deliberate misinformation in electoral contexts, OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, para. 24.

specificity<sup>385</sup>. Thus, while terms such as “disinformation,” “information disorder,” and “anti-democratic acts” may inform the creation of public policies and even guide the drafting of prohibitions on expression, States should establish these prohibitions in accordance with Inter-American requirements of legality and specificity.

218. Finally, the Rapporteurship emphasizes that, according to the rules set forth in Articles 8 and 13.2 of the American Convention, States are required to provide due justification for restrictions on freedom of expression<sup>386</sup>. According to the Inter-American Court of Human Rights, the motivation is “the externalization of the reasoned justification that allows one to reach a conclusion”<sup>387</sup>. To meet the requirements of the ACHR, the reasoning must make it possible to ascertain the facts, reasons, and rules on which the judiciary based its decision, so as to rule out any hint of arbitrariness, and must demonstrate to the parties that they were heard in the course of the proceedings<sup>388</sup>. Therefore, the Rapporteurship reminds the Brazilian State that, when imposing restrictions on freedom of expression, it is not enough to invoke the possibility of limiting this right. There is a duty to explain how the facts demonstrated are subsumed under the rules invoked and to state the reasons for doing so, always considering the allegations of the parties and the evidence presented.

## **E. Decriminalize *desacato*, crimes against honor, and combat strategic litigation against public participation**

219. *Criminal prosecution is one of the most severe mechanisms for restricting the right to freedom of expression. However, the imposition of disproportionate civil liabilities can have a similar effect. Both mechanisms are frequently used in Brazil. Notably, Brazilian legislation maintains criminal offenses expressly rejected by the Inter-American System, such as the crime of desacato. It is of particular concern that this allows for the widespread judicialization of conflicts related to the control exercised by citizens over public authorities, creating significant risks for people who participate in debates and matters of public interest.*

220. The Rapporteurship was alerted to the persistence of the criminalization of *desacato* in Brazil, as provided for in Article 331 of the Penal Code. The State informed the Rapporteurship that the Federal Supreme Court ruled, in ADPF 496 of 2020, that the criminalization of *desacato* is

<sup>385</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Guide to guarantee freedom of expression in the face of deliberate misinformation in electoral contexts](#), OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 23.

<sup>386</sup> Inter-American Court of Human Rights, Case of Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2017, Series C No. 340, para. 103.

<sup>387</sup> Inter-American Court of Human Rights, Case of Capriles v. Venezuela, Preliminary Objection, Merits, Reparations, and Costs, Judgment of October 10, 2024, Series C No. 541, para. 174.

<sup>388</sup> Inter-American Court of Human Rights, Case of Capriles v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of October 10, 2024, Series C No. 541, para. 174.

compatible with the Brazilian Constitution, the American Convention on Human Rights, and the decisions of the Inter-American Court of Human Rights, since it would be a restriction on expression in the name of public order, which is an objective mentioned in Article 13.2 of the Convention. In this regard, the State informed the Rapporteurship that it is aware of the Inter-American Commission's position regarding the incompatibility of *desacato* laws with the Convention, but that the STF considered that Article 13 would only be violated by the "improper use of criminal law," and not by the "mere abstract classification of crimes against honor or *desacato*." Furthermore, the State claims that in 2020, there would be no "express prohibition" by the Inter-American Court regarding the use of criminal law "to curb abuses of freedom of expression," but only regarding "the misuse of criminal law as an instrument of persecution and inhibition of freedom of expression." The legal right protected by maintaining the crime of *desacato* would be the "protection of public office" and "the Public Administration," and not the honor of the specific person who holds public office.

221. However, as reported during the visit, the criminalization of *desacato*, and the consequential imposition of sanctions, could lead to the perception of an excessive protection of the interests of public authorities. This warning is consistent with the IACHR's historical records on Brazil. For example, in its 2021 Report, the IACHR had already documented the use of *desacato* legislation against members of civil society organizations, especially by police institutions<sup>389</sup>.

222. Since the creation of the Rapporteurship, its work has shown a particular focus on laws that criminalize "*desacato*". Back in 1994, the Commission issued recommendations for the repeal of *desacato* laws, as they do not constitute a legitimate restriction on freedom of expression and repress the freedom of expression necessary for the functioning of a democratic society, citing Article 331 of the Brazilian Penal Code as an example<sup>390</sup>. Since one of the objectives of freedom of expression is to scrutinize State activities, protecting speech about public authorities is essential to freedom of expression. For this reason, the Commission understood that the existence of the crime of *desacato* cannot be justified by the protection of public order<sup>391</sup>, as this would be directly contrary to the logic of the Convention. Since then, the Commission and the Rapporteurship have reiterated the need to repeal *desacato* laws where they still exist. The Declaration of Principles on Freedom of Expression, approved by the Commission in 2000, states in its principle 11 that *desacato* laws undermine freedom

<sup>389</sup> IACHR, *Situation of Human Rights in Brazil*, OEA/Ser.L/V/II, February 12, 2021, para. 490.

<sup>390</sup> IACHR, Annual Report 1994, Chapter V: Report on the Compatibility between *Desacato* Laws and the ACHR, OEA/Ser.L/V/II.88, doc. 9 rev. 17, February 17, 1995, p. 324.

<sup>391</sup> IACHR, Annual Report 1994, chap. V: Report on the compatibility between *Desacato* laws and the ACHR, OEA/Ser.L/V/II.88, doc. 9 rev. 17, February 17, 1995, p. 336.

of expression. In numerous reports, the Rapporteurship has reiterated the importance of legislative reforms to decriminalize *desacato* and its commitment to promoting this movement<sup>392</sup>.

223. The Inter-American Court, in turn, has recognized in contentious cases that legislative measures to repeal the criminalization of *desacato* worked to “harmonize domestic legislation with the American Convention”<sup>393</sup>. For all these reasons, the Commission, in its latest report on the human rights situation in Brazil, expressed its concern about the persistence of the *desacato* law in Brazil<sup>394</sup>, and recommended its decriminalization<sup>395</sup>. Given this retrospective, the Rapporteurship cannot agree with the Brazilian State's conclusions that the American Convention and the declarations of the Inter-American System allow for the criminalization of *desacato*. The demand for decriminalization is one of the longest-standing issues regarding freedom of expression in the System, and the Rapporteurship must reiterate its recommendations to the State to repeal the criminalization of *desacato*. Thus, the Rapporteurship takes note of the information provided by the State that the judgment of ADPF 338 is a new opportunity to analyze the conventionality of the crime of *desacato*.

224. In addition to the criminalization of *desacato*, the Rapporteurship was informed that the criminal offenses of slander, libel, and defamation—all crimes against honor—are repeatedly used to prosecute the dissemination of information of public interest, which is aggravated by the fact that Brazilian criminal law does not have a defense clause based on the dissemination of information of public interest. Furthermore, the use of *exceptio veritatis* as a defense for the defendant in such cases would have a very limited application and, for example, cannot be used as a defense mechanism for alleged slander against the President of the Republic<sup>396</sup>. The base penalties imposed for crimes against honor can reach up to two years in prison, with legal causes for increase, such as the norm mandating penalties to be tripled if the crime is “committed or circulated” in the “worldwide web”<sup>397</sup>. The Rapporteurship heard criticisms of specific cases seen as representative, such as a sports journalist's sentencing to imprisonment, replaced in the proceedings by alternative measures, for reporting information from a source about the management of a football club<sup>398</sup>. However, the Rapporteurship

<sup>392</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Hemispheric Agenda for the Defense of Freedom of Expression](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 4/09, February 25, 2009, para. 59.

<sup>393</sup> Inter-American Court of Human Rights, Case of Palamara Iribarne v. Chile, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 91.

<sup>394</sup> IAC<sup>HR</sup>, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II, February 12, 2021, para. 489.

<sup>395</sup> IAC<sup>HR</sup>, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II, February 12, 2021, recommendation 16.

<sup>396</sup> Art. 138, para. 3, I, II, and III; art. 139, sole paragraph; and art. 141 of the Penal Code.

<sup>397</sup> Art. 141, para. 2º, do Código Penal.

<sup>398</sup> Union of Professional Journalists of the State of São Paulo, [SJP stands in solidarity with journalist Elias Aredes Jr. and vehemently repudiates his absurd judicial conviction, which violates the Constitution](#), January 27, 2025; Brazilian Press Association, [Journalist from Campinas convicted for protecting his sources](#), January 28, 2025.

notes with concern that the penalties imposed for crimes against honor can amount to actual imprisonment, as has happened in previous years<sup>399</sup>.

225. The Rapporteurship received information alerting it to the extensive use of the previously existing National Security Law to protect the honor of public authorities, especially during the previous presidential term. The Rapporteurship previously recorded the use of the National Security Law in relation to statements against the STF in 2019<sup>400</sup>, and to investigate journalists, with possible criminal proceedings, in 2020<sup>401</sup>. Reports of the use of the National Security Law to limit criticism continued to be recorded by the Rapporteurship in 2021<sup>402</sup>. The Rapporteurship was also informed that, despite the repeal of the National Security Law, a circumstance was added to increase penalties for crimes against honor if committed against public officials, according to the new Article 141, II, of the Brazilian Penal Code. The Rapporteurship notes that a federal deputy was investigated for calling the current president a “thief”.

226. In this context, the Rapporteurship was informed that Brazilian legislation on crimes against honor would be applied differently by judges, which would present challenges regarding legal certainty in the application of restrictions. According to this report, the judiciary would, for the most part, adopt a stance of not presenting complete reasoning and not attempting to formulate simple and general rules for the resolution of cases involving freedom of expression, which would result in the application of inconsistent solutions to specific cases. In this sense, even measures considered necessary and in line with an adequate understanding of the public interest would have weaknesses in terms of their reasoning and justification. This would contribute to the perception of the judiciary's actions as arbitrary and politically motivated.

227. The Rapporteurship has already expressed concern about the use of "crimes against honor" as a way to prevent public participation<sup>403</sup>. Public officials, those aspiring to be public officials, or those involved in the development of public policies need to have a higher degree of tolerance for criticism, since they perform public functions<sup>404</sup>. The Inter-American Court has established that, in all cases, the State must act "with moderation" when initiating criminal proceedings, given its dominant position in society and its ample resources for responding to unjustified attacks and

<sup>399</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2022, OEA/Ser.L/V/II Doc. 50, March 6, 2023, para. 216.

<sup>400</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2019, OEA/Ser.L/V/II, Doc. 5 vol. 2, February 24, 2020, para. 237.

<sup>401</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2020, OEA/Ser.L/V/II, Doc. 28, March 30, 2021, para. 160.

<sup>402</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2021, OEA/Ser.L/V/II Doc. 64 rev. 1, May 26, 2022, para. 136.

<sup>403</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2004, chap. VI.

<sup>404</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2024, OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 272.

criticism<sup>405</sup>. The Commission also indicated that proceedings based on investigations of public interest discourage public debate and generate an effect of self-censorship<sup>406</sup>. Thus, the use of criminal law for expression on matters of public interest was considered incompatible with the American Convention, as it constitutes a disproportionate sanction, as can also be the case with excessive civil sanctions that discourage public debate. Thus, the Inter-American Commission, in its 2021 report on the human rights situation in Brazil, recommended the decriminalization of crimes against honor and their conversion, in cases involving public officials or matters of public interest, into civil actions<sup>407</sup>.

228. However, the Inter-American Court pointed out that determining whether certain statements are in the public interest would, in most cases, require legal proceedings, and that the very initiation of legal proceedings could serve as a mechanism of intimidation<sup>408</sup>. Therefore, the Court understood that the prohibition of the use of criminal mechanisms for cases of mere offenses or offensive facts—which do not constitute the imputation of crimes—should be based on the status of the alleged victim as a public official, and not on the possible definition of the statements as being in the public interest<sup>409</sup>. In this regard, the Court stated that States must establish alternative mechanisms to criminal response, so that public officials can obtain rectifications or responses, ensuring the proportionality of the response even if the sanctioned expression is serious, taking care not to impose excessively burdensome fines<sup>410</sup>. In addition, the classification of possible crimes should not be based on open and indeterminate concepts<sup>411</sup>.

229. Increasing penalties for expressions about the exercise of public office may intensify the use of these provisions to curb public monitoring of State authorities, which is inconsistent with Inter-American standards. As the Inter-American Court of Human Rights has already stated, legislation on crimes against honor must "allow for the broadest possible popular control" over the exercise of public functions<sup>412</sup>, and, in any case, weigh the interest in respecting the honor of public

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<sup>405</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2022, Series C No. 481, para. 112.

<sup>406</sup> IAC<sup>HR</sup>, Arguments before the Inter-American Court in the case of Palamara Iribarne v. Chile. Transcribed in: Inter-American Court of Human Rights, Case of Palamara Iribarne v. Chile, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 64.e).

<sup>407</sup> IAC<sup>HR</sup>, Situation of Human Rights in Brazil, OEA/Ser.L/V/II, February 12, 2021, recommendation 16.

<sup>408</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2022, Series C No. 481, para. 130.

<sup>409</sup> Inter-American Court of Human Rights, Case of Capriles v. Venezuela, Preliminary Objection, Merits, Reparations, and Costs, Judgment of October 10, 2024, Series C No. 541, para. 162.

<sup>410</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2022, Series C No. 481, para. 115.

<sup>411</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2022, Series C No. 481, para. 141.

<sup>412</sup> Inter-American Court of Human Rights, Case of Tristán Donoso v. Panama, Preliminary Objection, Merits, Reparations and Costs, Judgment of January 27, 2009, Series C No. 193, para. 122.

officials against the value of vigorous public debate on the control of State activity<sup>413</sup>. Therefore, the Court concluded that a cause for increasing the penalty based on the victim's role as a public official was contrary to the American Convention<sup>414</sup>, and the very existence of this type of aggravating rule can have a chilling effect on the expression of critical opinions about public authorities. In addition, the Court has repeatedly held that civil penalties can have particularly serious effects on the lives of those subject to them<sup>415</sup>.

230. In this context, the Rapporteurship carefully notes the information provided by the Brazilian State regarding initiatives that could promote the alignment of Brazilian legislation with Inter-American standards. These include the processing of bills that would aim to make crimes against honor "criminal offenses," which would reduce their severity, and to exclude slander and defamation from the criminal code, while maintaining insults for discriminatory reasons as a crime. The Rapporteurship notes that the State also reported that a bill is being processed that provides for an increase in the penalty for slander and defamation committed through digital media, which would promote tougher criminalization rather than compliance with Inter-American requirements.

231. Another point reported concerns the judgment of ADPF 338, which analyses the provision of Article 141, II, of the Penal Code to increase by one-third the penalty for crimes against honor committed against public officials because of their functions, or against the presidents of the Federal Senate, the Chamber of Deputies, or the Federal Supreme Court. According to the State, the reporting justice's vote would mirror the understanding of the Inter-American System, by establishing that the increase in penalty should not be applicable to crimes of defamation and insult, but only to the crime of slander. However, the Rapporteurship states that, as explained, the understanding of the Inter-American System does not allow the use of criminal law as a means of suppressing discussions of public interest or about public officials, and that there are no understandings favorable to increased penalties for crimes against the honor of public officials. In this regard, the judgment of ADPF 338 should effectively promote the compliance of Brazilian legislation with Inter-American standards on freedom of expression.

232. The Rapporteurship has expressed concerns about the practice known as strategic lawsuits against public participation (SLAPP), which consists of the disproportionate use of legal actions to limit expression on matters of public interest, especially by high-ranking public officials.

<sup>413</sup> Inter-American Court of Human Rights, Case of Tristán Donoso v. Panama, Preliminary Objection, Merits, Reparations and Costs, Judgment of January 27, 2009, Series C No. 193, para. 123.

<sup>414</sup> Inter-American Court of Human Rights, Case of Baraona Bray v. Chile, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2022, Series C No. 481, para. 141.

<sup>415</sup> Inter-American Court of Human Rights, Case of Kimel v. Argentina, Merits, Reparations and Costs, Judgment of May 2, 2008, Series C No. 177, para. 85.

The broad criminalization of expression in Brazil is a factor that facilitates this type of litigation. The practice of SLAPP, however, is not limited to criminal proceedings and can also occur through civil proceedings, with convictions involving high monetary penalties. In one case, a journalist and the media outlet where she worked were jointly sentenced to a fine of R\$ 600,000.00<sup>416</sup> for disclosing public information about payments made to a magistrate<sup>417</sup>. In another case, a journalist had to pay a fine of more than R\$300,000<sup>418</sup> for publishing a book criticizing the conduct of a Supreme Court justice in a well-known case involving allegations of money laundering, embezzlement of public funds, and corruption<sup>419</sup>.

233. Among the cases described to the Rapporteurship as SLAPP is the case of a newspaper that, together with its journalists<sup>420</sup>, faced hundreds of lawsuits for its journalistic coverage of organized religion in Brazil. Another newspaper was also subject to several lawsuits by magistrates and other public authorities for reporting on their salaries<sup>421</sup>. In addition, the organization Amazônia Real was subject to measures to remove journalistic investigations of matters of public interest under penalty of a fine<sup>422</sup>. A similar case refers to an unsuccessful lawsuit initiated by a professional association of physicians against a physician who disagreed with the body's public positions, accusing her of "defamation"<sup>423</sup>.

234. The Rapporteurship noted that Brazilian procedural rules would allow lawsuits to be filed in different states on the same cause, with reports of individuals and companies filing hundreds of lawsuits related to matters of public interest. Based on the perception that judges often decide similar cases on freedom of expression differently, the practice of filing identical lawsuits in different jurisdictions would aim to obtain a conviction in one of them, since there would be no significant costs for filing multiple lawsuits. In addition, restrictive measures would often be imposed on a provisional or interlocutory basis, which would be extended without a clear time frame for their end. The existence of this dynamic would ultimately mean that suspicion of criminality is a reason to restrict freedom of expression, without proving that an offense has been committed.

<sup>416</sup> Approximately 111,000 USD.

<sup>417</sup> Migalhas, [Columnist and ZH to pay damages for article on appeals court judge's salary](#), May 22, 2025; Zero Hora, [Judge orders journalist and ZH to pay damages to TJRS appeals court judge](#), May 21, 2025.

<sup>418</sup> Approximately 55,500 USD.

<sup>419</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Annual Report 2022](#), OEA/Ser.L/V/II Doc. 50, March 6, 2023, para. 217.

<sup>420</sup> El País, [The legal crusade of 111 evangelical pastors against a Brazilian writer over a tweet](#), October 18, 2022; Folha de S. Paulo, [J.P. Cuenca already responding to 144 lawsuits filed by Universal pastors, and MPF calls hearing](#), December 12, 2022.

<sup>421</sup> ABRAJI, [Gazeta do Povo reports on the remuneration of magistrates and prosecutors](#), June 8, 2016; Gazeta do Povo, [STF decides to dismiss lawsuits filed by judges against Gazeta do Povo journalists](#), October 2, 2023.

<sup>422</sup> AJOR, [Amazonas court censors Amazônia Real report](#), July 20, 2022; Vladimir Herzog Institute, [Organizations condemn censorship of Amazônia Real report](#), July 22, 2022.

<sup>423</sup> Folha de S. Paulo, [Federal Council of Medicine accuses physician of defamation and asks for R\\$ 100 thousand redress](#), October 28, 2024; O GLOBO, [Who is physician Ligia Bahia, sued by CFM for criticizing entity's positions during the pandemic](#), February 06, 2025.

235. In this regard, the IACHR and its RELE have already noted in their previous annual reports that precautionary judicial measures would be used as a way to prohibit the dissemination of news even prior to its publication or, in addition to restricting the circulation of public news, would impose preconditions for journalists to speak out again<sup>424</sup>. In addition, the Rapporteurship has received complaints that such actions are sometimes conducted in secret, making it difficult to verify that there is a concerted practice of filing lawsuits. This would mean that searches for cases in electronic case management systems would not return any information, suggesting that no cases exist.

236. In a scenario marked by improper lawsuits against the media, the Rapporteurship recorded criticism of the Federal Supreme Court's decision in the case RE 1.075.412, which established a thesis that allows the media to be held liable for false accusations of crimes made by interviewees. The decision was analyzed as providing support for the practice of so-called judicial harassment by creating new grounds for holding the media liable. In this sense, the thesis would have been applied even in cases that have no direct relation to the imputation of crimes, as a way of reinforcing the conviction of media outlets and journalists. The Federal Supreme Court clarified the thesis in a motion for clarification, stating that media outlets should only be held liable if proven intent or gross negligence, and emphasizing the possibility of granting the right of reply, especially for live statements; statements available on the internet should be deleted<sup>425</sup>.

237. The Rapporteurship takes note of two resolutions of the National Council of Justice related to combating SLAPP. In its Recommendation 127/22, the entity warned of the existence of "predatory judicialization," which would consist of repeatedly filing similar lawsuits in different territorial jurisdictions to inhibit freedom of expression. In Recommendation 159/24, subsequent to the STF decisions, the CNJ compiled a list of "potentially abusive procedural conduct" that would need to be monitored and prevented by the courts. The State also reported that the National Council of Justice monitors litigation against the media and journalists, with the aim of preventing undue restrictions on freedom of expression. The Rapporteurship emphasizes that speech on matters of public interest is specially protected, and that the application of criminal sanctions for this type of speech has been considered in several cases by the IACHR and the Court to be disproportionate and unnecessary in a democratic society<sup>426</sup>, with strict requirements for its application, which should not occur for matters of public interest.

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<sup>424</sup> IACHR, Annual Report 2022, Chapter V, Follow-up on recommendations made by the IACHR in its country or thematic reports, Brazil; IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2022, OEA/Ser.L/V/II Doc. 50, March 6, 2023, paras. 126 and 127.

<sup>425</sup> STF, RE 1.075.412 ED (Theme 955), March 20, 2025.

<sup>426</sup> IACHR, Special Rapporteurship for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression: Update 2025, OEA/Ser.L/V/II CIDH/RELE/INF. 29/25, para. 235.

238. The Rapporteurship notes that the Federal Supreme Court recently adopted two positive decisions regarding lawsuits against journalists. In ADIs 6.792 and 7.055, the STF defined as "judicial harassment" the practice of filing simultaneous lawsuits in different locations against journalists or media outlets, with the aim of hindering the defense or significantly increasing procedural costs. Once this strategy is identified, journalists can request that all lawsuits be consolidated, facilitating their defense and minimizing costs. Furthermore, the Federal Supreme Court ruled that journalists should only be held liable in cases of proven intent or evident professional negligence, these criteria also serving to curb "judicial harassment." The Rapporteurship notes perceptions that the rules for determining jurisdiction would allow for a multiplicity of possible competent courts, especially in civil defamation cases involving content circulating on the internet. According to this view, the suit could be brought to the "place of the act or fact", as well as the place of "domicile" of the plaintiff; this concept being interpreted broadly to include places beyond the plaintiff's residence. This would lead to choices based on the plaintiff's convenience, in practices known as *forum shopping*.

239. Based on the foregoing, the Rapporteurship emphasizes that the Inter-American Court has classified SLAPPs as an abusive use of judicial mechanisms, which must be controlled<sup>427</sup>. SLAPPs would unduly restrict the discussion of matters of public interest, which have been repeatedly recognized as falling within the category of speech that is specially protected under Article 13 of the American Convention.

240. In its recent Advisory Opinion 32, the Inter-American Court affirmed that States have an obligation to identify laws that are applied selectively or recurrently to silence, as well as legal ambiguities that may have intimidating effects. Once such laws are identified, States must modify or repeal them, also establishing procedures that allow for the rapid dismissal of lawsuits intended to intimidate environmental defenders. Furthermore, public authorities must be trained to identify this type of action, with the aim of preventing practices of intimidation<sup>428</sup>.

241. Additionally, the Rapporteurship highlights that rules establishing court jurisdiction also play an important role as an anti-SLAPP practice.<sup>429</sup> With this in mind, the Rapporteurship recalls

<sup>427</sup> Inter-American Court of Human Rights, Case of Palacio Urrutia et al. v. Ecuador, Merits, Reparations and Costs, Judgment of November 24, 2021, Series C No. 446, para. 95.

<sup>428</sup> Inter-American Court of Human Rights, Climate Emergency and Human Rights (interpretation and scope of Articles 1.1, 2, 4.1, 5.1, 8, 11.2, 13, 17.1, 19, 21, 22, 23, 25, and 26 of the American Convention on Human Rights; 1, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador"; and I, II, IV, V, VI, VII, VIII, XI, XII, XIII, XIV, XVI, XVIII, XX, XXIII, and XXVII of the American Declaration of the Rights and Duties of Man), Advisory Opinion OC-32/25, May 29, 2025, para. 587.

<sup>429</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Parameters for a free, open, and inclusive internet, OEA/Ser.L/V/II, CIDH/RELE/INF. 17/17, March 15, 2017, para. 119.

that the resolution of liability issues should prioritize the jurisdiction of "judges with the 'closest' connection to the case," which can be measured by the jurisdiction of the plaintiff, the victim, or the origin of the content. Furthermore, states should avoid so-called "defamation tourism" or forum shopping, with rules requiring judges to declare themselves "incompetent when there is no demonstrable substantial harm in their jurisdiction"<sup>430</sup>. These considerations are crucial in the ever-increasing circulation of online content, which can be distributed to a multitude of locations. Prioritizing the forum of the defendant's domicile, in accordance with the judgment of ADIs 6.792 and 7.055, helps to avoid forum shopping, but this rule is limited to situations in which a multiplicity of lawsuits has previously been observed.

242. The Rapporteurship calls on all sectors of society to refrain from using strategic lawsuits against public participation, as this type of lawsuit is one of the main causes preventing the exercise of freedom of expression and journalistic activity on the continent. For this reason, the Rapporteurship expresses its concern about the perception in Brazilian society that public authorities and people who voluntarily expose themselves to public scrutiny often use litigation mechanisms against public participation. The Inter-American system has long understood that public authorities have mechanisms at their disposal to address criticism based on further expression and can easily seek alternatives to legal action<sup>431</sup>.

#### **F. Move forward with updating the current legal framework to respond to the current challenges of the digital age**

243. *The widespread use of the internet offers promises, such as the democratization of access to information and the possibility for more voices to be heard in public debate, but it also poses significant challenges to civic space and human rights. During the visit, the Special Rapporteurship was alerted to the persistence of challenges in universalizing internet access. In addition, the Rapporteurship noted intense debates regarding proposals to change the Brazilian regulatory framework for the internet, with profound questions about the role of the State, civil society, and digital platforms in the face of some of the main challenges faced.*

244. The Rapporteurship was informed of the growing use of facial recognition technologies in Brazil, without comprehensive and adequate regulation of this technology. The extensive use of this technology for criminal investigation purposes would result in discrimination against minority groups

<sup>430</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Parameters for a Free, Open, and Inclusive Internet, OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 17/17, March 15, 2017, para. 119.

<sup>431</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression: Update 2025, OEA/Ser.L/V/II IAC<sup>HR</sup>/RELE/INF. 29/25, para. 67.

in Brazil, who would be disproportionately identified by the technology as suspects or fugitives. There is a tendency for the Brazilian State to contract surveillance mechanisms, which is sometimes accompanied by the waiver of legal bidding mechanisms, with obstacles to public oversight. The Rapporteurship notes that ADPF 1143, which seeks to discuss the use of monitoring tools by the State, is pending before the Federal Supreme Court. The Rapporteurship also notes that Brazilian personal data protection legislation does not apply to data processing for purposes of public security, national defense, State security, or criminal investigation, leading to criticism that such projects do not follow the minimum requirements established for other activities.

245. The State informed the Rapporteurship that an estimated 40% of the Brazilian population is affected by facial recognition technologies, in projects covering public security, urban monitoring, and admission to sporting events, for example, noting that this use brings "advances in terms of security and efficiency." The State stated that the General Data Protection Law regulates the use of facial recognition technologies, including requiring knowledge, although consent is not always necessary. Furthermore, the National Data Protection Agency has regulations applicable to facial recognition technology operators, requiring data governance practices and retention policies. In addition, the State reported that the use of facial recognition at sporting events is a legal requirement. The State reported on the progress of Bill 2338/2023, which would regulate the use of this technology by the public sector. The State provided information to the effect that, even though there is no such specific regulation, facial recognition technologies are used in public security investigations for the purpose of gathering evidence, and facial recognition should not be the only evidence, since the State recognizes that there are biases that cause "higher error rates for black people, women, and minority groups."

246. The State informed the Rapporteurship of the existence of other initiatives using digital technologies for public security purposes, such as the Cortex Platform. This platform would consist of the integration of personal data held by different State authorities, such as police and the Executive, to provide a consultation system, allowing the search for vehicles and people, with different functionalities. The State reported using this platform to prevent and investigate traffic violations and crimes; to search for stolen vehicles; and to search for vehicles that may be driven by fugitives. This system could only be used by public security and intelligence agencies, and the sharing of this data with private entities was prohibited, with system audit measures also in place.

247. The Rapporteurship noted criticism of the operation of this tool, which could select individuals for monitoring without providing formal justification<sup>432</sup>. The State reported that the Córtext system would be gradually phased out. In addition, there was the "Excel Project," which aimed to provide the judicial police of the federal states with greater investigative capabilities, consisting of tools designed to break telematic secrecy, extract data from seized devices, and exchange data between public security agencies. The Rapporteurship noted the existence of legal proceedings aimed at ending the operation of these tools<sup>433</sup>. The State informed the Rapporteurship that "Project Excel" was definitively terminated on March 18, 2025.

248. The Rapporteurship learned of official investigations into the use of intelligence apparatus to monitor public officials, political activists, journalists, social communicators, among others, due to their political positions, which was allegedly followed by the use of the information obtained for illegal purposes. The Rapporteurship notes that the Federal Police is investigating these allegations, which have been dubbed "parallel ABIN"<sup>434</sup>. The State did not provide further information regarding these investigations. These practices were allegedly made possible by the lack of State oversight of intelligence mechanisms, whose activities are subject to broad secrecy on the grounds that this is necessary for the protection of national security.

249. The Rapporteurship emphasizes that the Inter-American System understands that the conduct of intelligence authorities is subject to limitations. The Inter-American Court has stated that the domestic legislation of States must clearly set out the powers and authorization requirements for the activities of intelligence services<sup>435</sup>, to prevent such interference with human rights from being arbitrary<sup>436</sup>. In addition, intelligence services must be clear about which classes of persons and activities may be subject to information gathering, and what objectives underlie this choice<sup>437</sup>. For the Court, invasive monitoring measures must be subject to judicial authorization<sup>438</sup>, since the use of

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<sup>432</sup> Intercept Brasil, [From license plates to social security numbers](#), September 21, 2020; Agência Pública, [Ministry of Justice surveillance program allows 55,000 agents to track "targets" without justification](#), October 9, 2024.

<sup>433</sup> Intercept Brasil, [After Intercept report, Federal Prosecutor's Office files civil lawsuit against Excel Project](#), December 14, 2022; Coalizão Direitos na Rede, [Open Letter: We support the suspension of data sharing and the destruction of the Excel Project database](#), December 20, 2022.

<sup>434</sup> Federal Police, [Final Report ref: INQ 4781/DF\\_PET 11108/DF](#), p. 644.

<sup>435</sup> Inter-American Court of Human Rights, Case of Members of the "José Alvear Restrepo" Lawyers' Collective v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment of October 18, 2023, Series C No. 506, para. 538.

<sup>436</sup> Inter-American Court of Human Rights, Case of Members of the "José Alvear Restrepo" Lawyers' Collective v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment of October 18, 2023, Series C No. 506, para. 541.

<sup>437</sup> Inter-American Court of Human Rights, Case of Members of the "José Alvear Restrepo" Lawyers' Collective v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of October 18, 2023, Series C No. 506, para. 538.

<sup>438</sup> Inter-American Court of Human Rights, Case of Members of the "José Alvear Restrepo" Lawyers' Collective v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment of October 18, 2023, Series C No. 506, para. 542.

intrusive surveillance techniques, in secret, presents an "extreme risk of arbitrariness" regarding the rights to privacy, freedom of thought, and freedom of expression<sup>439</sup>.

250. All intelligence service activities must also observe limitations related to discrimination between individuals, and the ability to conclusively identify persons whose personal data are in State databases. This means imposing restrictions on the collection of sensitive personal data, due to its great ability to identify individuals. At the same time, it is necessary to limit collection of personal data of journalists, to preserve the confidentiality of their sources and the information necessary for their activity, for example<sup>440</sup>. The Rapporteurship has already noted that there is a "common practice" among intelligence authorities of collecting data from users of digital services to create profiles of individuals, including seeking to gauge their political opinions<sup>441</sup>. In the Rapporteur's view, these initiatives seek to establish excessive controls on social protests and criticism of the actions of State security forces<sup>442</sup>, deepening processes of surveillance and discrimination against historically discriminated groups, which requires the establishment of regulatory frameworks to mitigate these risks<sup>443</sup>.

251. The Rapporteurship was alerted to insufficient regulation of internet use by children and adolescents, with no specific safeguards in place to monitor and adopt measures to protect their interests. The Rapporteurship was informed that, according to recent surveys by internet management bodies<sup>444</sup>, nine out of ten people under the age of 17 in Brazil use the internet. In this sense, the perceived lack of regulation would expose children and adolescents to the exploitation of their data and to conditions that prevent the effective use of social networks. The ad-based business models of many digital platforms were identified as a concern, since the lack of restrictions on profile-based ads targeting children and adolescents would mean their exposure to harmful practices, such as gambling.

252. As discussed in topic 3 above, there is also a perception that social networks are an environment conducive to the spread of threats of violence in schools. The Rapporteurship was also alerted to the need to consider the intersectionality that may be present in relation to children

<sup>439</sup> Inter-American Court of Human Rights, Case of Members of the "José Alvear Restrepo" Lawyers' Collective v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of October 18, 2023, Series C No. 506, para. 547.

<sup>440</sup> Inter-American Court of Human Rights, Case of Members of the "José Alvear Restrepo" Lawyers' Collective v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of October 18, 2023, Series C No. 506, paras. 554 and 555.

<sup>441</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 63.

<sup>442</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 64.

<sup>443</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 65.

<sup>444</sup> Agência Brasil, [Nine out of ten children and adolescents are internet users](#), August 16, 2022; CGI.br, [TIC Kids Online investigates](#), for the first time, the frequency of use of digital platforms by children and adolescents, October 23, 2024.

belonging to other minority groups or in situations of socioeconomic vulnerability. The State informed the Rapporteurship of the adoption of measures to remove content perceived as unduly affecting children and adolescents. In this regard, the National Prosecutor's Office for the Defense of Democracy had acted in the extrajudicial notification of digital platforms regarding illegal gambling advertisements involving children and adolescents. The State also reported the organization of advisory committees to develop policies on age verification requirements and methodologies for processing reports of digital crimes against children and adolescents.

253. The State informed the Rapporteurship of the adoption of measures to promote the safety of the digital environment for children and adolescents, such as the issuance of Ordinance 351 by the Ministry of Justice. This Ordinance imposes obligations on digital platform providers to prevent and investigate content that may cause harm to children and adolescents, such as attacks on school environments, and requires the assessment of these risks and the review of the possibility of platform tools contributing to such risks.

254. The Rapporteurship has already noted that the digital environment can present specific challenges to children and adolescents. These challenges can arise from the use of platforms that are not suitable for them, as well as from malicious behavior such as sexual exploitation and abuse<sup>445</sup>. According to UNICEF's classification, children and adolescents are exposed to three types of risk: content risks, consisting of the consumption of illegal, inappropriate, or dangerous content; contact risks, consisting of virtual contact with people who engage in illegal, sexual, or dangerous behavior; and behavior risks, in which children and adolescents contribute to the production of risky content or contacts<sup>446</sup>. The Rapporteurship emphasizes that ensuring the best interests of children and adolescents means ensuring that they can access the internet safely, obtaining the benefits of technological access while minimizing risks<sup>447</sup>. As recommended by UNESCO, States should develop awareness-raising policies for children, adolescents, and their guardians that clearly communicate their rights on the internet and the risks associated with its use. Furthermore, the Rapporteurship emphasizes that States must ensure that children and adolescents are able to report content in a simplified manner on digital platforms, and that their data is treated in accordance with applicable national and international rules<sup>448</sup>.

<sup>445</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital inclusion and internet content governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 38.

<sup>446</sup> UNICEF, [The State of the World's Children 2017: Children in a Digital World](#), December 2017.

<sup>447</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 300.

<sup>448</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 305.

255. The Special Rapporteurship noted challenges to ensuring digital inclusion in Brazil. These challenges relate to infrastructure problems in internet access, as well as a lack of digital literacy with a focus on developing civic capacities among the Brazilian population. This problem would lead to an easier spread of phenomena such as misinformation and hate speech, and would hinder the beneficial use of social networks as tools for public participation.

256. The Rapporteurship noted criticism of a perceived lack of public policies to ensure digital connectivity in the Amazon region, which affects the right of access to information for populations in this area. More remote regions of Brazil, such as locations in the Amazon region, do not have sufficient infrastructure to ensure internet access. The low supply would drive the existence of a satellite internet market, which is not adequately regulated in Brazil. This scenario is also related to the emergence of "information deserts," that is, regions that do not receive sufficient journalistic coverage.

257. In this regard, the State reported that the General Telecommunications Law and Decree 9.612/2018 would introduce the principle of reducing regional inequalities in access to infrastructure<sup>449</sup>. The State stated that 91.17% of the population would be served by 4G and 5G networks, with 99.57% of the urban population and 45.62% of the rural population served<sup>450</sup>. The North Region would have the lowest access rates, with only 23.53% of its rural area covered by network infrastructure. For this reason, the State stated that it had committed investments of R\$ 41 billion<sup>451</sup> to areas with coverage deficits, as well as R\$ 3 billion<sup>452</sup> to promote this access to public schools<sup>453</sup>. In addition, the State has developed the Integrated and Sustainable Amazon Program to install fiber optic infrastructure in the Amazon region and administers the Telecommunications Services Universalization Fund to expand the telecommunications network<sup>454</sup>.

258. The State informed the Rapporteurship about the work of the Brazilian Internet Steering Committee (CGI.br) to promote digital literacy. The Committee reportedly organized a public consultation to obtain input on strategies for regulating digital platforms, which is available in a systematic manner at<sup>455</sup>. CGI.br also develops indicators on internet use in Brazil, with the aim of

<sup>449</sup> Federal Republic of Brazil. Reply of the State to the Letter requesting information under article 41 ACHR n° 04-2025/543, June 12, 2025, IACtHR archive.

<sup>450</sup> Federal Republic of Brazil. Reply of the State to the Letter requesting information under article 41 ACHR n° 04-2025/543, June 12, 2025, IACtHR archive.

<sup>451</sup> Approximately 7,6 billion USD.

<sup>452</sup> Approximately 550 million USD.

<sup>453</sup> Federal Republic of Brazil. Reply of the State to the Letter requesting information under article 41 ACHR n° 04-2025/543, June 12, 2025, IACtHR archive.

<sup>454</sup> Federal Republic of Brazil. Reply of the State to the Letter requesting information under article 41 ACHR n° 04-2025/543, June 12, 2025, IACtHR archive.

<sup>455</sup> CGI.br, Systematization of Contributions to the Consultation on Digital Platform Regulation, 2023.

measuring "meaningful connectivity," based on each user's use of the internet and mapping their digital literacy. In addition, the Committee has developed a guide of proposals to expand effective digital connectivity<sup>456</sup>. The State has also supplied information on public policies which aim to guarantee digital and media literacy, in cooperation with the Ministry of Education and the Secretariat for Social Communication of the Presidency. These policies include instructing over 340.000 teachers; incorporating media literacy into the National Program for Textbooks; establishing national directives on the use of digital devices in school environments; integrating media literacy to the curricula on Federal State and municipal-level education; and producing 80 courses on digital literacy, available for free<sup>457</sup>.

259. The Rapporteurship emphasizes internet access as an essential condition for effective participation in public life and the exercise of human rights, notably freedom of expression, the rights to assembly and association, and the full enjoyment of culture<sup>458</sup>. There is a real dependence on information technologies to fully exercise communication, access public services, and participate in the civic space<sup>459</sup>. This scenario is also marked by the existence of so-called digital exclusion, understood as the separation between people who have effective access to digital and information technologies, particularly the internet, and people who have little or no access<sup>460</sup>. The Rapporteurship has already recognized that vulnerability factors, such as gender, socioeconomic status, and racial identity, can amplify the impacts of digital exclusion on certain individuals and groups<sup>461</sup>. The consolidation of digital platforms as spaces for public debate means that groups with limited access find it difficult to make their voices heard<sup>462</sup>. The Rapporteurship has also found that women and girls are affected by structural gender inequalities that challenge their access to the internet, including through harassment<sup>463</sup>.

260. The Rapporteurship emphasizes that the technical capacity to access the internet is an essential requirement for ensuring digital inclusion, and therefore recommends that States promote

<sup>456</sup> NIC.br, Meaningful Connectivity: proposals for measurement and a portrait of the population in Brazil, 2024.

<sup>457</sup> Federal Republic of Brazil, Verbal Note 386/25, December 19, 2025, IACtHR archive.

<sup>458</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Parameters for a free, open, and inclusive internet, OEA/Ser.L/V/II, IACtHR/RELE/INF. 17/17, March 15, 2017, para. 32.

<sup>459</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Digital Inclusion and Internet Content Governance, OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 68.

<sup>460</sup> UN, Report of the Special Rapporteurship on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27, May 16, 2011, para. 61.

<sup>461</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Digital Inclusion and Internet Content Governance, OEA/Ser.L/V/II, CIDH/RELE/INF. 28/24, June 2024, para. 72.

<sup>462</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Digital Inclusion and Internet Content Governance, OEA/Ser.L/V/II, IACtHR/RELE/INF. 28/24, June 2024, para. 72.

<sup>463</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Digital Inclusion and Internet Content Governance, OEA/Ser.L/V/II, CIDH/RELE/INF. 28/24, June 2024, para. 130.

universal access policies that expand network infrastructure<sup>464</sup>. In this regard, States should take measures to reduce digital exclusion, including infrastructure measures, ensuring network accessibility<sup>465</sup>. This accessibility should also incorporate a qualitative dimension, ensuring that access is equitable and of adequate quality<sup>466</sup>.

261. In addition, States must simultaneously promote digital literacy measures. Digital literacy comprises the skills and abilities necessary for users to use digital services effectively, and is essential for true digital inclusion<sup>467</sup>. The Rapporteurship has already stated that it is not enough for people to have connection points; this connection must be accompanied by digital skills that enable technology to meet the needs of users<sup>468</sup>. In other words, internet access is only fully guaranteed when accompanied by digital literacy measures, which condition useful and beneficial access for users<sup>469</sup>, in close relation to the plurality of information that must be ensured by the State<sup>470</sup>. The lack of specific digital literacy policies can also mean that groups such as the elderly, people with disabilities, and people with low literacy levels encounter even greater difficulties in accessing the internet<sup>471</sup>. Therefore, the promotion of access must consider the specific challenges faced by marginalized groups<sup>472</sup>, and must convey knowledge about the risks associated with the use of technology and the tools necessary for its responsible use<sup>473</sup>. Furthermore, the participation of girls and women in the development of technologies and public policies can help combat gender bias.<sup>474</sup>

262. The Rapporteurship was informed of the progress of bills aimed at changing the Brazilian regulatory framework for digital platforms. Bill 2630, for example, had been pending in the Brazilian National Congress since 2020, providing for transparency in advertising, content

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<sup>464</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 319.

<sup>465</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 1.

<sup>466</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, CIDH/RELE/INF. 28/24, June 2024, para. 69.

<sup>467</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Parameters for a free, open, and inclusive internet](#), OEA/Ser.L/V/II, CIDH/RELE/INF. 17/17, March 15, 2017, para. 42.

<sup>468</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 70.

<sup>469</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 70.

<sup>470</sup> Inter-American Court of Human Rights, Case of Kimel v. Argentina, Merits, Reparations, and Costs, Judgment of May 2, 2008, Series C No. 177, para. 57; IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 73.

<sup>471</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 41.

<sup>472</sup> OAS, IX Summit of the Americas, [Regional Program for Digital Transformation](#), 2022.

<sup>473</sup> UN, [Digital Space and Human Rights](#); IACHR, Special Rapporteurship for Freedom of Expression, Dialogue of the Americas, Digital Literacy: Concept Note, 2022,

<sup>474</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 163.

moderation, and platform responsibility for third-party content<sup>475</sup>. The Rapporteurship notes that it was recently declared by the President of the Chamber of Deputies that the bill would be shelved, as there was no longer any chance of its approval<sup>476</sup>. In view of the accumulation of civil society positions over years of deliberation, several civil society organizations argued that the advances and consensus established in the public discussion should be taken into account when proposing new regulations. The Rapporteurship notes with concern the perception of civil society organizations that new regulatory proposals being drafted by the State, which have not yet been made public, would not be based on the public debate surrounding Bill 2630, and reminds the State of the need for public consensus-building on technical matters<sup>477</sup>. The Rapporteurship was warned of the difficulty of reconciling the different inputs presented in a single cohesive draft, which would result in the inclusion in the text of the bill of matters that have not been fully debated or that constitute some kind of contradiction with other provisions.

263. The Rapporteurship was informed of the progress of Bill 4691/2024 in the Chamber of Deputies, filed after the shelving of Bill 2630/2020, which would also aim to regulate the exercise of freedom of expression and the role of digital platforms in digital environments. This bill brings provisions on content moderation and crimes that would generate liability for platforms other than those in Bill 2630/2020, and is perceived as a resumption of proposals for the regulation of social networks, with public disagreements regarding its wording<sup>478</sup>. Regarding the regulation of artificial intelligence, Bill 2338/2023 is also being processed, which, according to reports, would seek to establish risk categories for different uses of artificial intelligence, with obligations arising from the level of risk. Congress has established a Special Commission to analyze this process, which will hold hearings with members of civil society.

264. The Rapporteurship was informed of a precedent set by the Superior Court of Justice affirming the possibility of Brazilian court decisions requiring digital platforms to make certain content unavailable worldwide. According to the decision, this mechanism would not violate the sovereignty of foreign countries, as it would be a necessary tool to enforce Brazilian jurisdiction. For the Superior Court of Justice, the effectiveness of removal decisions requires global unavailability, and removal only in Brazil would be "insufficient," since, in this case, the content considered illegal would

<sup>475</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Annual Report 2023](#), OEA/Ser.L/V/II Doc. 386, December 6, 2023, para. 326.

<sup>476</sup> Jusbrasil, [After public pressure, Chamber of Deputies shelves social media regulation bill](#), April 16, 2024; Metrópoles, [Lira: Fake News bill was "doomed to go nowhere."](#) April 9, 2024.

<sup>477</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, CIDH/RELE/INF. 28/24, June 2024, para. 293.

<sup>478</sup> CNN Brasil, [New center-right bill becomes alternative to Fake News Bill in Congress](#), January 15, 2025; Gazeta do Povo, [Lula administration may piggyback on Centrão proposal to regulate social media](#), February 11, 2025.

be demonstrably available in other countries. Furthermore, the Court considered that the Brazilian Civil Rights Framework for the Internet authorizes the extension of Brazilian jurisdiction across borders and without any geographical limitation "on application providers," provided that data is collected from users in Brazil<sup>479</sup>.

265. The Rapporteurship expressed concerns about the lack of specific regulation for the use and development of artificial intelligence systems in Brazil, which would lead to the massive use of systems for generating fake images and videos. The Rapporteurship was alerted to the possibility of artificially generating content that would spread messages encouraging human rights violations. As reported, these artificial intelligence content generation tools would be used to create material that would spread false information, including about health policies and the Brazilian electoral system<sup>480</sup>. In addition, the Rapporteurship noted complaints about so-called "*deep fakes*," which consist of artificially inserting a person's appearance into a video. In addition to the perceived impacts on private individuals, the Rapporteurship recorded concerns about the possibility of inserting the appearance of public figures, especially parliamentarians and human rights defenders, into artificially manipulated situations<sup>481</sup>. The Rapporteurship was also alerted to cases described as the creation of pornographic material through *deep fakes*<sup>482</sup>.

266. The Rapporteurship notes with concern the perception that digital platforms have organized themselves to prevent changes in the regulation of digital platforms that would impose obligations on them. The Rapporteurship was informed of the opening of investigations by the Attorney General's Office to investigate platform executives allegedly responsible for acting against bills<sup>483</sup>. The Rapporteurship notes that, while there is legitimate space for contesting matters of public interest, the main digital platforms have remarkable economic power, conferred, among other things, by the volume of users and their extensive data processing capacity. These factors, combined with the platforms' professed political and partisan neutrality, mean that their direct participation in public debate can have disproportionate impacts, not least because users depend on these platforms to access information about all the positions that coexist in public debate. In this context, the Rapporteurship is concerned that platforms convey their position in matters of public interest through tools that are

<sup>479</sup> STJ, RESP 2.147.711/SP, November 12, 2024.

<sup>480</sup> Terra, [Deepfakes grow 830% in Brazil in one year. study finds](#), November 28, 2023; Rádio Câmara, [Deep Fake in Elections](#), April 1, 2025.

<sup>481</sup> Terra, [Moro denounces 'deepfake' where his image is used to carry out 'Serasa scam'](#), June 7, 2024; Estadão, [Video manipulates voices of Nikolas Ferreira and Tralli to spread false compensation of up to R\\$ 7,000](#), January 21, 2025; Agência Lupa, [Fake customer service, deepfakes, and brands are weapons in scams. Lupa study shows](#), June 23, 2025.

<sup>482</sup> Estadão, [Tabata Amaral takes legal action for electoral defamation in sexually explicit deepfakes](#), September 14, 2024; G1, [Students expelled after using artificial intelligence to create fake nudes of teacher and classmates at private school in Cuiabá](#), September 25, 2024; CNN Brasil, [AI increases the creation of pornographic deepfakes involving women. says study](#), June 16, 2025.

<sup>483</sup> Metrópoles, [Attorney General's Office asks Supreme Court to investigate Google and Telegram executives](#), May 11, 2023; Supreme Court, [Supreme Court opens investigation into actions of Google and Telegram executives in Fake News Bill](#), May 12, 2023.

not available to other parties involved in the public debate, giving it levels of visibility that cannot be achieved by any other actor.

267. The Rapporteurship has already recorded conflicts between the Federal Supreme Court and social network X, formerly known as Twitter<sup>484</sup>. The platform breached non-disclosure obligations related to confidential orders to remove content sent by the Federal Supreme Court<sup>485</sup>, and decided to close its office in Brazil, reportedly motivated by the arrest warrant issued for the local representative of the company<sup>486</sup>. The Federal Supreme Court requested that X appoint a person responsible for legal representation on the platform<sup>487</sup>, eventually ordering the removal of the platform in Brazil, until it complied with the previous decisions<sup>488</sup>. To this extent, the State supplied information to the Rapporteurship detailing attempts to induce compliance by the platform.

268. The Federal Supreme Court also imposed a daily fine of R\$50,000<sup>489</sup> on people who accessed X using VPNs<sup>490</sup>, a measure that was criticized for not being technologically feasible, as well as being perceived as excessive, by impacting the freedom of expression of individuals not responsible for illicit acts<sup>491</sup>. After criticism was aired, the decision was amended to exclude the mention of VPNs, but the fine for people accessing the platform was maintained<sup>492</sup>.

269. The platform was taken offline by the National Telecommunications Agency, in accordance with court orders, which depends on each internet service provider implementing the block. The internet service provider Starlink, which also has Elon Musk as an investor, reportedly informed Anatel of its intention not to comply with this order<sup>493</sup>. In view of what was perceived as intentional non-compliance with the block, the STF fined X and Starlink<sup>494</sup>. Starlink subsequently began blocking access to the X network<sup>495</sup>. The platform finally paid the fines imposed by the STF and reportedly complied with the required content moderation orders, appointing a legal representative

<sup>484</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Annual Report 2024](#), OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 224.

<sup>485</sup> [Gazeta do Povo](#), [Musk discloses Moraes' "illegal order" to suspend senator's profile](#), August 31, 2024; [CNN Brasil](#), [X creates profile dedicated to disclosing Moraes' confidential decisions](#), August 31, 2024.

<sup>486</sup> [Nexo Jornal](#), [X, formerly Twitter, closes office in Brazil](#), August 17, 2024; [Exame](#), [X \(formerly Twitter\) closes office in Brazil and cites Moraes as the cause](#), August 17, 2024.

<sup>487</sup> [STF](#), [STF summons Elon Musk and X to appoint legal representative within 24 hours under penalty of suspension of activities in Brazil](#), August 28, 2024; [BBC Brasil](#), [Alexandre de Moraes gives Elon Musk ultimatum and may take social network X offline](#), August 28, 2024.

<sup>488</sup> [STF](#), [STF orders suspension of X, formerly Twitter, throughout the national territory](#), August 30, 2024.

<sup>489</sup> Approximately 9,250 USD.

<sup>490</sup> [CNN Brasil](#), [Moraes prohibits use of VPN to access X under penalty of a R\\$ 50,000 fine](#), August 30, 2024; [BBC Brasil](#), [Moraes backs down from removing VPNs from Brazil, but maintains R\\$ 50,000 fine for those who access Elon Musk's network](#), August 30, 2024.

<sup>491</sup> Article 19, [What the suspension of X reveals about freedom of expression in Brazil](#), September 30, 2024.

<sup>492</sup> [Consultor Jurídico](#), [Alexandre backtracks on VPN exclusion but maintains fine](#), August 30, 2024; [Agência Brasil](#), [Moraes backs down and suspends blocking of VPN applications](#), August 30, 2024.

<sup>493</sup> [Poder360](#), [Starlink tells Anatel it will not block access to X](#), September 1, 2024; [G1](#), [Starlink informs Anatel president it will not comply with Moraes' decision to suspend X](#), September 1, 2024.

<sup>494</sup> [CartaCapital](#), [Moraes fines X and Starlink R\\$ 5 million after Musk circumvents social network block in Brazil](#), September 19, 2024; [G1](#), [Moraes fines X R\\$ 5 million for 'trick' that circumvented social network block in Brazil](#), September 19, 2024.

<sup>495</sup> [Legal Advisor](#), [Starlink backs down and says it will block access to X in Brazil](#), September 3, 2024; [UOL](#), [After backing down, Starlink begins to block access to X in Brazil](#), September 3, 2024.

in Brazil<sup>496</sup>. On October 8, 2024, the STF authorized the resumption of service of social network X, requesting that Anatel take the necessary measures<sup>497</sup>.

270. Although all public authorities are subject to intense public scrutiny, the Rapporteurship notes that the criticisms made by the owner and CTO of platform X should be interpreted considering their active participation in elections and other issues of public interest with a clear bias. This situation is atypical in the governance of large digital platforms. The management policies of these platforms are usually presented by their managers as neutral and pluralistic. At the same time, these managers have opinions about their preferred results in electoral and legislative processes. Although these opinions may be legitimate, managing platforms based on them presents challenges to the role of platforms in safeguarding democracy. This contrast raises legitimate questions about the platform's role in moderating public debate, creating uncertainty about whether business decisions and political positions adhere to a coherent model of governance or are politically motivated by the interests of individuals who share the political views of the platform owner.

271. The State provided information to the Rapporteurship regarding the protocol followed for the removal of digital content, adopted when there are orders to block *websites*, as in the case of platform X. According to the information provided, the National Telecommunications Agency (ANATEL) is the agency that received the restraining orders. The ability to implement such takedown orders does not refer to individual content on social networks, but rather to the blocking of the entire *website*, which is why this tool would not be confused with the moderation of individual platform content. The State also reported that requesting ANATEL to block websites is only undertaken as a last resort, if the content is not voluntarily removed. Furthermore, the execution of such blocking orders would depend on the cooperation of approximately 20,000 independent operators, with ANATEL being responsible for monitoring compliance, which would result in delays, with attempts being made to improve ANATEL's institutional capacities.

272. The Rapporteurship recorded criticism of the imposition of an arrest warrant on the legal representative of platform X. The arrest warrant was reportedly motivated by repeated failure to comply with court orders to remove content from the platform<sup>498</sup>. According to information received during the visit, other cases of threats of personal liability to platform representatives were observed.

<sup>496</sup> UOL, X appoints legal representative for the platform in the country, say lawyers, September 20, 2024; Brasil247, X appoints legal representative in Brazil and tries to avoid new sanctions from the STF, September 20, 2024.

<sup>497</sup> STF, STF authorizes immediate return of X and orders Anatel to take measures to resume service, October 8, 2024.

<sup>498</sup> CNN Brasil, X should not appoint a new legal representative or respond to Moraes, August 29, 2024; O GLOBO, X complies with Moraes' order and appoints a new legal representative to the STF: find out who it is, September 20, 2024.

These episodes were described as promoting an intensely intimidating environment for representatives and as negative for fostering institutional debate on platform regulation.

273. On the other hand, the Rapporteurship documented extensive debates on the constitutionality of Article 19 of the Brazilian Civil Rights Framework for the Internet, the name given to Law 12.965/2014, culminating in a ruling that decided its partial unconstitutionality. The Civil Rights Framework establishes rules regarding freedom of expression on the internet and the protection of users' privacy, providing for net neutrality<sup>499</sup>. The wording of Article 19 states that internet application providers can only be held liable for content generated by third parties if they fail to comply with a specific court order to remove that content. Pursuant to Article 21 of this law, the rule is exempted in the case of unauthorized disclosure of intimate images, which must be removed after notification to the provider.

274. The Rapporteurship notes that the discussion would be driven by the perception that the Civil Rights Framework is overly lenient with digital platforms, allowing them not to act on content perceived as illegal or harmful. According to this view, the Civil Rights Framework's liability exemption rule was adopted when digital platforms did not have the broad economic and market power they currently have, which would justify a more lenient treatment, which would need to be reviewed in view of the platforms' inaction in the face of harmful content, when they would have the technical conditions to moderate it. Furthermore, the current system encourages the spread of such harmful content by monetizing content that achieves greater reach, which includes content inciting hate speech and threats of violence.

275. The Rapporteurship documented that the Federal Supreme Court considered Article 19 to be "partially unconstitutional," stating that the current rule would not sufficiently protect "relevant constitutional rights," such as fundamental rights and democracy. Although the complete ruling has not yet been published, the Court has made available a document of "consensus theses"<sup>500</sup>, which establish a new regime of content moderation obligations relating to the liability of platforms for content published by third parties. The theses state that the Legislature must establish new legislation, but provide applicable rules until such legislation exists. According to the ruling, the rule in Article 19 only continues to apply to specific providers, such as email, closed meetings, and instant messaging services; and, in relation to all application providers, for crimes against honor. In other cases, digital content that is characterized as "illegal" is subject to a notice and takedown regime, with the possibility of civil liability for platforms that do not remove such content after extrajudicial

<sup>499</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Annual Report 2014, OEA/Ser.L/V/II Doc. 13, March 9, 2015, para. 132.

<sup>500</sup> STF, Recognition of the partial and progressive institutionality of art. 19 of the MCI, June 26, 2025.

notification. Platforms are also required to remove content that "replicates" publications that have already been deemed illegal by court decisions<sup>501</sup>.

276. Furthermore, the new regime established by the ruling on Article 19 creates other obligations for platforms. In the case of content published as an advertisement or with paid promotion, or even with "artificial distribution network" content, there is a presumption of liability on the part of providers for illegalities, regardless of notification, which can be rebutted if the provider demonstrates "diligent action within a reasonable time"<sup>502</sup>. In addition, an exhaustive list of "serious crimes" has been defined, which includes (i) anti-democratic conduct and acts, with references to the Penal Code; (ii) crimes of terrorism or preparatory acts of terrorism; (iii) crimes of inducing, instigating, or aiding suicide or self-mutilation; (iv) incitement to discrimination based on race, color, ethnicity, religion, national origin, sexuality, or gender identity; (v) crimes committed against women because of their female gender, including content that propagates hatred or aversion to women; (vi) sexual crimes against vulnerable persons, child pornography, and serious crimes against children and adolescents; and (vii) human trafficking<sup>503</sup>. For crimes on this list, providers are required to "immediately remove content" and may be held liable for failure to do so, apparently without the need for notification. In any case, the theses establish that such "immediate" liability would not occur in the case of "isolated" or "atomized" content, but only in cases of "systemic failure," defined as the failure to adopt "state-of-the-art" preventive measures that provide "the highest levels of security"<sup>504</sup>. If there is an "isolated" publication that constitutes one of the crimes on this list, the applicable regime is *notice and takedown*. Notably, the theses impose on the person responsible for the publication the duty to prove, in court, the "absence of illegality" of the publication if they want it to be reinstated; and, if successful, internet providers cannot be required to compensate them.

277. Platforms identified as "marketplaces"<sup>505</sup> would be liable under consumer law, and all platforms would have additional obligations regarding self-regulation, customer service, and establishing representation in Brazil. The Rapporteurship registered criticism by certain sectors of civil society to this judgment, noting that the judgment dealt with the same themes as previous unsuccessful legislative efforts, which featured intense public participation by different actors; in this sense, the judgment would guarantee less public participation than the legislative process. To this point, the State noted that the judgment featured ample possibilities for public participation, such as the successful enrollment of actors as *amicus curiae*, as well as public hearings featuring diverse

<sup>501</sup> STF, Recognition of the partial and progressive institutionality of art. 19 of the MCI, June 26, 2025.

<sup>502</sup> STF, Recognition of the partial and progressive institutionality of art. 19 of the MCI, June 26, 2025.

<sup>503</sup> STF, Recognition of the partial and progressive institutionality of art. 19 of the MCI, June 26, 2025.

<sup>504</sup> STF, Recognition of the partial and progressive institutionality of art. 19 of the MCI, June 26, 2025.

<sup>505</sup> The term should be clarified in the publication of the full judgment, as it is not defined in the theses.

bodies<sup>506</sup>. The Rapporteurship also noted criticism that the published theses do not seek to establish differentiated regimes for larger and smaller platforms, which could impose competitive obstacles on smaller platforms, especially through costly content moderation obligations and the obligation to establish legal representation.

278. The Rapporteurship emphasizes that the imposition of obligations on digital intermediaries in general, and more specifically on social media platforms, must be in accordance with the obligations imposed on States by their human rights commitments<sup>507</sup>. In this sense, the Rapporteurship reiterates the importance of avoiding regulatory arrangements that allow or encourage private censorship conducted by social media platforms<sup>508</sup>. Although there is some flexibility regarding regulation, in any case, regimes that impose general content monitoring obligations on platforms, such as strict liability regimes<sup>509</sup>, should be avoided. For this reason, the Rapporteurship considers the requirement of judicial control to be, in general, an effective strategy that avoids excessive supervision of platforms and can respect the requirements of due process<sup>510</sup>.

279. However, certain types of illegal content whose circulation may cause immediate and serious harm may be subject to removal without judicial orders, taking into account the requirements of international law regarding unprotected speech, such as child pornography, war propaganda, hate speech that constitutes incitement to violence, and incitement to genocide<sup>511</sup>. In this regard, the Rapporteurship recalls that hate speech can reinforce structural barriers faced by vulnerable groups, resulting in physical violence<sup>512</sup>. Responses to this phenomenon, as established by the United Nations Special Rapporteurship on Freedom of Opinion and Expression, must differentiate between expressions that constitute crimes, subject to criminal sanctions; expressions that cannot be criminally sanctioned but may be subject to civil sanctions; and expressions that, although problematic, cannot be subject to criminal or civil sanctions<sup>513</sup>. In any case, the Judiciary must ensure

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<sup>506</sup> Federal Republic of Brazil, Verbal Note 386/25, December 19, 2025, IACHR archive.

<sup>507</sup> IACHR, Special Rapporteurship for Freedom of Expression, Parameters for a free, open, and inclusive internet, OEA/Ser.L/V/II, IACHR/RELE/INF. 17/17, March 15, 2017, para. 101.

<sup>508</sup> IACHR, Special Rapporteurship for Freedom of Expression, Guide to guaranteeing freedom of expression in the face of deliberate misinformation in electoral contexts, OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 25.

<sup>509</sup> UN, OSCE, OAS, ACHPR, Joint Declaration on Freedom of Expression and "Fake News," Disinformation, and Propaganda, March 3, 2017.

<sup>510</sup> IACHR, Special Rapporteurship for Freedom of Expression, Digital Inclusion and Internet Content Governance, OEA/Ser.L/V/II, CIDH/RELE/INF. 28/24, June 2024, paras. 208 and 209.

<sup>511</sup> IACHR, Special Rapporteurship for Freedom of Expression, Digital Inclusion and Internet Content Governance, OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 212.

<sup>512</sup> IACHR, Special Rapporteurship for Freedom of Expression, Digital Inclusion and Internet Content Governance, OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 213.

<sup>513</sup> UN, Report of the Special Rapporteurship on the promotion and protection of the right to freedom of opinion and expression, Online hate speech, A/67/357, September 7, 2012, para. 2.

that its decisions do not constitute forms of censorship and do not lead to human rights violations, and must ensure that only necessary and proportionate restrictions are imposed<sup>514</sup>.

280. The Rapporteurship has already affirmed the importance of States establishing regulations that require companies to operate in accordance with human rights<sup>515</sup>. In this sense, the existence of duties for digital platforms related to the removal of illegal content can be an effective tool in guaranteeing the rights provided for in the American Convention<sup>516</sup>. Nevertheless, the Rapporteurship emphasizes the need for platforms not to be held responsible solely for evaluating content differently from the State<sup>517</sup>. In this regard, the Rapporteurship has already stated that if the platform has adequate processes in place to identify and manage content that is not protected by the right to freedom of expression, it could only be held responsible if it decides not to act without adequate justification or acts in bad faith<sup>518</sup>. For the Rapporteurship, the content moderation duties incumbent upon platforms consist of taking the necessary measures aimed at a result, and not of ensuring that such a result is achieved<sup>519</sup>. Therefore, interpreting the platforms' moderation duties as "outcome" duties rather than "means" duties may encourage them to remove content indiscriminately, compromising their duty to respect freedom of expression<sup>520</sup>. Thus, rather than immediately and flawlessly removing infringing content, platforms should be monitored from the perspective of the existence of robust and effective mechanisms to do so.

281. Platforms should provide their users with mechanisms for appealing content moderation decisions. These mechanisms must be effective and easily accessible, with deadlines for reaching a decision. Furthermore, in situations that require greater contextual analysis, platforms should consider the possibility of human review of content. These mechanisms should exist without prejudice to the possibility of access to judicial remedies<sup>521</sup>. On this point, the Rapporteurship expresses concern about the agreed theses. By attributing responsibility to platforms for not removing content considered illegal—either immediately or after notification—the theses do not consider that

<sup>514</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 215.

<sup>515</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 222.

<sup>516</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, CIDH/RELE/INF. 28/24, June 2024, para. 224.

<sup>517</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 233.

<sup>518</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 232.

<sup>519</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 231.

<sup>520</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 233.

<sup>521</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, [Digital Inclusion and Internet Content Governance](#), OEA/Ser.L/V/II, IAC<sup>HR</sup>/RELE/INF. 28/24, June 2024, para. 287.

platforms may have retained content after an internal appeal by the user and based on a reasoned decision by the platform itself. Such a regulatory design, as a result, discourages the creation of internal appeal mechanisms.

282. The Rapporteurship notes that the current ruling on the Civil Rights Framework for the Internet will still receive further clarification and refinement from the Federal Supreme Court, in the form of the full publication of the judgments resolving the individual cases that gave rise to the theses. In addition, the Rapporteurship notes that motions for clarification may still be filed if there are still unclarified points in the theses. This process of providing clarifications is important, since the published theses mention apparently abstract concepts that are not explicitly defined in pre-existing legislation, giving the Court the opportunity to present further considerations on their interpretation. In this sense, the Rapporteurship closely observes the development of this judgment, emphasizing the importance of due process guarantees in the moderation of digital content. The Rapporteurship urges the Federal Supreme Court to interpret its published theses, especially the points contained in its paragraph 5, as emphasizing the existence of general obligations of diligence and not allowing platforms to be held liable for the existence of specific publications. Furthermore, the Rapporteurship emphasizes the need for an interpretation of the theses that allows platforms to fulfil their duty to provide swift and effective mechanisms for appealing content moderation decisions.

#### **G. Harmonize the interpretation of parliamentary immunities with Inter-American human rights standards and require political leaders to act responsibly**

283. *People who hold public leadership positions, including parliamentarians, participate in a public space that they must also protect, both in their candidacies and in the exercise of their mandates. As the Inter-American System has already recognized, candidates and elected officials have special duties regarding the use of their speech, which are not the same as those of other people. Stigmatizing speech does not contribute to public debate, promoting the erosion of the democratic system<sup>522</sup>. Parliamentary immunity must have broad protection, as it is an essential element in the functioning of democratic societies. However, it cannot be distorted from its very reason for existing, serving to legitimize speech that violates the special duties incumbent upon parliamentarians as public leaders.*

284. The Rapporteurship has received reports that parliamentarians use the wide reach afforded by their public position to disseminate discourse that could be classified as not protected by

<sup>522</sup> IACtHR, Special Rapporteurship for Freedom of Expression, Special Report on the Situation of Freedom of Expression in Peru, OEA/SER.L/V/II, CIDH/RELE/INF26/23, December 2023, para. 245.

freedom of expression. Parliamentarians are subject to rules of conduct in the parliamentary sphere, which preach the need for ethical and responsible behavior. The codes of ethics applicable to parliamentarians require respectful treatment of colleagues and all persons with whom they come into contact in the exercise of their parliamentary activities, based on the understanding that the full exercise of democratic deliberation requires minimum levels of recognition of plurality on the part of parliamentarians. However, the Rapporteurship was informed that parliamentarians propagate prejudices based on categories protected by the American Convention, such as race, color, sex, religion, and sexual orientation. In addition, there have been cases of parliamentarians advocating Nazi ideology, torture, and dictatorial regimes, with statements described as hate speech, without any reprimand or sanction. The Rapporteurship requested the State to provide further information on these cases and received no response. The Rapporteurship also recorded complaints regarding the use of unverifiable data by public authorities, especially members of Congress, indicating that they had not taken the necessary steps to substantiate their allegations, or that there was not an adequate level of publicity regarding the collection of such data.

285. At the same time, the Rapporteurship took note of parliamentarians who feel that their functional prerogatives have not been adequately observed regarding their freedom of expression. According to positions expressed to the Rapporteurship, parliamentarians were concerned about the possibility that disciplinary mechanisms of the National Congress might be used to curb their positions in the discussion of legislation. Similarly, parliamentarians reported that their parliamentary immunity had been waived in investigations based on acts of expression, which would be contrary to the constitutional protection afforded to parliamentarians. Among the episodes presented as examples are the initiation of legal proceedings by the entities responsible for managing the Itaipu hydroelectric plant for alleged criticism<sup>523</sup>, and the activation of State agencies to indict a congressman for crimes against honor for criticism directed at STF Justices made in parliament<sup>524</sup>, with this congressman allegedly being included in STF investigations<sup>525</sup>. In addition, the Rapporteurship was presented with an order from the Superior Electoral Court imposing a fine of R\$ 30,000.00<sup>526</sup> for the dissemination of an excerpt from an electoral debate, based on the finding that, although the excerpt was true, its dissemination was "distorted"<sup>527</sup>. The Rapporteurship was also

<sup>523</sup> [Gazeta do Povo, Itaipu attempts to silence critics of the plant's spending in court](#), May 9, 2025; TRF-4, [Federal Court rejects Itaipu Binacional's lawsuit against Paraná government secretary](#), April 25, 2025.

<sup>524</sup> [Carta Capital, PT goes to the Attorney General's Office against Bolsonaro supporter from Novo for attacks on Moraes after Bolsonaro's trial](#), March 28, 2025; UOL, [PT leader takes action against Novo congressman who referred to the Supreme Court as a 'mafia organization'](#), March 28, 2025.

<sup>525</sup> [Veja, Novo defends van Hattem after investigation reported by Flávio Dino](#), October 16, 2024; O GLOBO, [Congressman becomes target of investigation by the STF after calling Federal Police chief a 'criminal'](#), October 15, 2024.

<sup>526</sup> Approximately 5,500 USD.

<sup>527</sup> TSE, [TSE upholds fine against Flávio Bolsonaro and Bia Kicis for irregular propaganda with misinformation](#), September 19, 2023.

informed of restrictions on the digital channels of parliamentarians, including based on what was classified as incorrect information about the coronavirus pandemic<sup>528</sup>. After registering concerns about a possible inhibiting effect by the application of disciplinary and judicial mechanisms to parliamentarians, the Rapporteurship requested information from the State regarding the number of sanctions issued by the Ethics Councils of the National Congress in the last seven years, but did not receive a response from the State. The Rapporteurship notes that State agencies with powers to "combat misinformation" have stated that they will not take action against members of parliament, as they enjoy immunity.

286. The Inter-American Court considers that persons holding high positions in public administration are subject to additional obligations regarding their expression. Members of the civil service must refrain from stigmatizing statements, since their statements are especially capable of fostering "hatred, public contempt, persecution, and discrimination" against persons who are in some way harassed<sup>529</sup>. Furthermore, their statements can promote the invisibility and minimization of relevant social problems, such as gender violence<sup>530</sup>. On the other hand, senior public officials may have an obligation to speak out on certain issues of public interest, arising from their position as guarantors of fundamental rights: in situations of social conflict, they must consider the risks related to their expression or omission<sup>531</sup>. People who hold these positions are obliged to verify, even if not exhaustively, the veracity of the facts on which they base their opinions, even more diligently than private individuals<sup>532</sup>.

287. The Rapporteurship emphasizes that high-ranking public officials, due to the additional responsibilities that their positions entail, have special rights and duties regarding the exercise of freedom of expression. For example, public officials have the right and duty to report human rights violations and cannot use the broad reach of their expression to spread discourse that is not protected by the American Convention. Even if certain speech does not explicitly authorize, instigate, order, instruct, or promote acts of violence, it can still result in amplifying the situation of vulnerability in which they find themselves<sup>533</sup>. As part of the state's obligation to combat intolerance,

<sup>528</sup> O GLOBO, [After suspension on Instagram, Bia Kicis is blocked on YouTube](#), March 1, 2022; Veja, [Due to new fake news, Bia Kicis has her YouTube account blocked](#), March 1, 2022.

<sup>529</sup> Inter-American Court of Human Rights, Case of the Gomez Paquiyauri Brothers v. Peru, Merits, Reparations and Costs, Judgment of July 8, 2004, Series C No. 110, para. 182.

<sup>530</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Special Report on the Situation of Freedom of Expression in Peru](#), OEA/SER.L/V/II, IACtHR/RELE/INF26/23, December 2023, para. 250.

<sup>531</sup> Inter-American Court of Human Rights, Case of Members and Activists of the Patriotic Union v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 27, 2022, Series C No. 455, para. 406.

<sup>532</sup> Inter-American Court of Human Rights, Case of Members and Activists of the Patriotic Union v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 27, 2022, Series C No. 455, para. 406.

<sup>533</sup> IACtHR, Special Rapporteurship for Freedom of Expression, [Hemispheric Agenda for the Defense of Freedom of Expression](#), OEA/Ser.L/V/II, IACtHR/RELE/INF. 4/09, February 25, 2009, para. 38.

discrimination, and the dissemination of false information, political leaders must foster intercultural understanding and respect for diversity<sup>534</sup>.

288. International human rights law recognizes that freedom of expression in parliament enjoys a high level of protection, as it constitutes a unique forum for debate in a democratic society and plays a role of fundamental importance<sup>535</sup>. However, the Rapporteurship emphasizes that, as decided by the Inter-American Court, the application or non-application of parliamentary immunities must be analyzed in each specific case and must be subject to a strict proportionality test, taking into account the need to respect the mandate of the parliamentarian and the right of access to justice of the persons allegedly harmed<sup>536</sup>. These guarantees cannot render the right of access to justice illusory<sup>537</sup>. In this sense, the existence of parliamentary immunity cannot serve to legitimize the violation of the obligations of parliamentarians about their expression, including the reinforced obligations they have compared to private individuals. At the same time, the Rapporteurship emphasizes that the accountability of parliamentarians, through disciplinary or judicial mechanisms, should not be done in a way that inhibits their parliamentary activity and affects speech that is specially protected by the American Convention<sup>538</sup>. In this regard, the European Court of Human Rights has stated that states have very limited scope to regulate the content of parliamentary speech, allowing only restrictions necessary to prevent, for example, direct or indirect incitement to violence. In such cases, control must be more rigorous to guarantee freedom of expression<sup>539</sup>. However, it also stated that "although freedom of parliamentary debate is of fundamental importance in a democratic society, it is not absolute in nature"<sup>540</sup>.

289. In addition, political parties must also take on a leadership role. The Special Rapporteurship has already recognized that political parties are essential institutions of the democratic system, acting as intermediaries between citizens and their representatives<sup>541</sup>. The Rapporteurship notes that the State has not provided information on the existence of a legal framework in Brazil that holds political parties accountable for deliberate misinformation, discriminatory speech, or stigmatizing speech by their members.

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<sup>534</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2024, OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 251.

<sup>535</sup> ECHR, Case of Karácsony and Others v. Hungary, App. nos. 42461/13 and 44357/13, Judgment of May 17, 2016, para. 138.

<sup>536</sup> Inter-American Court of Human Rights, Case of Barbosa de Souza et al. v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 7, 2021, para. 111.

<sup>537</sup> Inter-American Court of Human Rights, Barbosa de Souza et al. v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 7, 2021, para. 113.

<sup>538</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Annual Report 2024, OEA/Ser.L/V/II Doc. 39, March 3, 2025, para. 251.

<sup>539</sup> ECHR, Case of Karácsony and Others v. Hungary, App. nos. 42461/13 and 44357/13, Judgment of May 17, 2016, para. 140.

<sup>540</sup> ECHR, Case of Karácsony and Others v. Hungary, App. nos. 42461/13 and 44357/13, Judgment of May 17, 2016, para. 139.

<sup>541</sup> IAC<sup>HR</sup>, Special Rapporteurship for Freedom of Expression, Guide to guarantee freedom of expression in the face of deliberate misinformation in electoral contexts, OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 48.

290. The Rapporteurship urges parties not to participate in deliberate disinformation campaigns, whether voluntarily or involuntarily<sup>542</sup>. In addition, political parties should act proactively to discourage their members from acting contrary to democratic principles and mutual respect among parliamentarians. Political parties should adopt and implement measures, such as codes of conduct, that establish minimum standards of behavior for their members and candidates for elected office, including specific provisions to address speech that promotes intolerance, discrimination, or hatred, as well as disinformation intended to restrict freedom of expression or other human rights. In addition, parties should consider introducing or participating in cross-party initiatives aimed at combating intolerance, discrimination, and misinformation, promoting intercultural understanding, social inclusion, and respect for diversity<sup>543</sup>. If a member of parliament spreads misinformation or hate speech, political parties should use the resources at their disposal to sanction them, disavowing conduct that impoverishes democratic debate and fulfilling their role as guarantors of the public sphere.

#### IV. RECOMMENDATIONS

##### **Acting to defend democracy and freedom of expression and assigning proportional responsibilities**

1. Convene the Council of the Republic, which has a pluralistic composition, to promote a nationwide dialogue on attacks on democratic institutions and political and social conflicts, thereby contributing to a collective understanding of momentous events in the recent past.

2. Prioritize and conclude the processing of investigations and criminal complaints involving the individuals charged with leading the attempt to disrupt institutions described in this report, assigning further responsibilities according to the level of participation and awareness of each person involved.

3. Restrict the use of judicial secrecy to exceptional cases and adopt rules of active transparency and access to information in the Judiciary, which consider the particularities of the mandate of the Judiciary and weigh them against the social expectation of knowing how it works, taking into account that the lack of information necessarily opens space for uncertainty and criticism.

<sup>542</sup> IACHR, Special Rapporteurship for Freedom of Expression, [Guide to Guaranteeing Freedom of Expression in the Face of Deliberate Disinformation in Electoral Contexts](#), OEA/Ser.D/XV.22, OEA/Ser.G CP/CAJP/INF. 652/19, October 2019, p. 48.

<sup>543</sup> UN, OSCE, OAS, ACHPR, [Joint Declaration on Political Leaders, Public Officials, and Freedom of Expression](#), October 20, 2021; UN, Report of the Special Rapporteurship on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, [Freedom of expression and elections in the digital age](#), A/HRC/59/50, June 11, 2025, para. 106.

4. Prioritize, as a general rule, final judicial decisions on the merits of the case to restrict the right to freedom of expression in cases where the abusive exercise of that right is demonstrated.

5. Restrict the use of precautionary or provisional measures that limit the right to freedom of expression only to proven exceptional situations and with a defined time limit for such measures.

6. Ensure that restrictions on freedom of expression are not imposed on the basis of vague, open-ended concepts or concepts that otherwise do not meet the requirements of legality, such as "informational disorder" and "decontextualized information".

7. Ensure that the category of "anti-democratic acts" is not used to restrict speech that is merely critical of the authorities.

8. Clearly indicate the grounds for restrictions on freedom of expression, refraining from merely alleging the non-absolute nature of the right to freedom of expression or simply presenting a catalogue of categories of expressions that do not deserve protection without specifying their relationship to the specific case.

### **Safekeeping a pluralistic and inclusive environment for the exercise of freedom of expression**

9. Adopt a precise and well-defined definition of the scope of the term "hate speech," bringing it into line with Article 13.5 of the American Convention on Human Rights and the United Nations Rabat Plan of Action.

10. Expand preventive and educational initiatives to combat discriminatory stereotypes as a strategy to combat speech prohibited by Article 13.5 of the American Convention on Human Rights. This includes education focused on understanding, encouraging strategies for the provision of complementary information by the State, public awareness campaigns, and the deepening of statistical data collection and analysis.

11. Diligently investigate cases of violence and threats, including in the digital space, against journalists and human rights defenders, considering the exercise of their activities in the lines of crime investigation.

12. Strengthen the national system for the protection of journalists and human rights defenders, ensuring that it is based on instruments with formal legal hierarchy, adequate funding, independent bodies for assessing situations, and tools that enable the assignment of protective

measures in accordance with the particular needs of the persons affected and the exercise of their activities.

13. Promote community journalism and journalism developed by historically discriminated groups, with adequate allocation of radio spectrum and public policies that encourage their financing and operation.

14. Ensure that public authorities, especially those at the highest levels, fulfil their duty to reasonably verify the facts on which they base their opinions and adopt domestic legal provisions that require political parties to create and implement measures, such as codes of conduct, that establish minimum standards of behavior for their staff and for candidates for elected office, including to address speech that promotes intolerance, discrimination, or hatred, or that constitutes misinformation intended to limit freedom of expression or other human rights.

15. Harmonize the scope of parliamentary immunities with the special duties to which public authorities are subject when exercising their freedom of expression, in accordance with Inter-American standards on the matter.

### **Updating the legal framework to address the challenges of the digital era to public debate**

16. Advance the development of legal frameworks that address the challenges of the digital space, including the role of digital platforms, the use of artificial intelligence, the sustainability of journalism, and economic concentration in this environment, in accordance with the Inter-American parameters already developed in this area. To this end, ensure the broadest possible participation of stakeholders in these processes and prevent the approval of points agreed upon in bills or public policies from being blocked by dissent on other aspects.

17. Ensure that judicial decisions involving restrictions on content on social networks are notified to digital platforms and users with an explanation of the order adopted and the illegality of the specified content.

18. Limit the possibility of restricting content on digital platforms without hearing the user or the platform to exceptional situations, ensuring, even in these cases, that confidentiality or judicial secrecy does not prevent the affected person from knowing about the court orders that motivated the restriction.

19. Ensure that platforms are not held liable for content published by third parties when they comply with appropriate parameters of diligence in reviewing such content, recognizing that

moderation duties constitute obligations of means, not of results, and that the treatment of platforms should vary according to their size and scale.

20. Decriminalize *desacato*.

21. Decriminalize crimes against honor—slander, defamation, and libel—and, in the case of public officials or cases of public interest, convert them into civil actions, prioritizing the adoption of rectification and response measures.

22. Deepen the adoption of preventive procedural rules for strategic lawsuits against public participation, in accordance with international standards and best practices in this area, including establishing jurisdiction for the courts that have the closest connection to the case, the possibility of early termination of these lawsuits, and the implementation of technological tools that assist in identifying repeated lawsuits even when they are being processed in secret.