



Intervention (Jineth Bedoya v Colombia)

1. Media Defence (the 'Intervener') submits these written comments by way of a third-party intervention in the above-mentioned case. The Intervener is a non-governmental organisation that provides legal support and helps defend the rights of journalists, bloggers and independent media across the world. It is based in London and works closely with a world-wide network of experienced human rights lawyers, as well as local, national and international organisations, donors, foundations and advisors who are all concerned with defending freedom of expression. It has extensive experience in defending journalists and independent media. As part of its mandate, the Intervener engages in strategic litigation to protect and promote freedom of expression and has intervened in cases before various national and international tribunals.¹

2. The written comments are respectfully submitted to assist the Inter-American Court of Human Rights (also 'IACtHR') and provide information on assessing the State's obligations in contexts of heightened risk to women journalists. For this purpose, the intervention will focus on the following matters:

- (i) The context of violence against women journalists in Colombia;
- (ii) The special duty to protect journalists in the Colombian context;
- (iii) The duty to provide a specific approach to the protection of women journalists;
- (iv) The duty to provide safeguards to newsgathering activities of women journalists; and
- (v) Sexual violence against women journalists and impunity in such cases create a chilling effect on freedom of speech.

1. The context of violence against women journalists in Colombia

3. The Intervener believes that the present case is emblematic of the situation of violence against journalists, particularly women journalists, in Colombia. Several international human rights bodies, including the Inter American Commission on Human Rights (IACHR) and the Inter American Court of Human Rights, as well as local and international NGOs, have highlighted this issue in the past.

¹ See, for instance, European Court of Human Rights ("ECtHR"), *Gleb Vyacheslavovich Paykachev v Russia*, App. No. 11265/17 (communicated on 22 September 2017); Economic Community of West African States ("ECOWAS") Court, *Paul Uter Dery and 2 others v The Republic of Ghana*, Suit No. ECW/CCJ/APP/42/16 (29 April 2019); East African Court of Justice ("EACJ"), *Ronald Ssemuusi v Attorney General of the Republic of Uganda*, App. No. 4 of 2015.

4. As is evidenced in the IACHR's merits report in the present case, Ms. Bedoya received threats due to her work in different moments after the crimes of 25 May 2000.² It is the position of the Intervener that these are not isolated incidents, but are part of a general context of violence that persists in Colombia, one which the government has been well aware for decades.

5. Almost 30 years ago, in 1993, the IACHR highlighted the issue of violence against journalists in Colombia: "people are so defenceless that journalists are at the mercy of those who resort to the cowardly practice of assassination to intimidate them, repress them and coerce them".³ Furthermore, the IACHR highlighted that the killing of 96 journalists between 1977 and 1992 demonstrated a pattern of constant aggressions against journalists.⁴ In 1999, a new country report by the IACHR referred to the sustained increase of harassment against journalists by several actors, which was aimed at keeping them from carrying out their mission of informing the public.⁵ The report also highlighted that at least 37 journalists had been kidnapped during the previous 10 years.

6. The IACtHR has also referred to this same context. In *Velez Restrepo v Colombia*, the Court took into account that during the decade of 1990 journalists faced a "context of special risk" triggered by attacks from those involved in the internal armed conflict, as well as groups involved in ordinary crime.⁶ In that same vein, the Court recalled in *Carvajal Carvajal* that Colombia was considered in 1998 as the "deadliest place in the world for the press".⁷ Furthermore, it clarified that, during the 1990s, the different actors involved in the national conflict inflicted violence against journalists in response to their criticism, their denunciations or their reporting on sensitive issues.⁸ According to the IACtHR, this context also included a general environment of impunity for the killings of journalists.⁹

7. Recently, the UN High Commissioner for Human Rights noted the alarming increase in threats against journalists in Colombia.¹⁰ Additionally, the UN Special Rapporteur on the situation of human rights defenders referred to a general climate of fear amongst journalists in rural areas of the country,¹¹ and the Special Rapporteur for Freedom of Expression of the IACHR ('IACHR Special Rapporteur') mentioned in his most recent annual report that Colombia has an "increasingly critical climate of violence against the press".¹² Furthermore, this mandate holder also expressed concern about the high number of attacks, threats and intimidation through different means and in different parts of the country against journalists covering public interest issues such as the peace process, corruption and drug trafficking, among others.¹³ In addition, Reporters Without Borders considers Colombia "to be one of the western hemisphere's most dangerous countries for journalists"¹⁴ and the Foundation for Press Freedom (FLIP) recently reported that 583 journalists received threats between 2017 and 2019.¹⁵

² IACHR, Jineth Bedoya Lima and Other – Colombia, Report No. 150/18, CASE 12.954, para 66.

³ IACHR, Second report on the situation of Human Rights in Colombia, OEA/Ser.L/V/II.84, Doc. 39 rev. 14 October 1993, Chapter IX, D.

⁴ *Id.*

⁵ IACHR, Annual Report 1999, Chapter VIII The Right to Freedom of Thought and Expression, available at: <http://www.cidh.org/countryrep/Colom99en/chapter-8.htm>.

⁶ IACtHR, *Velez Restrepo and family v Colombia*, judgment of 3 September 2012, para 84.

⁷ IACtHR, *Carvajal Carvajal and others v Colombia*, judgment of 13 March 2018, para 167.

⁸ *Id.*

⁹ *Ibid.*, para 170.

¹⁰ UN General Assembly, Situation of human rights in Colombia Report of the United Nations High Commissioner for Human Rights, A/HRC/40/3/Add.3, 2019.

¹¹ UN General Assembly, Visit to Colombia, Report of the Special Rapporteur on the situation of human rights defender, A/HRC/43/51/Add., 2019.

¹² IACHR, Annual Report 2019, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2019, para 345

¹³ *Id.*, 351.

¹⁴ Reporters without Borders, Colombia Country profile. Available at: <https://rsf.org/en/colombia>.

¹⁵ FLIP, Callar y Fingir, la censura de siempre, Annual report 2019, February 2020. Available at: <https://flip.org.co/index.php/es/publicaciones/informes-anales/item/2463-informe-anual-2019-callar-y-fingir-la-censura-de-siempre>.

8. The abovementioned context has been fostered by different factors, such as the decades-long internal conflict and organised crime,¹⁶ coupled with a general environment of impunity with regards to attacks against the press¹⁷ and the failure of the governmental protection mechanism to adapt to emerging challenges and structural deficiencies that hinder its effectiveness in protecting lives.¹⁸ Regarding the last point, the IACHR Special Rapporteur has urged the Colombian government to “make progress and articulate more effective mechanisms to prevent and curb the growing context of violence against the press”.¹⁹ Some regions of Colombia are characterized by a high risk to the life and personal integrity of journalists. An example is the border between that country and Ecuador, where the IACHR’s Special Follow Up Mechanism to the kidnapping and murder of three journalists concluded that both States should implement measures to prevent and protect journalists who cover that region.²⁰

9. These risk factors are heightened in the case of women in a country like Colombia, which has a long history of violence against women. In that sense, the Committee on the Elimination of Discrimination Against Women (CEDAW) has identified an increasing and persistently high number of cases of gender-based violence against women and girls, including femicide and institutional violence, which remain in impunity.²¹ Women journalists face specific risks, as reported by the IACHR Special Rapporteur, such as “coercion, intimidation, abuse of power, and threats based on gender status” as well as “violence and sexual harassment” in work contexts.²² Furthermore, the government’s National Centre for Historical Memory reported that violence perpetrated against women journalists includes physical and psychological torture, direct attacks and sexual humiliation, also against relatives.²³ In addition, the FLIP has explained that women in Colombia are subject to a lower recognition of their voices and face higher obstacles to participate in public debate, including in the press.²⁴ FLIP has also argued that the government’s protection mechanism lacks a gender approach.²⁵

2. The special duty to protect journalists in the Colombian context

10. Case law from international human rights bodies has referred to States’ positive obligation to provide protection for journalists. The European Court of Human Rights (ECtHR) has considered that States are obliged to “put in place an effective system of protection for authors and journalists” as a part of the obligation to create a favourable

¹⁶ See *La Palabra y el Silencio: La violencia contra periodistas en Colombia (1977-2015)*, Report of the National Centre for Historical Memory [*Centro Nacional de Memoria Histórica*], November 2015.

¹⁷ IACHR, Annual Report 2019, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2019, para 330.

¹⁸ See UN General Assembly, Visit to Colombia, Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/43/51/Add., 2019, para 58, where the Special Rapporteur notes criticism by defenders with regards to the mechanism, “particularly the emphasis on their individual and material nature, the delays in risk assessment, which have resulted in lives being lost, the requirement for excessive information, including membership of legally established organizations...” .

¹⁹ IACHR, Annual Report of the Inter-American Commission on Human Rights 2019, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2019, para 359.

²⁰ IACHR, Special Follow Up Mechanism, Final Report by the Special Follow Up Mechanism designated by the IACHR, follow up to the facts that led to the kidnapping and murder of Javier Ortega, Paúl Rivas and Efraín Segarra (Members of the journalistic team of “El Comercio”), December 2019, para 341.

²¹ UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the ninth periodic report of Colombia, CEDAW/C/COL/CO/9, para 25.

²² IACHR, Women Journalists and Freedom of Expression Discrimination and gender-based violence faced by women journalists in the exercise of their profession, OEA/SER.L/V/II CIDH/RELE/INF.20/18, 31 October 2018, para 39.

²³ *La Palabra y el Silencio: La violencia contra periodistas en Colombia (1977-2015)*, Report of the National Centre for Historical Memory [*Centro Nacional de Memoria Histórica*], November 2015.

²⁴ FLIP, *Prensa acorralada: un juego de violentos y poderosos*, Annual report 2018, February 2019. Available at: <https://flip.org.co/micrositios/informe-2018/descargas/informe-anual-2018.pdf>.

²⁵ FLIP, *Callar y fingir, la censura de siempre*, Annual report 2019, February 2020. Available at: <https://flip.org.co/index.php/es/publicaciones/informes-anuales/item/2463-informe-anual-2019-callar-y-fingir-la-censura-de-siempre>.

environment for public debate and enable the expression of any opinion or idea without fear.²⁶ Likewise, the IACtHR has established that the obligations to guarantee the rights to life and to freedom of expression of journalists are intertwined²⁷ and that this positive obligation arises in cases where the authorities “knew or ought to have known” the existence of a “real and immediate danger” to the rights to life or personal integrity of an individual or individuals.²⁸ The ECtHR has taken a similar view.²⁹ It is the submission of the Intervener that the positive obligation of protecting journalists is heightened in a context like the Colombian one, which implies a duty by the government to adapt its protective mechanism to the changing realities of the country and to the shortcomings of its implementation. This is particularly relevant from a gender perspective in the case of women journalists.

11. The special mandates on freedom of expression of the four regional mechanisms have considered that the protection and promotion of freedom of expression includes the duty to ensure the protection of that right “as a matter of domestic legal, regulatory and policy frameworks in accordance with international standards”.³⁰ In that same vein, the special mandates have also referred to a duty of the States to “take effective measures to prevent attacks against journalists and others exercising their right to freedom of expression”.³¹ Similarly, the UN Special Rapporteur on the right to freedom of expression has said that governments must not only respect journalism but also provide protection to journalists “through strong laws, prosecutions of perpetrators and ample security where necessary”.³²

12. Such a duty has been emphatically stressed in resolutions adopted by the UN General Assembly and the UN Human Rights Council,³³ as well as in the Plan of Action on the Safety of Journalists and the Issue of Impunity, spearheaded by UNESCO. This document stresses that the protection of journalism and the fight against impunity is not limited to “after-the fact action” and “requires prevention mechanisms and actions to address some of the root causes of violence against journalists and of impunity”.³⁴ The plan also refers to the need to adapt the protection of journalists to the local realities affecting them and calls for “careful, context-sensitive consideration of the differing needs of journalists in conflict and non-conflict zones, as well as of the different legal instruments available to ensure their protection”.³⁵

²⁶ ECtHR, *Dink v Turkey*, No. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment of 14 September 2010, para 137.

²⁷ IACtHR, *Case of Carvajal Carvajal v Colombia*, judgment of 13 March of 2018, para 176.

²⁸ See IACtHR, *Case of the “Pueblo Bello Massacre” v Colombia*, judgment of 31 January 2006, para 119 and IACtHR, *Case of Carvajal Carvajal v Colombia*, judgment of 13 March of 2018, para 161.

²⁹ See ECtHR, *Hajduová v Slovakia*, No. 2660/03, judgment of 30 November 2010, para 50; ECtHR, *Case of Opuz v Turkey*, No. 33401/02, judgment of 9 June 2009, para 129; ECtHR, *Case of Kiliç v Turkey*, No. 22492/93, judgment of 28 March 2000, para 63; ECtHR, *Case of Osman v United Kingdom*, (87/1997/871/1083), judgment of 28 October 1998, para 115.

³⁰ Special mandates on freedom of expression, Twentieth anniversary of the joint declaration: challenges to freedom of expression in the next decade, 2019. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1146&IID=1>.

³¹ Special mandates on freedom of expression, Joint declaration on freedom of expression and responses to conflict situations, 2015. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=987&IID=1>.

³² UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/71/373, 6 September 2016.

³³ UN Human Rights Council, Resolution adopted by the Human Rights Council on 27 September 2018, A/HRC/RES/39/6 and UN General Assembly, Resolution adopted by the General Assembly on 18 December 2019, A/RES/74/157.

³⁴ UN Plan of action on the safety of journalists and the issue of impunity, CI-12/CONF.202/6, para 1.6, available at https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists_en.pdf.

³⁵ *Id.*, paras 1.6 and 1.16.

13. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has considered that the following elements are relevant for the assessment of the “ought to have known” condition of the positive obligation to protect journalists:³⁶

- i. Whether there are credible threats objectively verifiable; that is to say supported by reference to a range of sources of information;
- ii. Whether the perpetrators have the intention to implement their threats, whether they are in a position, including physical proximity, whether they have the capabilities, to carry out the threats;
- iii. Whether the risk is immediate, meaning continuing and soon;
- iv. Whether the identity of the victim places him/her in specific situations of vulnerabilities or risks; and
- v. Whether there are patterns of violence against groups of individuals by virtue of their identities.

14. The Intervener submits that given the Colombian context and the extensive reporting and cases litigated domestically and regionally, it must be considered that the authorities have had knowledge of the dangers faced by journalists, triggering a heightened duty to actively protect them.

15. The heightened duty to protect journalists in special contexts of risk has been stressed by both the Inter-American Commission and Court. In that sense, the IACtHR has emphasised that States have a duty to create conditions to prevent violations to the right to life as a prerequisite for the exercise of other rights, including freedom of expression.³⁷

16. The IACtHR has also recognized the possibility of *de facto* conditions where those who exercise freedom of expression are in a higher risk or vulnerability.³⁸ In such circumstances, States have an obligation to refrain themselves from actions that facilitate or deepen the danger and, where applicable, adopt necessary and reasonable measures to prevent violations or to protect rights of those who are in danger.³⁹ This stance is complemented by the IACHR’s position that countries with “systematic and serious structural situation of violence against journalists and other media actors” must establish special protection programs.⁴⁰

17. Having this in mind, the Intervener notes that the IACtHR used the context of risk against journalists in Colombia as a relevant element for the “diligent evaluation of the need for opportune measures of protection” in *Carvajal Carvajal v Colombia*.⁴¹ Although Colombia has implemented a protection mechanism for journalists at risk, the IACtHR ordered the Colombian State to forward information from its periodic reports to the Organisation of American States and to the United Nations regarding the duty to prevent attacks against journalists and to protect them. This order has not been complied with.⁴² However, recent reports issued by UN bodies (see para 8) indicate that the mechanism remains ineffective.

³⁶ UN Human Rights Council, Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi, A/HRC/41/CRP.1, 19 June 2019, para 338.

³⁷ IACtHR, *Case of Carvajal Carvajal v Colombia*, judgment of 13 March of 2018, paras 162 and 176.

³⁸ IACtHR, *Case of Uzcategui and Others v Venezuela*, judgment of 3 September 2012, para 190.

³⁹ *Ibid.*

⁴⁰ IACHR, Office of the Special Rapporteur for Freedom of Expression, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, 2013, para 62, available at http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf.

⁴¹ IACtHR, *Case of Velez Restrepo and family v Colombia*, judgment of 3 September 2012, para 193.

⁴² IACtHR, *Case of Carvajal Carvajal v Colombia*, Order on Monitoring Compliance of 7 October 2019, para 19.

3. *States have a duty to provide a specific approach to the protection of women journalists*

18. International and regional bodies have referred to the special risks faced by women journalists when exercising their freedom of expression or working as journalists.⁴³ These persons face specific gender-based risks that are additional to the risks that their male peers would face.⁴⁴ According to the IACHR, traditional patterns of discrimination and violence against women in the Americas are factors that “prevent, hinder, or heighten the risk” of women journalists exercising freedom of expression, which in turn reduces their ability to seek, receive and disseminate information and ideas.⁴⁵

19. In the case of *Khadija Ismayilova v Azerbaijan*, the ECtHR dealt with a situation that exemplifies the specific nature of the attacks against women journalists. Ms. Ismayilova was subject to illegal surveillance that resulted in the filming of a non-authorized intimate video of her with her partner, which was later used for blackmailing her and to humiliate her publicly. The government initiated a criminal investigation but it had significant flaws and delays that ultimately lead to impunity. The ECtHR considered that the government failed in its positive obligation to protect the journalist’s privacy, which was connected to her freedom of expression: “the threat of public humiliation and the acts resulting in the flagrant and unjustified invasion of the applicant’s privacy were either linked to her journalistic activity or should have been treated by the authorities when investigating as if they might have been so linked. In this situation Article 10 of the [European] Convention required the respondent State to take positive measures to protect the applicant’s journalistic freedom of expression, in addition to its positive obligation under Article 8 of the Convention to protect her from intrusion into her private life.”⁴⁶

20. In connection to the particular risk that women journalists face, international and regional bodies have considered that, when adopting measures for the protection of journalists, States must apply a strong specific approach that takes into account gender-based considerations.⁴⁷ Regarding such approach, the IACHR Special Rapporteur and the Committee of Ministers of the Council of Europe have referred in detail to the content of the possible actions for gender-based prevention, protection and justice. Among those issues, the Intervener notes the IACHR Special Rapporteur’s emphasis on the need to conduct risk assessments and implement protective measures that consider the risk faced by women journalists as a result of gender-based violence.⁴⁸ In that same line, the Committee of Ministers stated that a “systematic, gender-sensitive approach is required to prevent and combat these specific dangers, as well as to counter the underlying societal customs, practices, gender stereotypes, prejudices and discrimination on which they feed”.⁴⁹ In that sense, the Intervener recalls that the ECtHR has considered that Article 14

⁴³ See Special mandates on freedom of expression, Joint declaration on crimes against freedom of expression, 2012; UN Plan of action on the safety of journalists and the issue of impunity, CI-12/CONF.202/6; UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/71/373, 6 September 2016; UN Human Rights Council, Resolution adopted by the Human Rights Council on 27 September 2018, A/HRC/RES/39/6 and UN General Assembly, Resolution adopted by the General Assembly on 18 December 2019, A/RES/74/157.

⁴⁴ IACHR, Women Journalists and Freedom of Expression: Discrimination and gender-based violence faced by women journalists in the exercise of their profession, OEA/SER.L/V/II CIDH/RELE/INF.20/18, 31 October 2018, paras 12-14.

⁴⁵ *Id.*, para 13.

⁴⁶ ECtHR, *Case of Khadija Ismayilova v Azerbaijan*, Nos. 65286/13 and 57270/14, judgment of 10 January 2019, para 164.

⁴⁷ See UN Human Rights Council, Resolution adopted on 27 September 2018, A/HRC/RES/39/6 and UN General Assembly, Resolution adopted on 18 December 2019, A/RES/74/157.

⁴⁸ IACHR, Women Journalists and Freedom of Expression Discrimination and gender-based violence faced by women journalists in the exercise of their profession, para 169.

⁴⁹ Committee of Ministers, *Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors*, adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers’ Deputies.

of the European Convention on Human Rights (prohibition of discrimination) “does not prohibit a member State from treating groups differently in order to correct “factual inequalities” between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article”.⁵⁰

21. Such considerations are coherent with the IACtHR’s interpretation of sexual violence through the lenses of the Convention on the Elimination of All Forms of Discrimination Against Women as an embodiment of traditionally unequal power relationships between women and men⁵¹ and of the culture of gender-based violence and discrimination.⁵² The IACtHR also has affirmed that being a woman is a factor that can maximize other risks.⁵³ In that sense, it has stressed that women face specific risks which are different from those faced by men, such as sexual violence, which is usually perpetrated with the purpose of humiliating⁵⁴ and can have devastating physical and psychological effects.⁵⁵ Due to those specific risks faced by women, the IACtHR has considered that States must provide an adequate legal framework for the protection of women, which includes policies and practices to act promptly when a complaint is filed, the adoption of comprehensive preventive measures and the strengthening of the response by the authorities.⁵⁶

22. In a recent case, the ECtHR stressed the state’s positive obligation to implement “effective deterrence against serious acts such as rape, where fundamental values and essential aspects of private life are at stake”, which includes adopting adequate criminal law provisions that demonstrate “particular vigilance and afford increased protection” to individuals in a vulnerable position.⁵⁷ Important in the context of the present case, the ECtHR recognised that the obligation to safeguard physical integrity may extend to questions relating to the effectiveness of a criminal investigation.⁵⁸

23. The Intervener submits that the abovementioned reasoning of a heightened duty to protect women journalists should be taken into account in the assessment of a case of sexual violence against a woman journalist. Furthermore, such duty is even more acute in a country with a context of violence against women journalists like Colombia.

4. States must provide safeguards to newsgathering activities of women journalists

24. According to the IACtHR, “journalism is the primary and principal manifestation of freedom of expression or thought”.⁵⁹ The value of investigative journalism in a democracy cannot be overstated. It gives publicity to matters that would otherwise go unexposed. It informs members of the public about places or practices that have a significant impact on society, but are otherwise inaccessible or unknown to them.

25. In order for the press to perform its “public watchdog”⁶⁰ role, it must not only be free to impart information and ideas of public interest, but it must also be free to gather, collect and assess such information and ideas. In this context, the ECtHR has consistently recognised that “the gathering of information is an essential preparatory step in journalism

⁵⁰ ECtHR, *Case of Andrie v the Czech Republic*, No. 6268/08, judgment of 17 February 2011, para 48.

⁵¹ IACtHR, *Case of Fernandez Ortega and Others v Mexico*, judgment of 30 August 2010, para 118.

⁵² IACtHR, *Case of González and Others (Cottonfield) v Mexico*, judgment of 16 November 2009, paras 132-133.

⁵³ IACtHR, *Case of Veliz Franco and Others v Guatemala*, judgment of 19 May 2014, para 134.

⁵⁴ IACtHR, *Case of Penal Miguel Castro v Peru*, judgment of 25 November 2006, para 223.

⁵⁵ *Id.*, para 313.

⁵⁶ IACtHR, *Case of González and Others (Cottonfield) v Mexico*, para 58.

⁵⁷ ECtHR, *E.B. v Romania*, No. 49089/10, judgment of 19 March 2019, paras 53 and 55.

⁵⁸ *Ibid.*, para 55; also ECtHR, *M.C. v Bulgaria*, No. 39272/98, judgment of 4 December 2003, para 152.

⁵⁹ IACtHR, *Advisory Opinion OC 5-85* of November 13, 1985, para. 71.

⁶⁰ The press is regularly referred to as a ‘public watchdog’ in courts in Europe. See for example ECtHR, *Bladet Tromso and Stensaas v Norway*, No. 21980/93, judgment of 20 May 1999, para. 59.

and an inherent, protected part of press freedom.”⁶¹ It is therefore essential, consistent with the position of the IACtHR, that “journalists who work in the media should enjoy the necessary protection and independence to exercise their functions to the fullest, because it is they who keep society informed, an indispensable requirement to enable society to enjoy full freedom and for public discourse to become stronger”.⁶²

26. In that same vein, the ECtHR has considered the newsgathering of information in certain locations and events where authorities use their force against persons or groups in a vulnerable situation, such as in prisons,⁶³ asylum seekers’ camps⁶⁴ and protests⁶⁵ as a matter of public interest, which is granted a stronger protection within the right to freedom of expression.

27. The need to protect newsgathering in order to protect press freedom is reflected in the UN Special Rapporteur’s definition of journalism. In his report to the UN Human Rights Council in 2012 the Special Rapporteur noted that individuals carrying out a journalistic function “observe and describe events, document and analyse events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole”.⁶⁶ Therefore, any measure that interferes with the newsgathering activities of individuals carrying out a “public watchdog” role will inevitably interfere with the right to freedom of expression in its individual and collective dimensions.

28. Newsgathering activities, particularly in complex contexts, can trigger risks against journalists. Furthermore, women journalists, as explained by the IACHR Special Rapporteur, “disproportionately and routinely” face gender-based violence in the field.⁶⁷ This is consistent with the UN Special Rapporteur on violence against women conclusion that the risk for women journalists in the field, in conflict zones or contexts, is “exacerbated simply by the fact that they are women and they face an increased risk of sexual assault or rape at the hands of warring parties or the public”.⁶⁸ As a consequence, women journalists who want to work in the field are reluctant to disclose assaults against them to their editors or the police, as they fear to be marked as vulnerable and therefore denied the opportunity to work in future assignments.⁶⁹

5. Sexual violence against women journalists and impunity in such cases creates a chilling effect on freedom of speech

29. The Intervener submits that sexual violence against women journalists has a chilling effect, reinforced when such attacks remain in impunity. Among other possible effects, violence against women journalists (or against their fellow women colleagues) and

⁶¹ See, e.g., ECtHR, *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland*, No. 931/13, para. 128, and *Butkevich v Russia*, No. 5865/07, judgment of 13 February 2008, para 123.

⁶² IACtHR, *Case of Herrera Ulloa v Costa Rica*. Judgment of 2 July 2004, para. 119. 27. Also, the General Assembly of the United Nations, as early as 1946, recognised that “freedom of information implies the right to gather, transmit and publish news [...]. It requires as a basic discipline the moral obligation to seek the facts.” See UN General Assembly, Resolution 59(1) Calling of an International Conference on Freedom of Information, UNDoc. A/RES/59(I).

⁶³ ECtHR, *Schweizerische Radio- und Fernsehgesellschaft srg v Switzerland*, No. 34124/06, judgment of 21 June 2012, para 56.

⁶⁴ ECtHR, *Szurovecz v Hungary*, No. 15428/16, judgment of 24 February 2020, para 61.

⁶⁵ ECtHR, *Butkevich v Russia*.

⁶⁶ UN Special Rapporteur on Freedom of Opinion and Expression, Report to the Human Rights Council, UNDoc. A/HRC/20/17, paras. 3 to 4.

⁶⁷ IACHR, *Women Journalists and Freedom of Expression Discrimination and gender-based violence faced by women journalists in the exercise of their profession*, para 5.

⁶⁸ UN General Assembly, Report of the Special Rapporteur on violence against women, its causes and consequences, Combating violence against women journalists, A/HRC/44/52, 6 May 2020, para 61.

⁶⁹ UN General Assembly, Report of the Special Rapporteur on violence against women, its causes and consequences, Combating violence against women journalists, A/HRC/44/52, 6 May 2020, para 31.

the ensuing impunity, can deter them from pursuing a journalistic career or from working on certain topics.

30. Women journalists face a hostile environment with a direct effect in their work and their freedom of expression,⁷⁰ which creates a negative incentive for certain activities and for the journalistic activity itself. The UN Special Rapporteur on violence against women has explained that “social norms and gender stereotypes continue to present considerable challenges that prevent women from working in the profession on an equal basis with men”.⁷¹ Added to this, impunity for attacks against journalists deepens hostility and its effects, hindering women’s avenues to work in journalism and exercise their freedom of expression.

31. This reasoning is complementary to the IACtHR’s caselaw, which established that the impunity for attacks against journalists is likely to have an “intimidating effect [...] on other journalists who cover news of public interest”⁷² and that impunity in cases of violence against women leads to feelings of insecurity and reinforces the message that such violence is tolerated.⁷³ In the emblematic case of *Opuz v Turkey*, the ECtHR reasoned that even if unintentional and not arising from the law, the “overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors” are indications of insufficient commitment to take appropriate action to address gender-based violence.⁷⁴

32. Additionally, when an environment of impunity in cases of attacks against journalists exists, in the words of the ECtHR, there is a “grave chilling effect on freedom of expression, including on the “public watchdog” role of journalists and other media actors and on open and vigorous public debate”.⁷⁵

33. A further consequence of the aforementioned chilling effect is that the public loses relevant voices and points of view, which undermines its right to receive information and ideas from a diverse set of postures.⁷⁶ In that sense, the UN Secretary General has stated that women journalists may resort to self-censorship after being attacked, which in turn may have the effect of delegitimizing and reducing the impact of women’s voices.⁷⁷ The Secretary General also affirmed that “this violence and consequent exclusion further entrenches discrimination and inequality, affects the right of everyone to freedom of expression and opinion, including the right to information, and undermines democracy”.⁷⁸

6. Conclusion

34. Colombia is a country with a highly documented history of violence against journalists and the media. The long list of attacks against freedom of the press in the country originates from a varied number of perpetrators, patterns of violence and local contexts. Past Colombian governments have undertaken initiatives to counter the risks associated with journalism, but the number of attacks throughout the years demonstrates that those efforts have not resulted in better conditions or a favourable environment for journalism.

⁷⁰ IACHR, *Women Journalists and Freedom of Expression Discrimination and gender-based violence faced by women journalists in the exercise of their profession*, para 6.

⁷¹ UN General Assembly, Report of the Special Rapporteur on violence against women, its causes and consequences, *Combating violence against women journalists*, A/HRC/44/52, para 34.

⁷² IACtHR, *Velez Restrepo and family v Colombia*, para 212. See also IACtHR, *Carvajal Carvajal and others v Colombia*, paras 175 and 177.

⁷³ See IACtHR, *Case V.R.P., V.P.C. and others v Nicaragua*, judgment of 8 March 2018, para 291, IACtHR, *Case Gutiérrez Hernández and Others v Guatemala*, judgment of 24 August 2017, para 176, and IACtHR, *Case González and Others (Cotton field) v Mexico*, para 400.

⁷⁴ ECtHR, *Case of Opuz v Turkey*, No. 33401/02, judgment of 9 June 2009, paras 181, 193 and 200.

⁷⁵ ECtHR, *Case of Khadija Ismayilova v Azerbaijan*, para 161.

⁷⁶ IACtHR, *Case Granier and Others v Venezuela*, judgment of 22 June 2015, para 170.

⁷⁷ UN General Assembly, *The safety of journalists and the issue of impunity*, Report of the Secretary General, A/72/290, 4 August 2017, para. 12.

⁷⁸ *Id.*

35. The Colombian context triggers a special duty of care by the government with regards to potential attacks against journalists. This duty is not limited to providing protective measures when an extraordinary risk is identified with regard to an individual, but should be activated to specific contexts and events. Additionally, this duty relates to the government's obligation to provide safeguards for the process of newsgathering on issues of public interest, such as corruption and public order, as well as in places where facts of public interest may take place, such as prisons.

36. Women journalists face specific obstacles while pursuing their careers, hindering their opportunity to enjoy a healthy and safe environment to seek, receive and disseminate information in pursuit of a professional career. In a context such as the Colombian one, the risks to women journalists are exacerbated. Such conditions undermine women journalists' capacity to participate in public debate. In this sense, the Intervener highlights that there are specific moments and contexts where women will face disproportionate dangers while gathering information. As a result, the assessment of attacks to journalists performing newsgathering activities or reporting on them must take into account the effects of those actions on a woman journalist's capacity to develop her "watchdog role".

37. Furthermore, the government has a special duty to provide a favourable environment that guarantees that women are capable of pursuing a career as journalists and to perform their "watchdog role" without limitations that may be imposed by the context of gender and/or sexual violence. Such duty is connected to the obligation to prevent attacks against journalists, protect them in case risks emerge and pursue justice when attacks are perpetrated.

38. The impunity from attacks against women journalists affects not only their right to seek, receive and disseminate information and ideas, but also the public's right to receive them. Such attacks and the ensuing impunity also have the perverse effect of increasing the gender divide in the journalistic profession, as they result in self-censorship with regards to certain topics or to the suppression of the desire of pursue a career. Democracy is weakened due to the reinforced central role of male voices in public debate, who although face dangers as journalists, have a privileged position in that gender divide.