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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Follow-up on country visits**

### **Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

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## **I. Introduction**

1. Pursuant to Human Rights Council resolution 34/18, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submits the present report in follow-up to the official visits that were undertaken by the mandate holder to Japan (2016), Turkey (2016), Honduras (2012), Israel and the occupied Palestinian territories (2011) and Côte d'Ivoire (2004). This is the first such report prepared by the mandate holder.
2. In January 2019, the Special Rapporteur sent questionnaires concerning the status of the recommendations made following the visits to the respective States. The Special Rapporteur also issued an open call for submissions, requesting input from civil society and other interested actors, including in the countries concerned. Replies were received from Honduras, the Palestinian Authority and Turkey, along with 21 submissions from non-governmental organizations (NGOs) and individuals. Those replies, together with information gathered from United Nations bodies, regional human rights organizations and civil society and publicly available information, have informed the report, in which the status of implementation of each recommendation has been evaluated as falling into one of four categories: implemented, partially implemented, not implemented or contravened.
3. The Special Rapporteur expresses his gratitude to all those who provided input for the report, which is intended to serve as a useful reference for States, civil society, the current mandate holder and his successors. Submissions received in its preparation can be found at: [www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx](http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx) or <https://freedex.org>.

## **II. Follow-up on country visits**

### **A. Japan**

4. The Special Rapporteur undertook an official visit to Japan from 12 to 19 April 2016. He presented his report on the visit at the thirty-fifth session of the Human Rights Council, held in June 2017 (A/HRC/35/22/Add.1 and Corr.1). Comments on the report were submitted by the State at the same session (A/HRC/35/22/Add.5).
5. During the visit, the Special Rapporteur identified significant concerns regarding the independence of the media and its role as a public watchdog committed to investigative journalism; the manipulation of media outlets through an opaque and clique-based system of press clubs and incentives to practice “access journalism”; and the impact of secrecy laws on the public’s right to information. Journalists, activists, academics and others shared with the Special Rapporteur their concerns that freedom of expression was under significant stress. The Special Rapporteur carried out the visit in the context of proposed changes to the Constitution of Japan, the bedrock for the protection of all human rights in the country, including proposals to revise articles 19 and 21, on the protection of freedom of opinion and expression, and introduce restrictions inconsistent with article 19 of the International Covenant on Civil and Political Rights.
6. Subsequent to the visit, the Special Rapporteur made recommendations concerning media independence; interference in history teaching; restrictions on demonstrations and electoral campaigning; access to information; discrimination and hate speech; and digital rights.
7. The Special Rapporteur regrets that no reply was received from the State in response to his request for information in the preparation of the present report, however, he thanks the State for its comments on the draft version sent to the Government prior to the finalization of the report. Not only has positive action not been taken on the recommendations made, but the Special Rapporteur has received reports of several worrying developments, including those addressed in the four communications sent by the

Special Rapporteur since the visit. Table 1 contains a summary of the status of implementation of the recommendations.

8. Article 4 of the Broadcast Act remains in force, with the regulation of broadcast media in line with the Act continuing to fall within the ambit of the Ministry of Internal Affairs and Communications. The tensions created by this regulatory framework, with its lack of institutional independence, have reportedly been accentuated by public pushback from government officials against the work of critical journalists, including through communications to a newspaper editorial board and a kisha club<sup>1</sup> concerning questions posed by a journalist at government press conferences. To perform its role as a public watchdog, the press must be free to pursue its own lines of reporting and investigation. The State must refrain in all cases from stigmatizing journalists, regardless of whether the content of their work may be perceived as critical or sensitive. To create a positive environment for journalistic work, authorities at the highest level should publicly express support for the work of independent, investigative journalists.

9. The Special Rapporteur welcomes the information received regarding steps taken by civil society and journalist unions to foster solidarity among those within the profession. He encourages such efforts, in particular in the light of additional information received relating to reported decisions taken at the editorial level of a prominent Japanese newspaper, which appear to have restricted the scope for its reporters to work on sensitive topics.

10. Editorial pressure on journalists working on controversial issues, including historical crimes committed by Japan and the use of “comfort women” in particular, has compounded the continuing resistance of the authorities to civil society’s advocacy efforts in connection with historical crimes. The Special Rapporteur reiterates his recommendation that the Government accept a visit of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence as a step towards building a positive framework for dealing with the issue.

11. Authorities have continued to place pressure and undue restrictions on peaceful protesters in Okinawa. Specific concerns in this regard were raised in an official communication to the State from several special procedure mandate holders on 28 February 2017, concerning the arrest and charging of Hiroji Yamashiro in connection with his involvement in peaceful protests against the expansion of military bases in Okinawa.<sup>2</sup> Released on bail in March 2017, Mr. Yamashiro has since been convicted and sentenced to two years of imprisonment with hard labour, suspended for three years. His appeal to the Fukuoka High Court was recently rejected. In opinion No. 55/2018 (A/HRC/WGAD/2018/55), the Working Group on Arbitrary Detention declared Mr. Yamashiro’s detention to be arbitrary and directly connected to his exercise of freedom of expression and peaceful assembly. The Special Rapporteur expresses serious concern that Mr. Yamashiro’s suspended sentence not only restricts him in any further exercise of his rights, but risks proving a broader deterrent against the exercise of the right of freedom of assembly. The freedoms of assembly and expression are closely linked and often mutually reinforcing. The State must strengthen its commitment to fulfilling its human rights obligations in these areas.

12. The Government does not appear to have taken steps to address concerns raised regarding the Act on the Protection of Specially Designated Secrets. The Special Rapporteur reiterates the need to amend the Act and translate informal assurances that it will not be used to target journalists into legally binding safeguards.

13. Cumulatively, continued pressure on freedom of expression restricts access to information and narrows the latitude for developing and sharing diverse political opinions. The rights to freedom of opinion and expression have a direct, multifaceted impact on the development of democracy, equality and societies in their entirety. The limitation or

<sup>1</sup> Associations of print and broadcast journalists (see A/HRC/55/22/Add.1, para. 34).

<sup>2</sup> See communication JPN 1/2017, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

promotion of those rights dictates the nature of their impact. All of the recommendations made subsequent to the visit remain pertinent.

Table 1

**Japan: status of implementation of recommendations**

<i>Recommendation</i>	<i>Status</i>
To the Government	
Review the legal framework governing broadcast media, repeal article 4 of the Broadcast Act, develop the framework for an independent regulator of broadcast media (para. 65)	Not implemented.
Refrain from interfering in the interpretation of historical events in educational materials and support efforts to inform the public on serious historical crimes (para. 69)	Not implemented. New school curriculum and textbook guidelines were approved in March 2018. Reportedly, the new standards require that diversified viewpoints, including the perspectives of the Government, be included in textbooks. Civil society advocacy in connection with historical crimes, in particular the issue of “comfort women”, has been met with strong opposition from the authorities.
Ensure full transparency in the elaboration of school curricula and reconsider how the Textbook Council could be insulated from government influence (para. 69)	Partially implemented. The new school curriculum was published for public comment in February 2018, however, no changes have been made to the manner in which appointments are made to the Textbook Council.
Consider requesting a visit of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (para. 70)	Not implemented.
Repeal provisions in the Public Office Election Act that impose disproportionate restrictions on political campaigning (para. 71)	Not implemented.
Make every effort to protect the right to peaceful assembly and protest, in particular in Okinawa (para. 72)	Not implemented. Disproportionate restrictions on the right continue.
Include an exception in the Act on the Protection of Specially Designated Secrets to ensure that no individual is punished for disclosing information of public interest, acquired in good faith, that does not harm national security (paras. 74 and 75)	Not implemented.
Take steps to create a bedrock of social and organizational norms that promote the reporting of information in the public interest (para. 76)	Insufficient information for an evaluation to be made.
Establish oversight boards with experts to improve accountability in the enforcement of the Act on the Protection of Specially Designated Secrets (para. 77)	Not implemented. Information received indicates that the powers of both the advisory council established by the Act and oversight committees in the Diet have proved insufficient to ensure effective oversight.
Adopt a broadly applicable anti-discrimination	Not implemented. While Japan has adopted legislation to protect specific

<i>Recommendation</i>	<i>Status</i>
law (para. 78)	groups from discrimination, such as the Act on the Promotion of the Elimination of Buraku Discrimination, which entered into force in December 2016, it has not adopted a broad anti-discrimination law. This was highlighted during the universal periodic review process in 2017 and by the Committee on the Elimination of Racial Discrimination in 2018.
Stipulate in any forthcoming legislation concerning surveillance that communications must only be surveilled under the most exceptional circumstances and exclusively under the supervision of an independent judicial authority (para. 81)	Not implemented. In 2017, amendments to the Act on Punishment of Organized Crimes and Control of Crime Proceeds were passed, expanding the scope of the Act and raising concerns that it may lead to more widespread surveillance, including of NGOs. These concerns have been rejected by the Government.
To the authorities and media groups	
Publicly express their rejection of any form of threat or intimidation against journalists or other investigative reporters (para. 66)	Contravened. Information has been received reporting cases of officials putting pressure on and issuing public statements against critical media outlets.
To the media	
Remain vigilant against any form of direct or indirect pressure on editorial activities, in particular by guaranteeing full support for and protection to journalists reporting on controversial topics (para. 67)	Partially implemented. While statements of support have been issued by journalist associations in response to pressure on journalists, information received indicates that changes have also been made to editorial policy to limit reporting on sensitive issues.
To journalist associations	
Broaden the membership of the current kisha club system to allow the participation of the widest possible range of journalists (para. 68)	Not implemented.

## **B. Turkey**

14. The Special Rapporteur carried out an official visit to Turkey from 14 to 18 November 2016. His report on the visit was presented at the thirty-fifth session of the Human Rights Council, held in June 2017 (A/HRC/35/22/Add.3), along with comments by the State (A/HRC/35/22/Add.6).

15. The visit took place in the context of grave violations of the right to freedom of expression, exacerbated by the attempted coup d'état in July 2016 and the subsequently imposed state of emergency. These violations were witnessed against the backdrop of a protection framework for freedom of expression undermined by broad, vaguely drafted antiterrorism laws and criminal sanctions for defamation; a framework that was further weakened by the Government's derogation under article 4 of the International Covenant on Civil and Political Rights from a range of its obligations under the Covenant, including those under article 19. The violations included the detention of hundreds of journalists, media workers, academics and writers and the closing of over 100 media outlets through

sweeping decrees enacted under the state of emergency. Cumulatively, they reinforced a climate for freedom of expression defined by media concentration, fear of reprisals and pre-emptive self-censorship. This could also be observed online, with legislation in place granting expansive governmental control over Internet content, providing for the blocking of websites, large numbers of takedown requests and a wide base for data collection, all without sufficient or effectively independent judicial oversight.

16. The Special Rapporteur made a series of recommendations subsequent to the visit, which concerned media freedom and access to information; Internet freedom; emergency decrees; and restrictions on the right to freedom of opinion and expression in national legislation. Table 2 contains a summary of the status of implementation of the recommendations.

17. Following the visit, the state of emergency was renewed at three-month intervals until it was lifted on 19 July 2018. Amid the renewals, widespread arrests, detentions, convictions, the imposition of harsh sentences and dismissals of journalists, media workers, academics, judges and public employees continued, as did the closure of independent and critical media outlets. Twenty-two new emergency decrees were passed, significantly reshaping portions of Turkish law. A referendum was held on 16 April 2017, in which amendments to the Constitution were passed by a narrow majority, thus transforming the country's political system from a parliamentary system into a strong presidential system. In the context of security operations carried out by the Turkish military forces in south-eastern Turkey, human rights violations in that region intensified, with evidence gathered by the Office of the United Nations High Commissioner for Human Rights (OHCHR) attesting to killings of unarmed civilians, allegations of torture, the criminalization of journalism and public criticism of the operations.<sup>3</sup>

18. The Special Rapporteur welcomes the input provided by the Turkish authorities for the present report, along with the responses to 17 of the 18 communications sent following the visit. However, he regrets the lack of effective efforts by the State to implement the recommendations made. While in some instances this has amounted to a lack of action and the resultant continuance of the status quo, in others action directly contrary to the recommendations has been taken.

19. The Government lifted the state of emergency in July 2018. During the period following the visit, in which the state of emergency was still being renewed, emergency measures continued to be used despite serious concerns as to their compatibility with international human rights standards regarding restrictions on freedom of expression. A great number of amendments to existing legislation were fast-tracked through state-of-emergency executive decrees and remain in force.

20. Many individuals who were being held in detention following their criticism of the Government or certain journalistic work at the time of the Special Rapporteur's visit have remained in prison under national security and counter-terrorism legislation. To make matters worse, further persons have been detained on the same bases despite the ending of the state of emergency. The Special Rapporteur notes the Government's position that no profession can be used as a shield against criminal investigations for alleged terrorist activities. He stresses, however, that the lack of evidence presented to justify charges of terrorism in these cases and the general overbroad legislation in this regard raises serious concerns. Civil society monitoring indicates that, as at the date of finalization of the present report, between 68 and 139 journalists were being detained.

21. The cases of those detained are dominated by arrests based on alleged violations of the counter-terrorism law. Placed in pretrial detention on charges including membership of a terrorist organization, spreading propaganda for a terrorist organization and assisting a

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<sup>3</sup> OHCHR, "Report on the human rights situation in south-east Turkey: July 2015 to December 2016", available at [www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf); and "Report on the impact of the state of emergency on human rights in Turkey, including an update on the south-east: January–December 2017", available at [www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf).

terrorist organization without being a member, journalists and others have been subjected to exceptional conditions of detention as expanded through emergency decrees. These conditions have included lengthy pretrial detention periods, long delays in the judicial review of appeals and restrictions on access to lawyers and due process. Several of these exceptional conditions were authorized by Law No. 7145 of July 2018, in which the scope of investigative powers relating to counter-terrorism legislation was also extended.

22. While those detained in such cases have been able to challenge their detention, which is also subject to review every 30 days, lengthy periods of pretrial detention remain extremely common. The possibility of effective appeals, which are directed through a horizontal system in which the Criminal Judgeships of Peace review detention orders issued by one another, has been criticized by the Venice Commission<sup>4</sup> and civil society. The severity of these issues grows in the light of concerns regarding the independence of the judiciary, in particular following changes to the Council of Judges and Prosecutors effected through the constitutional reforms of 2017. Those detained are frequently presented with sparse, unclear information on the case against them, while decisions to release detained persons can be appealed by prosecutors.

23. In many cases, individuals have been pursued solely on the basis of acts of expression, including expression online. Amendments made in March 2018 to Law No. 6112, imposing a traditional broadcast licence framework on online content providers, along with continued, intensive use of takedown requests and blocks on online content, in particular on the basis of article 8A of Law No. 5651, have severely restricted free expression on the Internet.

24. Concerns surrounding Internet freedoms must be considered in the light of the closure of traditional media outlets and the seizure of their assets through emergency decrees. As at the date of the finalization of the present report, approximately 190 media outlets and publishing houses had been closed down, with few granted permission to reopen. Pro-government takeovers of media outlets have further restricted traditional platforms for freedom of expression and journalistic work, adding weight to concerns relating to the public's right to information.

25. Remedies to challenge the legality of measures taken pursuant to emergency decrees, while available, have remained ineffective. The Inquiry Commission on State of Emergency Measures, established through emergency decree No. 685 in January 2017 with a remit to review dismissals of public sector employees, has failed to result in any significant improvement in the situation. The Commission began working on 22 May 2017. As at the end of 2018, it had received 125,600 applications, reached 50,500 decisions and provided judgments leading to the reinstatement of dismissed public employees in 3,750 cases. By 15 March 2019, the Commission had rendered decisions of reinstatement in 4,750 cases. The Special Rapporteur notes with serious concern several shortcomings in the Commission's operation. In particular, he is concerned by reports that applicants seeking to apply to the mechanism must do so without concrete information as to the reason for their dismissal, a fixed time frame for the processing of their applications, the possibility of putting forward their cases at an oral hearing, and without support for legal representation or the right to appeal. The significance of these issues is heightened in the light of the decisions of the Turkish Constitutional Court and the European Court of Human Rights recognizing the Commission as a domestic remedy that must be exhausted before cases submitted to those courts may be accepted.

26. The Special Rapporteur expresses his extreme concern at these developments, which approach the effective normalization of restrictions on freedom of expression through its conflation with criminal and terrorist activity. The recommendations made subsequent to the visit remain relevant and have only grown in urgency. They stand as initial steps, which the State could implement on many levels immediately, to improve the situation concerning freedom of expression in the country.

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<sup>4</sup> European Commission for Democracy through Law (Venice Commission), "Turkey: opinion on the duties, competences and functioning of the Criminal Peace Judgeships", available at <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29004-e>.

Table 2  
**Turkey: status of implementation of recommendations**

<i>Recommendation</i>	<i>Status</i>
Immediately release the journalists, writers, judges and academics detained pursuant to counter-terrorism legislation and emergency decrees (para. 77)	Contravened. While some individuals have been released, many have remained in detention and detentions pursuant to counter-terrorism legislation continue.
Adopt all appropriate measures to ensure that all media and individuals can comment on public issues and inform public opinion without censorship or constraint (para. 78)	Contravened. Detention based on acts of expression and the continued imposition of criminal charges for defamation have created an atmosphere of self-censorship.
Reverse the closure of media outlets and ensure that they are suspended only in exceptional circumstances provided for by the law and subject to judicial oversight (para. 79)	Contravened. Outlets continued to be closed on the basis of emergency decrees following the visit.
Review the Internet law and revise the broad authority to block and remove online content (para. 80)	Not implemented.
Refrain from excessive blocking and filtering of online content and limit takedown requests to actual cases meeting the requirements of international human rights law (para. 80)	Not implemented. Instances of blocking and takedown requests continue in large numbers, with insufficient judicial oversight.
Ensure that any restriction on freedom of expression during the state of emergency is strictly proportionate to the exigency of the situation (para. 81)	Not implemented. Numerous emergency decrees were adopted, imposing disproportionate and arbitrary restrictions on freedom of expression in the absence of any connection to the stated purpose of the state of emergency.
With a view to ending the state of emergency, reconsider whether conditions remain such as to justify its continuation (para. 82)	Implemented. The state of emergency was lifted on 19 July 2018, having been extended seven times.
Review and revise emergency decrees to ensure their consistency with international human rights norms and standards, in particular those deprived of their liberty pursuant to emergency decrees must be entitled to initiate proceedings before a court to challenge the lawfulness of their detention (para. 82)	Not implemented. Emergency decrees enacted at the time of the visit remained in place, with some measures contained therein subsequently transformed into law.
Ensure that anyone who has been a victim of unlawful arrest, detention or dismissal, in particular on the basis of emergency decrees, has an enforceable right to review and remedy (para. 83)	Not implemented. While measures have been taken, shortcomings have thus far rendered them an ineffective remedy in practice.
Review the antiterrorism law to ensure its compatibility with article 19 (3) of the International Covenant on Civil and Political Rights (para. 84)	Contravened. Law No. 7145 transformed emergency antiterrorism measures into law, increasing the scope of measures that can be taken and restrictions that can be imposed pursuant to existing antiterrorism

<i>Recommendation</i>	<i>Status</i>
Repeal articles 125 (3) and 299 of the Penal Code and refrain from attempts to silence criticism in the name of “insult” of public authorities (para. 85)	legislation. Contravened. The implementation of this recommendation has been deemed unnecessary by the State. Judicial processes invoking articles 125 (3) and 299 of the Penal Code continue.

### C. Honduras

27. The former Special Rapporteur, Frank La Rue, conducted an official visit to Honduras from 7 to 14 August 2012. He presented his findings in his report to the twenty-third session of the Human Rights Council, held in March 2013 (A/HRC/23/40/Add.1). Comments from the State were presented at the same session (A/HRC/23/40/Add.3).

28. During the visit, the Special Rapporteur followed up on developments in Honduras since the previous visit of the mandate holder in November 2007 (see A/HRC/11/4/Add.2). In particular, he sought to analyse the situation in the light of the coup d'état of June 2009.

29. The visit was carried out in the context of frequent violent attacks against journalists. The impunity surrounding these crimes reflected profound institutional weaknesses at the time. Compounding that situation were disproportionate legislative restrictions on freedom of expression, including criminal charges for defamation, libel and slander, and the failure to effectively incorporate the rights of indigenous peoples and Afro-Honduran communities into the legal framework governing freedom of expression. Against a backdrop of narrowly concentrated media ownership and a generally polarized media landscape, these factors gave rise to serious concern in the course of the visit.

30. Elections were held in Honduras in 2013 and 2017. On both instances, the vote was marked by substantial allegations of corruption, fraud and intimidation. Following a delay in tallying votes cast in the election of November 2017, and the subsequent declaration of victory for the incumbent candidate of the National Party, protests began around the country. A state of emergency was proclaimed on 1 December 2017, leading to the imposition of a curfew from 6 p.m. to 6 a.m. until 11 December 2017 and the mass detention of protestors and others deemed to have violated it. As protests spread, 21 civilians and 1 police officer were killed, with many more wounded. According to OHCHR, at least 13 of those persons, including 2 children, were shot and killed by security forces during the policing of protests or subsequent, connected operations (A/HRC/37/3/Add.2, para. 20). The Special Rapporteur welcomes information provided by the State regarding the opening of investigations into all of the deaths identified as having occurred in the context of the protests. However, he regrets that further steps towards prosecution have been taken in only two such cases.

31. These recent events and grave violations connected to freedom of expression signal the underlying instability of the environment for exercising the right in Honduras. They occurred despite the recommendations made by the former Special Rapporteur following the visit. The recommendations concerned violence and impunity; freedom, pluralism and diversity in the democratic debate; litigation connected to acts of expression; and access to information.

32. The Special Rapporteur welcomes the information submitted by the State in support of the present report and the responses to the 28 communications sent by the mandate holder since the visit, along with the specific efforts made to implement the recommendations and improve the environment for freedom of opinion and expression in the country (see table 3). However, he stresses that there remains much work to be done to see improvements on paper transferred into progress in practice, for which a holistic, consistent approach is necessary.

33. Counterproductive practices have undermined the implementation of many of the recommendations. The importance of journalists and social communicators was recognized through the creation of a national mechanism for their protection in 2015 and has since been reaffirmed in statements issued by offices of the national system of protection. The Special Rapporteur welcomes the comments made by the President in 2016, at the opening of the OHCHR country office in Honduras, in which he recognized the important role of human rights defenders in promoting and protecting human rights. The Special Rapporteur encourages similar public support for journalists and social communicators, in particular in the light of statements made by public officials against critical and investigative journalists since the visit and smear campaigns targeting them, including online.

34. The protection mechanism established a framework to safeguard journalists, social communicators and others at risk as a result of their work. As at November 2018, the mechanism had granted protection measures to 28 journalists and 23 social communicators. The Special Rapporteur welcomes the creation of the mechanism, but regrets that it has proved ineffective in preventing serious attacks, including killings, on those it was designed to protect. While the United Nations Educational, Scientific and Cultural Organization (UNESCO) observatory of killed journalists documented no killings of journalists in Honduras in 2018, it has recorded the killings of 16 journalists since the visit.<sup>5</sup> Efforts to strengthen the mechanism must continue. A differentiated approach must be mainstreamed in risk analysis and incorporated into protective action, including gender-specific and group-specific considerations, along with an awareness of particular risks associated with specific types of work and human rights defence. Lines of communication between beneficiaries and staff of the mechanism must be kept open to ensure that changing protection needs can be met with appropriate responses.

35. The mechanism is one part of a national protection system, the effectiveness of which relies on the constant strengthening of each of its parts. Impunity for all crimes against journalists and social communicators has remained extremely high since the visit, highlighting continued issues regarding the investigative protocols and responsiveness of the bodies charged with ensuring justice in such cases. In that regard, the Special Rapporteur welcomes the creation of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials in March 2018. As at March 2019, the Office of the Special Prosecutor, which has six prosecutors, had received 80 cases, but had yet to bring any charges. The Office requires sufficient funding and staff in order to enable it to fulfil its mandate. It is essential that it develop specialized procedures for the investigation of specific threats.

36. The policing of demonstrations and the harassment of journalists covering protests has remained an issue of serious concern since the visit. When policing demonstrations, State security forces should prioritize the protection of journalists and enable them to carry out their work. While the information provided by the State on human rights education embedded in the training programmes of the national police and the armed forces is welcomed, the events of 2017–2018 suggest that these efforts alone have proved insufficient to mainstream human rights protection within the work of these bodies. OHCHR received credible information attributing 12 of the killings perpetrated during the post-electoral protests to the public order military police (A/HRC/37/3/Add.2, para. 20). The Government must broadly promote peaceful protest as a human right and reinforce the important role played by journalists in monitoring demonstrations. This will require public statements of support for journalists at the highest levels of government, a policy putting an end to the use of military forces to fulfil police functions, and ensuring accountability for these killings.

37. The country's press remains polarized, and media ownership is heavily concentrated in a few companies. The Government has not demonstrated a willingness to acknowledge and tackle these problems. To the contrary, the Government's action has tended to undermine the development of a more pluralistic media, as demonstrated in the allocation

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<sup>5</sup> UNESCO observatory of killed journalists – Honduras, available at <https://en.unesco.org/themes/safety-journalists/observatory/country/223721>.

of government advertising. State advertising is a crucial source of revenue in an industry marked by severe financial difficulties. The framework for its equitable distribution has only been weakened by legislation enacted since the visit, with Decree No. 86-2013 handing discretionary power to the executive to grant debt relief in return for advertising space.

38. Similarly, the State has failed to channel the distribution of broadcasting frequencies towards the fostering of more pluralistic media. The distribution of frequencies falls within the ambit of the National Communications Commission, whose commissioners are appointed by the President. Since the visit, the vast majority of newly opened frequencies have been sold to private parties, with the gap between community and private access growing commensurately. These developments contrast greatly with the potential reforms outlined by the State in its initial response to the country visit report, which included an equitable distribution of broadcast frequencies. Indigenous and Afro-Honduran community media outlets, often involved in human rights issues, continue to struggle for access to national media infrastructure, with some threatened with closure by the National Communications Commission on the basis of disproportionate community media regulations introduced in 2013.

39. The right to receive information converges with each of these issues. Decree No. 418-2013, adopted shortly after the visit and concerning the classification of State secrets, marked a backwards step in this regard. Under the Decree, the National Defence and Security Council was empowered to prevent the publication of State agency documents for between 5 and 25 years, with the possibility of extensions, on grounds of national security. This was followed by Council resolution No. 069/2014, placing the documents of 16 public institutions, including several without a link to national security, beyond the reach of the national Public Information Institute. More recently, ministerial agreement No. 1402-2018 of the Ministry of Energy, Natural Resources, the Environment and Mines, published on 17 August 2018, designated information related to environmental licences, including their relative location, as confidential.

40. Despite the Government's continuing efforts to improve the situation and implement the recommendations of the former Special Rapporteur, Honduras remains one of the world's most dangerous countries in which to work as a journalist or defend human rights. A comprehensive approach, linking the protection of civil and political rights to the fulfilment of economic, social and cultural rights, is required for progress to be made.

Table 3

**Honduras: status of implementation of recommendations**

<i>Recommendation</i>	<i>Status</i>
To the Government	
Recognize the importance of journalists' work and condemn attacks upon them (para. 93 (a))	Partially implemented. While the importance of journalists' work was recognized through the creation of the protection mechanism, statements against journalists by public officials have been reported since the visit and smear campaigns against journalists have gone unpunished.
Create a mechanism for the protection of journalists, social communicators, human rights defenders and administrators of justice (para. 93 (b)–(e))	Implemented. Created through Decree No. 34-2015, on 16 April 2015.
Establish a personal protection bureau within the national police force staffed with specially trained personnel (para. 93 (f))	Implemented.
Refer all cases involving violence against	Not implemented. No clear protocol

<i>Recommendation</i>	<i>Status</i>
journalists, social communicators and human rights defenders to the Office of the Special Prosecutor for Human Rights (para. 93 (g))	was put in place for following up on such cases. In March 2018, the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials was created.
Substantially increase the staff and budget of the Office of the Special Prosecutor for Human Rights and provide the staff members responsible for investigations and court proceedings with appropriate training (para. 93 (h))	Partially implemented. The budget of the Office has been increased, within overall increases in the budget of the Office of the Attorney General, and staff have been provided with opportunities for specialized training. However, these steps have proved insufficient to allow the Office of the Special Prosecutor to fulfil its mandate.
Increase existing penalties for those who commit crimes against members of the press and violations of the right to freedom of expression, especially in cases involving agents of the State as perpetrators (para. 93 (i))	Not implemented. While a new penal code is under preparation, penalties for such crimes have not been increased. Any changes to the penal code must only strengthen, and not risk undermining, the environment for freedom of expression and the work of journalists and social communicators.
Develop regulations to ensure transparent and equitable government spending on advertising so that it cannot be used by any given department or official to favour like-minded journalists or punish those who are critical of the Government (para. 94 (b))	Contravened. A lack of clear allocation criteria, procedures and oversight mechanisms persist. Decree 86-2013 introduced the possibility for media outlets to provide advertisement space to the Government in lieu of paying taxes, with decisions on such agreements resting with the President.
Refrain from the misuse of nationwide simultaneous broadcasts (para. 94 (c))	Partially implemented. While simultaneous broadcasts have been used sparingly, reports suggest that the criteria for their deployment have not been followed.
Amend the Telecommunications Framework Act to ensure the awarding of permits for the use of telecommunications frequencies on an equitable basis to communities and organizations of indigenous peoples and persons of African descent (para. 94 (d))	Not implemented.
Establish a national institute for the furtherance of the languages of the different ethnic groups and peoples in Honduras (para. 94 (e))	Not implemented. However, programmes to protect and promote indigenous and Afro-Honduran languages have been implemented by the Ministry of Education.
Give legal and political recognition to community-based media and ensure that they have the same rights and obligations as users of commercial frequencies (para. 94 (f))	Contravened. While the Regulation on Community Broadcasting Services issued by the National Communications Commission on 3 August 2013 provided legal recognition of community media, it imposed an overly burdensome framework for regularization, creating disproportionate barriers in comparison with commercial

<i>Recommendation</i>	<i>Status</i>
	alternatives.
Draw up an inventory and a map of bandwidths throughout the country to identify those not in use so that the corresponding permits can be withdrawn (para. 94 (g))	Partially implemented. An inventory was prepared as part of the national plan to transition from analogue to digital television in 2013, however, it is unclear whether disused bandwidths were identified or any permits withdrawn on that basis.
Digitize analogue communications services in the country and create a strategic reserve of radio frequencies (para. 94 (h))	Partially implemented. The process of digitizing communication services was initiated through the national plan to transition from analogue to digital television in 2013, and the transition from analogue to digital television is set to be completed at the end of 2019.
Guarantee Internet access for all sectors of the population, particularly the poorest and those living in rural and/or remote locations (para. 94 (i))	Partially implemented. Programmes, including a free public Wi-Fi programme called “Internet del Pueblo”, have been implemented by the State, however, the most recent data from the International Telecommunication Union indicate that access to the Internet remains low, at 32.1 per cent of the population.
Provide human rights training to all national police forces, as well as training on the use of force during peaceful demonstrations (para. 94 (j))	Implemented. However, this has proved ineffective in preventing serious human rights violations from being perpetrated by police during demonstrations.
Educate members of the armed forces on the role played by journalists and human rights defenders in monitoring demonstrations (para. 94 (k))	Implemented. However, journalists and human rights defenders continue to face serious obstacles in the course of monitoring demonstrations, including excessive use of force.
Ensure all police functions are performed by civilian forces only (para. 94 (l))	Contravened. Military forces have consistently been deployed to perform police functions, with the response of the State indicating that this policy will remain in place.
Decriminalize defamation, slander and libel and convert them into civil matters (para. 95 (a))	Not implemented. Journalists and social communicators continue to face criminal proceedings under such charges. The proposals for the new penal code, which include a reduction in the maximum penalty for such offences and the application of fines, nevertheless fall short of meeting international human rights standards on freedom of expression.
Protect journalists and social communicators from frivolous litigation (para. 95 (b))	Not implemented. Journalists and social communicators continue to be targeted by litigation based on their journalistic work, often in connection with the exposure of corruption.
Apply the Transparency and Access to Public Information Act on a non-discriminatory basis and carry out an	Not implemented. The Act and work of the Institute was severely limited by Decree No. 418-2013 on the

<i>Recommendation</i>	<i>Status</i>
independent assessment of the work of the Public Information Institute and its application of the Act (para. 96 (a) and (b))	classification of State secrets.
Establish a transparent procedure for the selection of Public Information Institute commissioners, removing the eligibility requirement of 10 years' experience in the civil service (para. 96 (c) and (d))	Not implemented.
Invite the Special Rapporteur on the independence of judges and lawyers to undertake a country visit (para. 97 (a))	Implemented. A visit of the Special Rapporteur has been confirmed by the State for August 2019.
Consider signing an agreement with OHCHR for the establishment of a country office (para. 97 (c))	Implemented. The OHCHR country office in Honduras was established on 4 May 2015 and officially opened in November 2016.
To the media	
Embrace a professional code of ethics that can provide a frame of reference for self-assessments (para. 94 (a))	Not implemented.
To international cooperation agencies and United Nations bodies	
Provide financial and technical support for initiatives to reinforce freedom of opinion and expression and for the establishment of a national protection mechanism (para. 97 (b))	Implemented.

#### **D. Israel and the occupied Palestinian territories**

41. The former Special Rapporteur, Frank La Rue, carried out an official visit to Israel and the occupied Palestinian territories from 6 to 17 December 2011. He presented his report on the visit at the twentieth session of the Human Rights Council, held in June 2012 (A/HRC/20/17/Add.2).

42. The visit was undertaken in the context of continuing political conflict, revealing a varied, but often threatened, environment for freedom of opinion and expression. In Israel, the Special Rapporteur found that restrictive national security legislation tended to undermine access to information. He observed discriminatory treatment of Palestinian citizens of Israel and members of the Bedouin community and attempts to curtail their right to freedom of opinion and expression, alongside pervasive censorship of the media by the military. The Special Rapporteur gathered reports of raids on media outlets and physical harassment of journalists, photographers and human rights defenders by members of the Israeli security forces in the occupied Palestinian territories. Journalists were also arrested, detained and subjected to travel bans by security forces. Reports of deliberate attacks against Palestinian, Israeli and foreign journalists covering demonstrations in the West Bank were also received by the Special Rapporteur.

43. In the occupied Palestinian territories, the Special Rapporteur identified the overall weakness of the legal framework protecting the right to freedom of opinion and expression as a primary point of concern. In both Gaza and the West Bank, restrictions on media outlets imposed by the Palestinian Authority and the de facto authorities, including bans on the distribution of certain newspapers, were prevalent, along with intimidation of journalists by intelligence services and State security forces. The Special Rapporteur found common stories concerning arbitrary arrests followed by short detention periods during which journalists were subjected to interrogation as to the content of their work.

44. The recommendations made to the Government of Israel following the visit concerned reviewing restrictive domestic legislation; media censorship; the policing of peaceful protests; the work of journalists; and minority rights. The recommendations made to the Palestinian Authority concerned legislative reform; independence of the media regulatory body; press freedom; and the right to peaceful assembly. The recommendations made to the de facto authorities in Gaza concerned media freedom; peaceful assembly; and the work of journalists.

45. The Special Rapporteur welcomes the information provided by the Palestinian Authority in support of the present report. He regrets that a response was not submitted by the Government of Israel. The 22 communications sent to Israel and the 4 communications sent to the Palestinian Authority since the visit testify to the continuing concerns regarding freedom of opinion and expression in Israel and the occupied Palestinian territories. The recommendations made by the former Special Rapporteur have retained their relevance throughout this period, during which they have gone almost entirely unimplemented (see table 4).

46. In Israel, regressive steps towards legalizing discrimination and undermining the right to freedom of expression were taken through amendments to the Basic Laws. On 19 July 2018, the Knesset adopted a bill entitled “Basic Law: Israel as the Nation-State of the Jewish People” (the Nation-State Law), raising serious concerns as to its impact on the constitutional rights of minorities in Israel. In article 1 (c), the right to exercise national self-determination is declared as unique to the Jewish people. In article 3, Jerusalem in its entirety is designated as the capital of Israel. In article 4, Arabic is downgraded to a language of “special status”, while in article 7, “Jewish settlement” is defined as a “national value” to be encouraged and promoted. Concerns as to the compatibility of the Law with international standards, including with regard to anti-discrimination, were raised in a communication sent by several special procedures mandate holders in November 2018.<sup>6</sup> A substantive reply to the communication has yet to be received. Further concern has been raised by recent comments by the Prime Minister of Israel, who stated that Israel is “not a state of all its citizens”.<sup>7</sup> The Law, which has since been subject to several High Court challenges, was adopted amid discussions in the Knesset concerning a further amendment to the Basic Laws that would insert a so-called “override clause”, undercutting the capacity of the courts to decide on the constitutionality of amendments to the Basic Laws.

47. New legislation has brought fresh limitations on freedom of expression in the name of national security. In March 2017, an amendment to the Entry into Israel Law provided for authorities to deny entry into the State to anyone who has publicly called for a boycott against Israel, with grounds for prohibition also including affiliation with any organization that has publicly supported such a boycott. A bill proposing to extend the potential for civil lawsuits based on the Boycott Law of 2011 is currently pending in the Knesset. In 2016, the Transparency Law was enacted, targeting human rights NGOs through the imposition of new reporting obligations, subject to fines, on organizations receiving more than 50 per cent of their funding from foreign Governments.<sup>8</sup>

48. Journalists and photographers have repeatedly been targeted in connection with their work. Frequently detained without charge, they have seen their detention periods extended through a series of administrative processes overseen by the military and civil courts. Threats by security forces, including of sexual and gender-based violence, smear campaigns led by the highest public authorities, physical assaults and travel bans have been used in an apparent attempt to dissuade journalists and human rights defenders from pursuing their work.

<sup>6</sup> See communication ISR 12/2018, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>7</sup> *The Guardian*, “Benjamin Netanyahu says Israel is ‘not a state of all its citizens’”, 10 March 2019. Available at [www.theguardian.com/world/2019/mar/10/benjamin-netanyahu-says-israel-is-not-a-state-of-all-its-citizens](http://www.theguardian.com/world/2019/mar/10/benjamin-netanyahu-says-israel-is-not-a-state-of-all-its-citizens).

<sup>8</sup> See communication ISR 1/2016, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

49. The recent findings of the Commission of Inquiry, established pursuant to Human Rights Council resolution S-28/1 to investigate alleged violations of international human rights law and international humanitarian law committed in the context of the “Great March of Return” protests of 2018, underline the critical need for the Israeli authorities to radically review their approach to the right to freedom of assembly, in particular in a context of occupation and related restrictions on political participation. The Special Rapporteur regrets that peaceful protests have become flash points within which other rights, including the right to life, have been put at risk. He expresses the deepest concern at the Commission of Inquiry’s documentation of the deliberate targeting of journalists covering the Great March of Return protests, as evidenced by the killing of two journalists and the injuring of 39 others. The Special Rapporteur calls upon the State to ensure that investigations, in full compliance with international human rights standards, be undertaken to identify those responsible for these crimes.

50. When considered as a whole, these developments seem to indicate the consolidation of a policy of selective respect for freedom of expression by the Israeli authorities, according to which entire communities under its control are not seen as equal rights holders. The authorities must take full responsibility to ensure, as an imperative, that Israel fulfils its obligations under the international human rights treaties to which it is a party and respects and protects the rights emanating therefrom for all those under its jurisdiction.

51. In the West Bank, fundamental issues remain. The Press and Publications Law has not been brought into line with international human rights standards and the Palestinian Broadcasting Corporation has yet to be reformed. Complaints on grounds of defamation have repeatedly been filed by public officials, including against journalists.

52. On 24 June 2017, the Cybercrime Law was passed, criminalizing, in broad wording, the accessing of websites, the use of encryption and a wide spectrum of forms of expression online, alongside obliging Internet service providers to cooperate with security agencies in data collection without judicial oversight. The passing of the Law was followed quickly by the blocking of websites critical of the authorities.<sup>9</sup> Despite positive amendments made in April 2018, the Law has continued to be used to stifle criticism online, and there were repeated instances of its arbitrary application in 2019. In its current format, the Law epitomizes a trend since the visit towards the criminalization of dissent by the Palestinian Authority. This has been reflected in the summoning and detaining of journalists for short periods, during which they are subjected to interrogation as to the purpose of their work. This practice has occurred most often in connection with criticism of government officials and peaceful protests, which have been met with violent responses by the authorities.

53. Similar developments have occurred in Gaza, where threats and attacks on journalists, human rights defenders and others in response to acts of expression have been common. As in the West Bank, criticism of the authorities, including online, has placed individuals at the most risk, with journalists working for outlets associated with Fatah also targeted. Recently, public demonstrations against tax increases and poor living standards have been violently dispersed, reinforcing a pattern of clampdown on public protest against policies of the de facto authorities.

54. In both the West Bank and Gaza, a lack of legislative protection for the right to freedom of opinion and expression remains. The absence of such protections remains extremely problematic in an overall environment characterized by hostility towards critical views. Alongside the immediate halting of overtly repressive practices and policies concerning freedom of opinion and expression, a systematic shift is needed to create an enabling environment for the expression of diverse views in the West Bank and in Gaza.

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<sup>9</sup> See communication PSE 2/2017, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

Table 4

**Israel and the occupied Palestinian territories: status of implementation of recommendations**

<i>Recommendation</i>	<i>Status</i>
To the Government of Israel	
Refrain from adopting laws that are inconsistent with the obligations of Israel under international human rights law (para. 98)	Contravened. Serious concerns are raised as to the compatibility with international human rights law of the Nation-State Law of 2018, amendments to the Entry into Israel Law passed in 2017 and the Transparency Law of 2016.
Amend the Basic Law on Human Dignity and Liberty to include principles of non-discrimination, equality and the right to freedom of opinion and expression (para. 99)	Contravened. In 2018, the Nation-State Law was added to the Basic Laws of Israel. The Law raises serious concerns as to its compatibility with the general principle of non-discrimination and with freedom of expression. Purporting to define the constitutional identity of the State of Israel, its application could take precedence over the Basic Law on Human Dignity and Liberty.
Amend or repeal articles 1A, paragraphs 144B, 144D2 and 144D3, article 5, paragraph 166, and article 7, paragraph 173, of the Penal Code of 1977 (para. 100)	Not implemented.
Abolish the post of Chief Censor and ensure that restrictions on the right to freedom of expression on the grounds of national security are made only where these grounds are prescribed by law, and that such law is accessible, unambiguous, drawn narrowly and with precision, and justified as being necessary and the least restrictive means available to protect a specific and legitimate national security interest (para. 101)	Not implemented.
Repeal Military Order 101 (para. 102)	Not implemented.
Ensure that no excessive force is used against peaceful protesters and ensure accountability for all injuries or deaths resulting from the use of force by the Israeli security forces (para. 102)	Contravened. Hundreds of killings by Israeli security forces monitoring protests in the occupied Palestinian territories have been recorded since the visit, with those recorded by the Commission of Inquiry during the Great March of Return potentially amounting to war crimes. The perpetrators have enjoyed almost blanket impunity.
Ensure that all journalists in the West Bank, including East Jerusalem, can work without undue interference; release journalists who have been arbitrarily detained or ensure that they are promptly brought before a court; investigate all attacks against journalists and bring perpetrators to account (para. 103)	Contravened. Journalists and photographers, in particular those covering demonstrations, have been subjected to harassment, physical attacks, confiscation of equipment and travel bans imposed by the Israeli security forces and border police. An increase in attacks since the visit has led civil society to allege that Palestinian journalists are being

<i>Recommendation</i>	<i>Status</i>
	systematically targeted. Information gathered in the preparation of the present report indicates that at least three journalists are currently being detained by the Israeli authorities.
Justify the imposition of travel bans on human rights defenders and journalists, and ensure the right to challenge bans in courts (para. 104)	Contravened. Broad and narrow travel bans have continued to be imposed, with journalists often notified as they attempt to access specific areas in the course of their work, leaving no room for effective judicial challenges. Continued Israeli infrastructural development in the West Bank, along with the advancement of its settler programme, has seen freedom of movement of Palestinians reduced further.
Ensure that Palestinian citizens of Israel can fully exercise their right to freedom of opinion and expression, including through their own media and language; repeal the requirement of “loyalty to the State of Israel” in East Jerusalem (para. 105)	Not implemented.
Fully respect the right to freedom of opinion of expression of Arab Knesset members (para. 106)	Contravened. The scope for freedom of expression has been reduced for all Knesset members.
Reinstate the residency status of the four members of the Palestinian Legislative Council (para. 107)	Not implemented.
Refrain from interfering with the content of textbooks in Palestinian schools in East Jerusalem and ensure that all cultural activities can be held without undue restriction (para. 108)	Not implemented. The 2011 amendment to the Budgets Foundations Law remains in place, allowing fines to be imposed on institutions celebrating the Nakba. A Supreme Court challenge against the law was rejected in 2012.
To the Palestinian Authority	
Revise the Press and Publications Law of 1995 in consultation with civil society (para. 109)	Not implemented. A new bill is reportedly pending before the Cabinet.
Decriminalize defamation (para. 110)	Not implemented.
Refrain from filing defamation lawsuits and exercise a higher degree of tolerance for critical comments (para. 110)	Contravened. Individuals, including journalists, have continued to face litigation on the basis of defamation, with a recent trend in complaints following critical comments online.
Halt the practice of detaining and interrogating individuals for legitimate criticism of public officials (para. 111)	Contravened. Such practices continue and have intensified since the introduction of the Cybercrime Law in 2017.
Ensure that the right to freedom of expression on the Internet is fully guaranteed (para. 111)	Contravened. The right is severely undermined by the Cybercrime Law of 2017.

<i>Recommendation</i>	<i>Status</i>
Take measures to promote tolerance of diverse opinions (para. 111)	Contravened. See the entries above.
Facilitate and support the reform of the Palestinian Broadcasting Corporation into an independent institution (para. 112)	Not implemented.
Lift the ban on newspapers affiliated with the de facto authorities and ensure that journalists working for such newspapers can undertake their work in the West Bank without fear of harassment or intimidation (para. 113)	Contravened. While the ban on newspapers has been lifted, media outlets associated with the de facto authorities, and their journalists, face judicial harassment, physical attacks and threats.
Allow peaceful demonstrations to take place in the West Bank without undue restrictions (para. 114)	Contravened. Organizers and participants in peaceful protests have faced threats, summonses and arrests, with protests critical of the authorities facing violent reprisals.
To the de facto authorities	
Promote a culture of tolerance of divergent views (para. 115)	Contravened. See the entries below.
Stop the practice of arbitrary arrests, detention and interrogation of individuals expressing critical views, as well as raids on offices and interference with human rights-related events (para. 115)	Contravened. Numerous cases of arrests, summonses and detentions in response to criticism of officials have been recorded.
Lift the ban on newspapers affiliated with the Palestinian Authority and ensure that journalists working for such newspapers can carry out their work in Gaza without any undue interference or harassment (para. 116)	Contravened. While the ban on newspapers has been lifted, outlets associated with Fatah, and their journalists, have faced serious pressure and harassment.
Ensure that peaceful assemblies, demonstrations, workshops and conferences can take place in Gaza without undue interference and restrictions (para. 117)	Contravened. Protesters, as well as journalists covering demonstrations, have faced physical attacks, destruction of equipment, arrests and charges. In 2012, local authorities began to require approval before permitting assemblies.
Ensure that local and foreign journalists can carry out their work without intimidation, harassment and interference by officials from the Internal Security Agency; abolish the requirement for foreign journalists to name a local contact to enter Gaza (para. 118)	Not implemented. The requirement to name a local contact stands.

## **E. Côte d'Ivoire**

55. The former Special Rapporteur, Ambeyi Ligabo, carried out an official visit to Côte d'Ivoire from 28 January to 5 February 2004. He presented his report on the visit at the sixty-first session of the Commission on Human Rights, held in November 2004 (E/CN.4/2005/64/Add.2).

56. The visit took place amid extreme political and inter-ethnic tensions resulting from the unresolved violence that broke out in September 2002. The conflict, fuelled by

xenophobic propaganda spread by some media outlets, led to thousands of killings, created hundreds of thousands of internally displaced persons and refugees, and divided the country into a rebel-held north and a Government-controlled south. Despite the signing of the Linas-Marcoussis Agreement in January 2003, the declaration of a complete ceasefire in May 2003, the establishment of United Nations peacekeeping missions and the formation of a Government of National Reconciliation, violence and serious human rights violations have continued.

57. During the visit, the violent undermining of the scope for freedom of opinion and expression was observed. Obstructions to the work of journalists and on the circulation of newspapers were recorded in areas under rebel control, while attacks on journalists and media outlets by pro-government forces were reported as taking place in Abidjan. A deeply partisan press compounded existing tensions. Instances of incitement to hate and violence were common. Foreign journalists working in the country regularly received death threats.

58. The recommendations made subsequent to the visit focused on the need to restore stability as a baseline from which to build protections around freedom of opinion and expression. They concerned the implementation of the Linas-Marcoussis Agreement; the release of persons detained on the basis of their opinions or beliefs; a review of the legal framework governing media; and cooperation with international organizations. Table 5 contains a summary of the status of implementation of the recommendations.

59. Much has occurred in the country since the visit, including the outbreak of fresh violence in 2010 following contested elections. With media outlets supporting either the newly declared President, Alassane Ouattara, or the former President, Laurent Gbagbo, the conflict led to at least 3,000 deaths and mass human rights violations committed by all sides. The violence continued until April 2011, at which time Mr. Ouattara assumed the Presidency following the arrest of Mr. Gbagbo.

60. The Special Rapporteur regrets that no submission was received from the Côte d'Ivoire authorities in support of the present report. He recognizes the challenges entailed in following up on the visit, given the events that have taken place in the country since the visit. However, he stresses the value in attempting to understand the effects of the visit at the time and in engaging in dialogue aimed at the promotion and protection of freedom of opinion and expression today.

61. A number of the recommendations were implemented soon after the visit. In December 2004, new press laws were introduced, decriminalizing some "press offences" and creating the National Council for Audiovisual Communication and the National Press Council as regulatory bodies. In 2005, a National Human Rights Commission was established, beginning operation in January 2007. In 2008, a prohibition against incitement to hate and violence was incorporated into the Penal Code. While these were positive steps, several issues would blunt the effectiveness of these measures. Suffering from a lack of civil society representation and independence, the National Human Rights Commission was reformed in 2012 and 2018. Concerns as to the independence of the National Press Council have been raised since its creation, in particular with regard to its actions during 2010–2011 crisis and the fines imposed subsequently on opposition media. Hate speech continues to be a problem today.

62. The recommendations made were closely aligned with the Linas-Marcoussis Agreement, seeking to tackle the underlying factors that enabled or contributed to the outbreak of violence in 2002. Substantial action was not taken on many of the recommendations, however, until after the events of 2010–2011. Despite the creation of a United Nations peacekeeping operation in February 2004, with a mandate to support investigations into human rights violations, impunity surrounding violations committed during the conflict in 2002 persisted. Significant progress on the demobilization of militias was not made until after August 2012. Discriminatory constitutional provisions surrounding eligibility for the Presidency remained in place until the adoption of a new Constitution on 30 October 2016.

63. As a result, many of the issues underlying the conflict in 2002, and the limitation on freedom of opinion and expression during the conflict, were left unaddressed. Widespread human rights violations, including attacks on press freedoms, continued, and ultimately

contributed to, the crisis of 2010–2011. These included the killing and disappearance of journalists, their systematic targeting while covering protests, physical attacks and threats. Simultaneous attacks on media outlets were also recorded, with the majority of these violations carried out by pro-government forces amid open intimidation of the press by high-ranking officials and incitements to violence by pro-government media. Several such cases were raised by the mandate holder in the 15 communications sent to the authorities since the visit.

64. The creation of an enabling environment for freedom of opinion and expression is fundamental for the prevention of social conflict. However, in order to play a role in achieving that goal, freedom of opinion and expression must be graspable as an actionable right, protected and promoted through legislation and State policies. Positive steps in this direction have been seen since 2011, including Law No. 2013-867, providing for the right to information, and Law No. 2014-388, on the promotion and protection of human rights defenders. The Special Rapporteur urges the State to take proactive measures to support the broad effectiveness of these laws, including through the application of Law No. 2017-867 on the regulation of the press adopted in December 2017, in particular its provisions concerning “publishing false news”. The Special Rapporteur underlines that any limitations on freedom of expression must comply with international human rights standards.

Table 5  
**Côte d’Ivoire: status of implementation of recommendations**

<i>Recommendation</i>	<i>Status</i>
To the Government	
Consider the fight against impunity as a main priority (para. 62)	Not implemented. Impunity for crimes committed during the crisis in 2002 and subsequent human rights violations continued following the visit.
Declare illegal and disband all militias (para. 62)	Partially implemented. While little progress was made immediately following the visit, significant steps towards demobilization, disarmament and reintegration have been made since 2012.
Pursue human rights violators in courts, regardless of their ethnic or political affiliation (para. 62)	Not implemented.
Immediately establish a national human rights commission (para. 64)	Implemented. Established through decision 2005-08/PR in 2005, the commission began operation in January 2007. Reformed in December 2012, it was replaced by the National Human Rights Council in November 2018 through Law No. 2018-900.
Respect the request for the creation of an international commission of inquiry aimed at ending impunity (para. 64)	Not implemented. However, by its resolution 17/21 of 17 June 2011, the Human Rights Council established the mandate of the International Expert on the situation of human rights in Côte d’Ivoire.
Release all individuals detained solely because of their opinions and beliefs or their belonging to an ethnic group (para. 65)	Not implemented. While some political prisoners were released, journalists continued to be arrested, detained and charged in connection with their work.

<i>Recommendation</i>	<i>Status</i>
Create a compensation fund for the victims of the conflict, regardless of their political affiliation (para. 66)	Implemented. The National Commission for Reconciliation and Compensation of Victims was established in 2015, overseeing a compensation fund for victims of human rights violations committed between 1990 and 2012.
Draft specific laws regarding hatred and hateful propaganda in the framework of the exercise of freedom of opinion and expression (para. 67)	Implemented. Criminal sanctions for racism, xenophobia, tribalism and racial and religious discrimination expressed in the media were introduced through Law No. 2008-222. Nonetheless, reports of incitement to violence continued. Concerns are raised that the provisions of the Law may lack precision. Criminal sanctions for incitement online based on racism and xenophobia were included in Law No. 2013-451 on combating cybercrime.
Reformulate article 35 of the Constitution concerning eligibility for the presidency (para. 68)	Implemented. On 30 October 2016, a new Constitution was adopted, in which the eligibility criteria for the presidency were reformulated in article 55.
Commit to a national, independent and inclusive media commission; adopt the draft bill on the press as soon as possible (para. 71)	Partially implemented. In December 2004, a new legislative framework for the press was adopted through Laws Nos. 2004-643 and 2004-644, creating the National Press Council. However, concerns regarding the Council's independence and authority were raised, with reports of the imposition of arbitrary and disproportionate sanctions. In December 2017, a new legislative regime was adopted through Law No. 2017-867, replacing the National Press Council with the National Press Authority.
Make efforts, together with civil society, to reactivate and reinforce the work of media institutions and professional associations (para. 71)	Implemented. Legislative efforts were accompanied by financial support, with Decree No. 2007-677 of December 2007 creating a support fund for press development and introducing subsidies for printing. With these subsidies ending in 2018, the State should consider the reintroduction of similar support measures.
Give urgent consideration to the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (para. 72)	Not implemented.
Submit outstanding reports to relevant treaty bodies as soon as possible (para. 73)	Not implemented.

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<i>Recommendation</i>	<i>Status</i>
To the United Nations and other international organizations	
Continue to support the development of independent media in Côte d'Ivoire (para. 70)	Implemented. In 2004, the Security Council, by its resolution 1528 (2004), established the United Nations Operation in Côte d'Ivoire, mandated to combat hate speech in the media. In September 2013, a UNESCO country office was opened in Abidjan.

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