

Universal Periodic Review Human Rights Council

Joint Submission on Internet-related Human Rights Issues in
Colombia by Colnodo

www.colnodo.org

and the Association for Progressive Communications



APC

ASSOCIATION
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Executive Summary

1. This submission has been prepared by Colnodo¹ and the Association for Progressive Communications. APC has general ECOSOC consultative status and is concerned with human rights and their recognition with regard to the internet from the perspective of the critical role we believe the internet can play to enhance social and economic development.
2. This submission focuses on two issues: violence against women and freedom of expression, in the context of the internet. It highlights how the internet is being used to promote and protect human rights, and the danger to human rights posed by Bill 201/2012, also known as the “Ley Lleras Bill”. Six recommendations are made for follow-up and implementation in the UPR process.

The Internet and Human Rights

3. The first UPR of Colombia did not include reference to internet related human rights issues, Human rights and the internet are referred to in the founding documents on the United Nations World Summit of the Information Society,² the Geneva Declaration of Principles³ and the Internet Governance Forum.⁴ During 2011 it became clear that the UPR **must** include the promotion and protection of human rights and fundamental freedoms on the internet, particularly freedom of expression and freedom of association.⁵ In 2011 the Human Rights Committee noted that freedom of expression (including the right to information and access to information) includes internet based expression.⁶ Member States existing human rights obligations⁷ extend to taking steps to ensure access to the internet and that limitations or restrictions on freedom of expression comply with agreed international standards, including women’s human rights.⁸ This submission also focuses on the internet in relation to the protection and promotion of women and minority groups. The first UPR of Colombia did include reference to violence against women and minority groups.⁹

Violence against women and minority groups

4. In its 2008 review, Colombia made voluntary commitments to (1) guarantee female victims of such violence full access to justice, and (2) guarantee a safe setting and favourable environment for the exercise by women of their Rights¹⁰. Since then, Colombia has passed new legislation to combat violence against women, including Law

¹ Colnodo is a Colombian association of non-profit non-governmental organisations founded in 1994. Its goal is to facilitate communication and the exchange of information and experiences among Colombian social organisations at the local, national and international level through low-cost electronic networks.

² World Summit on the Information Society, United Nations, and International Telecommunication Union “WSIS Outcome Documents” (December 2005).

³ Article 19 of the UDHR is cited in paragraph 4 of the Geneva Declaration of Principles (2003).

⁴ <http://www.intgovforum.org>

⁵ Human Rights Committee, General Comment 34, Freedoms of Opinion and Expression, (21 July 2011, CCPR/C/GC/34).

⁶ Ibid, para 12.

⁷ The UPR monitors existing human rights obligations: Human Rights Council, Institution-building of the United Nations Human Rights Council (18 July 2007, A/HRC/RES/5/1, affirmed in Resolution A/HRC/RES/16/21).

⁸ Frank La Rue “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” (26 April 2011, A/HRC/17/27).

⁹ A/HRC/10/82 Report of the Working Group: para 25, 49, 56,

¹⁰ UPR-Info database of recommendations and voluntary commitments <http://shar.es/51Dox>

1257, which expands the definition of violence against women to include physical, sexual, psychological, economic and material assets-related aspects.¹¹

5. New research on violence against women indicates that the internet is a critical space in the struggle for fundamental rights and freedoms.¹² In conflict areas such as Magdalena del Medio, women are documenting their testimonies of violence and creating short radio programmes about their life and experiences. In Bogotá's urban areas, displaced women are learning how to conduct online awareness campaigns about violence against women; and members of the lesbian, gay and transgender community are using Web 2.0 to advocate for peaceful, non-violent relationships.¹³
6. At the same time, it is important to address the dangers that the internet and ICTs¹⁴ pose to women and marginalised groups.¹⁵ In recent years the media have published many cases where women have been the victims of violence and where ICTs were used as the means to carry such attacks. However, these cases are not recognized as such and the role of the ICT in relation to violence is often neglected or ignored. It is important to highlight this issue and for the media, policy institutions, communication companies and social organizations to include in their own agendas urgent measures to prevent gender violence perpetuated through ICTs.
7. We recommend that legislation intended to combat violence against women extend to include violence against women online.

Bill 201/2012 and freedom of expression

8. In 2012 Colombian lawmakers passed the "Ley Lleras" (Lleras Law), also known as the "two strikes" law. Under it, copyright infringers could face harsh criminal penalties, whether or not the individual is aware of committing infringement. Since the definition of infringement encompasses the act of copying a product for the purpose of distribution, and the bill creates no minimum threshold for applying criminal sanctions even individuals creating a CD for a friend could be fined or put in jail.¹⁶ This extends also to internet service providers who facilitate media piracy, requiring them to "to block pages, P2P ports, suspend access to users and even cut off the service."¹⁷
9. Local groups have called on the government to amend the law based on Article 27 of the Universal Declaration of Human Rights, the **protection of copyright on the Internet must be weighed against the negative impact it could have for exercising one's right to freedom of expression.**¹⁸
10. In its 2008 review, Colombia accepted the recommendation to "Deepen its engagement with and support for civil society actors, human rights defenders and

¹¹http://www.genderit.org/sites/default/upload/APC_WNSP_MDG3_VAW_ICT_en_lac_dec2009_1.pdf

¹²Kee and Moolman, *Sexuality and women's rights: GISWatch 2011*

¹³<http://www.apc.org/en/node/11331/>

¹⁴Technology and tools that people use to share, distribute, gather information and to communicate with one another, one on one, or in groups. ICTs can be grouped into three categories. Information technology uses computers, which have become indispensable in modern societies to process data and save time and effort. Telecommunications technologies include telephones (with fax) and the broadcasting of radio and television, often through satellites. Networking technologies, of which the best known is the internet, also extend to mobile phone technology, voice over IP telephony (VoIP), satellite communications, and other forms of communication that are still in their infancy.

¹⁵<http://www.soyperiodista.com/tecnologia/nota-5855-la-violencia-se-refleja-redes-sociales>

¹⁶<https://www.eff.org/deeplinks/2012/04/colombia-fast-track-sweeping-new-copyright-reform-bill>

¹⁷<http://globalvoicesonline.org/2011/04/15/colombia-netizens-discuss-law-lleras-on-copyright>

¹⁸<http://advocacy.globalvoicesonline.org/2012/08/29/colombia-cele-analyzes-constitutionality-of-bill-lleras-2-0/>

minority groups, and ensure their safety, with specific mechanisms in place if necessary, including through supportive public statements on the important role they play in democracy”¹⁹. However a number of groups have reported insufficient engagement in the drafting of Bill 201/2012, and only three days after its initial reading, the law was approved by the Senate and House of Representatives secondary committees.²⁰

11. RedPaTodos, a citizen participation platform that promotes discussion on copyright and its application on the Internet, warns that the adoption of Bill 201/2012 failed the public debate, ignored citizens’ requests for participation, and disregarded the arguments of scholars and experts in the field in the design of the standard.²¹ Senator Camilo Romero has challenged the controversial law in the Constitutional Court, and warns that the law severely limits rights such as freedom of expression and privacy, and it restricts access to knowledge.²²
12. In 2011 the Special Rapporteur on Freedom of Expression stated:²³ “While blocking and filtering measures deny users access to specific content on the Internet, States have also taken measures to cut off access to the Internet entirely. The Special Rapporteur considers cutting off users from Internet access, regardless of the justification provided, including on the grounds of violating intellectual property rights law, to be disproportionate and thus a violation of article 19, paragraph 3, of the International Covenant on Civil and Political Rights.”
13. We recommend that Colombia engage with and support civil society actors, human rights defenders and minority groups on issues related to human rights online, including protection of freedom of expression.
14. We further recommend that the government amend any laws that provide for cut off of internet access for copyright violations; and ensure constitutional protections make it clear that freedom of expression in Colombia includes internet related expression, in accordance with General Comment 34 on Article 19 of the Human Rights Committee.²⁴

Recommendations

15. Support organisations that work with women and ICTs to help put an end to violence against women.
16. Extend legislation intended to combat violence against women to include ICTs and violence against women online.
17. Repeal or amend legislation that restricts freedom of expression, such as blocking or banning online content.
18. Engage civil society groups and internet activists in discussion and debate on legislation relating to the internet, human rights and intellectual property.
19. Ensure that constitutional protections for freedom of expression include internet related expression, in accordance with General Comment 34 on Article 19 of the Human Rights Committee.

¹⁹A/HRC/10/82 Report of the Working Group: para 49

²⁰<http://globalvoicesonline.org/2012/04/02/colombia-lawmakers-rush-bill-on-author-rights-and-intellectual-property/>

²¹Colnodo, Social mobilisation for the defense of digital rights and against the “Lleras Act”: GISWatch 2011

²²<http://camiloromero.co/en-el-senado/no-leylleras2-0/>

²³ Frank La Rue “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” (26 April 2011, A/HRC/17/27) at page 21, para 78.

²⁴ Frank La Rue “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” (26 April 2011, A/HRC/17/27) at page 21, note 3.