

## Colombia (2013)

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Colombia has the second highest Internet penetration rate in Latin America (after Uruguay), due in large part to government-led ICT development efforts. The Internet has created a vital space for civic dialogue in Colombia, and social media sites such as Facebook and Twitter have become critical tools for the campaigns of political leaders and activists alike. ONI testing on two Colombian ISPs revealed evidence of one blocked website; the government has also taken measures aimed at reducing children's exposure to online pornography. The government has passed laws addressing online privacy, electronic surveillance, and cybercrime, although Colombia's national intelligence service has reportedly engaged in extrajudicial surveillance. A pending law governing digital copyright, which was proposed as a measure of compliance with Colombia's free trade agreement with the United States, is currently being contested at the Supreme Court by advocates who assert that the law violates the country's constitution by limiting citizens' rights to access information.

### Background

Colombia is a democratic republic led by President Juan Manuel Santos, who took office in August of 2010.<sup>1</sup> Since the 1960s, the Colombian government has been engaged in a violent struggle against drug cartels and left-wing guerilla organizations, mainly the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia or FARC).<sup>2</sup> The armed conflict reached its peak in the early 1990s, and overall levels of violence have fallen dramatically since 2001. Although the organization has lost a significant portion of its membership over the last ten years, the FARC maintains political control in certain regions of the country; rule of law is not consistently upheld in these areas.<sup>3</sup>

The armed conflict between drug cartels, paramilitary groups, and the FARC has long had adverse effects on press freedom in Colombia; during the 1980s and '90s, threats of assassination, kidnapping, and physical assault were routine for investigative journalists.<sup>4</sup> In 1989, cocaine kingpin Pablo Escobar declared an "all-out war" against reporters investigating Colombia's drug trade<sup>5</sup> and ordered the killings and kidnappings of some of the nation's most prominent journalists, a move that caused several to flee the country.<sup>6</sup> In 2000, the government created the Program for the Protection of Journalists, an initiative aimed at re-establishing and upholding the basic human rights of media workers.<sup>7</sup>

Since 2002, the FARC saw their numbers halved as a result of efforts by Colombia's military, which has received support in this effort from the US. However, in the last three years, they have stepped up their attacks with the help of increased income from the drug trade.<sup>8</sup>

Violence against journalists has decreased considerably over the past decade,<sup>9</sup> but certain regions of the country continue to be dangerous places for journalists investigating violence, the drug trade, and political corruption. In March of 2010, *El Pulso del Tiempo* reporter Clodomiro Castilla Ospino was assassinated at his home. Known for his investigative work on paramilitary activity and political corruption in the Department of Córdoba, Castilla had been placed under protection by the Departamento Administrativo de Seguridad (Administrative Department of Security, or DAS) after receiving a series of threats related to his work in 2008. According to a report released by the Inter-American Commission on Human Rights (IACHR), this protection was "suspended at the

journalist's own request in February 2009, given the mistrust for the entity providing the protection [DAS]."<sup>10</sup> As of April 2013, little progress had been made in the investigation of Castilla's assassination.<sup>11</sup>

The IACHR also documented numerous threats of violence and death against journalists from a variety of sources, including the FARC, and several cases of police brutality against journalists and photographers covering civil demonstrations by students and union workers in Bogotá and Cali during the spring of 2010.<sup>12</sup> More recently, in April of 2012, French reporter Romeo Langlois was captured by FARC rebels while filming the destruction of cocaine laboratories in the Caqueta region. The FARC released a video on May 6, stating that it was holding Langlois as a prisoner of war.<sup>13</sup> He was finally released on May 30 and said that he was "fine and had been well-treated."<sup>14</sup>

In August of 2012, Colombia's Supreme Court filed a libel suit against journalist Cecilia Orozco Tascón, a political columnist for *El Espectador*, one of the nation's most widely-read daily newspapers.<sup>15</sup> Orozco was known for her coverage of corruption within the federal justice system. The suit was dropped shortly thereafter, in the wake of criticism from media organizations and civil society. Local press freedom advocates have demonstrated how cases like Orozco's, as well as various documented cases of police oppression against journalists, encourage journalists to censor or curb their coverage of controversial subjects such as political corruption and crime.<sup>16</sup>

Colombia's print, broadcast, and digital news sources represent a range of political perspectives.<sup>17</sup> Many of the nation's most prominent newspapers were founded in affiliation with leading political parties during the late nineteenth and early twentieth centuries, and some established institutional autonomy decades later.<sup>18</sup> Although the majority of Colombia's print and broadcast news sources are now owned by international media conglomerates, many of the nation's most influential journalists and newspaper publishers remain closely tied to major political parties.<sup>19</sup> For nearly a century, the family of President Santos has been the publisher and primary shareholder of *El Tiempo*, Colombia's largest daily newspaper in national circulation.<sup>20</sup> In 2012, *El Tiempo* was still the newspaper with the highest daily circulation in the country.<sup>21</sup> A Nieman Journalism Lab study, "Digital journalism in Colombia: The who and how of new media," conducted by a coalition of journalism and media organizations, revealed that the use of digital media by news organizations has been rising dramatically, especially over the past decade. Nevertheless, a majority of news sites are still tied to traditional media outlets; only 81 of the 391 sites that participated in the study were online-only organizations.<sup>22</sup>

Since 2000, the majority of the nation's newspapers and magazines have launched their own websites,<sup>23</sup> and in recent years, blogs and social media have created a popular platform for political discussion. The 2010 presidential elections marked the first federal election cycle in which political candidates employed digital communications tools in their campaign strategies and citizens could actively participate in campaign efforts using new media.<sup>24</sup> Critics attributed support among young, urban voters for presidential candidate Antanas Mockus to campaign efforts on social media sites such as Twitter and Facebook, a technique that his opponents swiftly adopted when polls began to show Mockus leading the race.<sup>25</sup>

### Internet in Colombia

Colombia established its first connection to the global Internet in 1990, at the Universidad de los

Andes.<sup>26</sup> The Ministerio de Tecnologías de la Información y las Comunicaciones (Ministry of Information Technologies and Communications, or MINTIC) now oversees the administration of the .co domain.<sup>27</sup> Colombia's Internet penetration rate has climbed rapidly over the past ten years, and rose to 40 percent in 2011.<sup>28</sup> The country's largest ISPs include EPM Telecomunicaciones, Colombia Telecomunicaciones, ETB, and Telmex Hogar.<sup>29</sup> Many Colombians have also begun to access the Internet using their mobile phones.<sup>30</sup> Although Internet use is more common among urban residents than those living in rural areas, Internet penetration rates in remote regions of the country have climbed steadily in recent years.<sup>31</sup>

In order to encourage growth and competition, Colombia liberalized its telecommunications sector in 1991 and has since put a significant percentage of the national budget towards improving the nation's telecommunications infrastructure.<sup>32</sup> In 2008 MINTIC, which was known as the Ministry of Communications until 2009, amended its pricing policy to make domain names more affordable for small and mid-sized businesses in Colombia.<sup>33</sup> The Comisión de Regulación de Comunicaciones (Communications Regulation Commission) regulates telecommunications service providers in order to monitor Internet connectivity and to encourage competitive telecommunications markets.<sup>34</sup> Colombia's .co domain has been in heavy demand since the registry was open to the international community in 2010. While the country only had 28,000 registers before opening the domain, just a year later, there were over 1 million .co domains, with single-letter domains such as o.co going for the highest bids.<sup>35</sup>

Since 2005, MINTIC has launched several large-scale ICT development projects with the goal of raising Internet penetration and digital literacy across the country.<sup>36</sup> The Plan Nacional de Tecnologías de la Información y las Comunicaciones (National Plan for Information and Communication Technologies) aims to increase broadband Internet access nationwide, provide digital education training programs for schoolteachers, and improve online government services.<sup>37</sup> MINTIC has provided thousands of computers and digital education tools for rural schools and co-sponsors the "Connecting the Senses" project, which helps people with physical disabilities to participate in the digital environment.<sup>38</sup>

Nationally-based social media sites such as Campus Party,<sup>39</sup> based in Bogotá, and Medelink,<sup>40</sup> based in Medellín, have been instrumental in developing Colombia's digital culture. An active free and open source software and hacker community has also developed in recent years, fueling citizen interest in protecting rights to free expression and access to information.<sup>41</sup>

Blogs and online social networks have provided an important space for political activism in Colombia. In February 2008, human rights leaders used Facebook to organize the global demonstration, "One Million Voices Against FARC."<sup>42</sup> The social networking site helped leaders to mobilize hundreds of thousands of people to demonstrate in protest of the guerilla army's violent practices. Created by Colombian engineer Óscar Morales, the group had over 300,000 members at its height.<sup>43</sup> Citizens have also used social networks to voice political wants; in February of 2013, Twitter played an active role in a campaign effort to promote a constitutional referendum that would allow for members of Congress to be removed from office if found guilty of corruption.<sup>44</sup> Colombians have also used social media to engage in a campaign against the television series "Los 3 Caínes," which is based on the life and death of Carlos, Fidel, and Vincente Castaño, considered the main leaders of the paramilitary movement in Colombia. Private TV station RCN began broadcasting the series in March 2013, but tens of thousands of citizens participated in a mass campaign on Twitter and Facebook calling for a boycott against companies advertising their

products on the series. After just two weeks of campaign, ten companies cancelled their contracts with RCN.<sup>45</sup>

In regions where violence between paramilitary groups and drug cartels remains prevalent, bloggers and social media activists have also taken an active role in reporting on violent events. In Medellín, Twitter users routinely tweet reports of violent acts that they have witnessed.<sup>46</sup> Sites such as Villactivos<sup>47</sup> and Revolución Esperanza,<sup>48</sup> which serve as collective discussion blogs for residents of violent areas, and Hiperbarrio,<sup>49</sup> a social network dedicated to strengthening citizen engagement against violence, have become important spaces for public discourse on violence and corruption in Colombia.<sup>50</sup>

### Legal and Regulatory Framework

Colombia's constitution protects both privacy and freedom of expression.<sup>51</sup> It guarantees "the right of every person to have access to public documents" and protects "journalistic activity."<sup>52</sup> Colombia is party to the International Covenant on Civil and Political Rights<sup>53</sup> and is a member of the United Nations<sup>54</sup> and the Organization of American States.<sup>55</sup>

Although the Constitution guarantees freedom of speech, this provision is subject to restrictions in certain circumstances. Decree 1812 declares that journalists may report on the activities of guerrilla organizations, drug cartels, and terrorist groups, but that they may not cite or republish interviews or speeches by members of these organizations.<sup>56</sup> If the nation is declared to be in a "state of internal commotion," the government may restrict the distribution of "radio or audiovisual communications that originate from or are attributed to guerrilla groups and other criminal organizations."<sup>57</sup> The decree also prohibits the public identification of anyone who has witnessed acts of terrorism or other crimes that threaten national order and gives MINTIC the power to close any media outlet that violates the decree for up to six months.<sup>58</sup> Decree 1800 prohibits "all types of propaganda, demonstration, communications and interviews with political electoral aims" on election days.<sup>59</sup>

Law 679, passed in 2001, aims to prevent the online circulation of child pornography and to eliminate online content related to child prostitution.<sup>60</sup> The law calls for the establishment of Internet Sano (Healthy Internet), a program administrated by MINTIC to protect children online and encourage the public to report illegal online content.<sup>61</sup> The law also prohibits ISPs from hosting child pornography and requires them to provide their customers with the technical ability to block all forms of pornography.<sup>62</sup>

In 2003, a private citizen filed charges against a marketing company that had continued to send him emails after he had requested that his email address be removed from the company's mailing list. A Colombian court ruled that the marketing company had violated the plaintiff's privacy,<sup>63</sup> citing the principle of *habeas data*, which states that any citizen has the right to know what information is being held about him or her in any database, whether physical or electronic, and also has the right to request that the information be corrected or destroyed.<sup>64</sup>

In 2009, Colombia's criminal code was reformed to include several measures concerning cybercrime. The code now addresses hacking, malware, phishing, unlawful interception and interference with data, and other infractions related to the protection of personal information.<sup>65</sup> The Centro Cibernético Policial (Police Cyber Center) is a special division of the Colombian national police department whose members are trained to investigate and prosecute cybercrimes, particularly those

related to cyberterrorism or organized crime.<sup>66</sup> The group cooperates closely with Interpol and the Inter-American Committee Against Terrorism.

In 2011, the national congress debated a proposed anti-piracy law commonly known as “ley Lleras” or the Lleras Law, named for its author, Interior and Justice Minister Germán Vargas Lleras. Written to comply with the requirements for the US-Colombia Trade Promotion Agreement (CTPA), the law aims to be consistent with US anti-piracy laws, mainly the Digital Millennium Copyright Act. Critics of the law noted that it made ISPs liable for user infractions instead of leaving the decisions in the hands of a judge. After much debate, the bill was struck down by the Senate in November 2011.<sup>67 68</sup>

Six months later however, in March 2012, a new version of the law was approved by both houses of Congress. Law 1520, which has been called “Lleras Law 2.0,” reforms the framework to legislate and regulate copyright and intellectual property.<sup>69</sup> The Electronic Frontier Foundation argued that the law “would have effectively forced service providers to spy on, disconnect, and censor their users in the name of protecting copyright.”<sup>70</sup> Immediately after the law was approved, civil society and bloggers criticized the law, arguing that it would threaten freedom of expression and the ability to share files and exchange material online.<sup>71</sup> Critics also suggested that the law had been on the fast track in order to fulfill CPTA agreements before the 6<sup>th</sup> Summit of the Americas on April 14.<sup>72</sup> CTPA finally went into effect on May 15, 2012, more than 5 years after being signed.<sup>73</sup> In June 2012, two Colombian senators filed a lawsuit concerning the copyright provisions in the law, arguing that it unjustifiably restricts the rights of Internet users and violates Colombians’ constitutional right to privacy.<sup>74</sup> A coalition of civil society groups challenged the constitutionality of the law before the nation’s Constitutional Court. In January 2013, the Court declared Law 1520 to be unconstitutional on procedural grounds. Digital rights NGO Fundación Karisma, which led the coalition, explained that the law should have been drafted and approved by the Congressional committee charged with handling legislation concerning intellectual property. Because it resulted from a proposed trade agreement, the law was approved by the committee on international affairs.<sup>75</sup>

### Surveillance

Colombia’s Criminal Code protects the secrecy of communications,<sup>76</sup> and Resolution 575 of 2002 requires telecommunications companies to adopt security mechanisms to protect client data.<sup>77</sup> Police authorities may monitor or intercept communicational exchanges, provided that they obtain judicial permission to do so. Resolution 575 also prohibits telecommunications service providers from allowing the extrajudicial interception of communicational exchanges between clients. If the violation comes from a third party, the service provider is obliged to inform police authorities. Telecommunications service providers are also authorized to exchange user information to prevent fraud.<sup>78</sup>

In 2009, government executives came under fire when the Colombian weekly magazine *Semana* revealed that the DAS had used illegal wiretaps to monitor the conversations of journalists, judges, politicians from multiple parties, and former Colombian president César Gaviria.<sup>79</sup> The DAS used a system called Phantom 3000, made by TraceSpan Communications, a company based in the US.<sup>80</sup> In 2010, at a hearing before the National Public Prosecutor, it was found that the DAS had placed widely read and respected *Noticia Uno* reporter Daniel Coronell under surveillance because of a series of investigations that Coronell had led concerning now former president Álvaro Uribe. DAS agents “checked up on the movements” of both Coronell and his wife and obtained secure information

about his bank transactions. Other hearings by the Public Prosecutor revealed that the DAS placed other journalists under surveillance during the administration of Álvaro Uribe, including Carlos Lozano, Hollman Morris, and Claudia Julieta Duque, a reporter for the human rights-focused digital radio channel *Radio Nizkor*. A DAS document with detailed instructions on how to threaten Duque and the life of her daughter was uncovered in the ensuing investigation.<sup>81</sup>

### ONI Testing Results

In June 2010, the ONI conducted tests on two ISPs in Columbia, EPM Telecomunicaciones (UNE) and Telmex Colombia. Testing data from 2010 found one website blocked in the sample of 100 URLs tested on EPM Telecomunicaciones (UNE). ONI testing data from 2010 found no evidence of Internet filtering on Telmex Colombia.

### Conclusion

Colombia's constitution guarantees freedom of the press but restricts certain content related to guerilla organizations and the illegal drug trade. Though corresponding legislation is currently being challenged in court, Colombia's recent free trade agreement with the United States may introduce new limitations on the use of copyrighted materials and general access to information on the Internet. Drug and criminal organizations continue to threaten political stability in certain regions of the country, but the Colombian government has made marked progress in combating these forces and re-establishing rule of law since 2001. Journalists covering crime and corruption continue to face threats from criminal organizations, as well as police and government actors. Though ONI testing showed no signs of Internet filtering in Colombia, practices of indirect censorship may extend to the online media environment in the future.

### Notes

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