

# Global Trends

Global Freedom of Expression Case Law Database  
2015 in Review



# 2015 Overall Trends

## Consolidation of 2014 trends

- internationalization, expansion and further deterioration of the **conflicts** in the Middle East, West Africa, North Africa as well as in Ukraine,
- geographical expansion of “terrorism” and an increase in terrorism-related death (by 61% since 2013)
- Largest number of refugees
- **Intolerance and xenophobia, politics of fear**
- At best, global economic trends stagnated or slowed down particularly in emerging economies, Europe; China growth rate slowed down

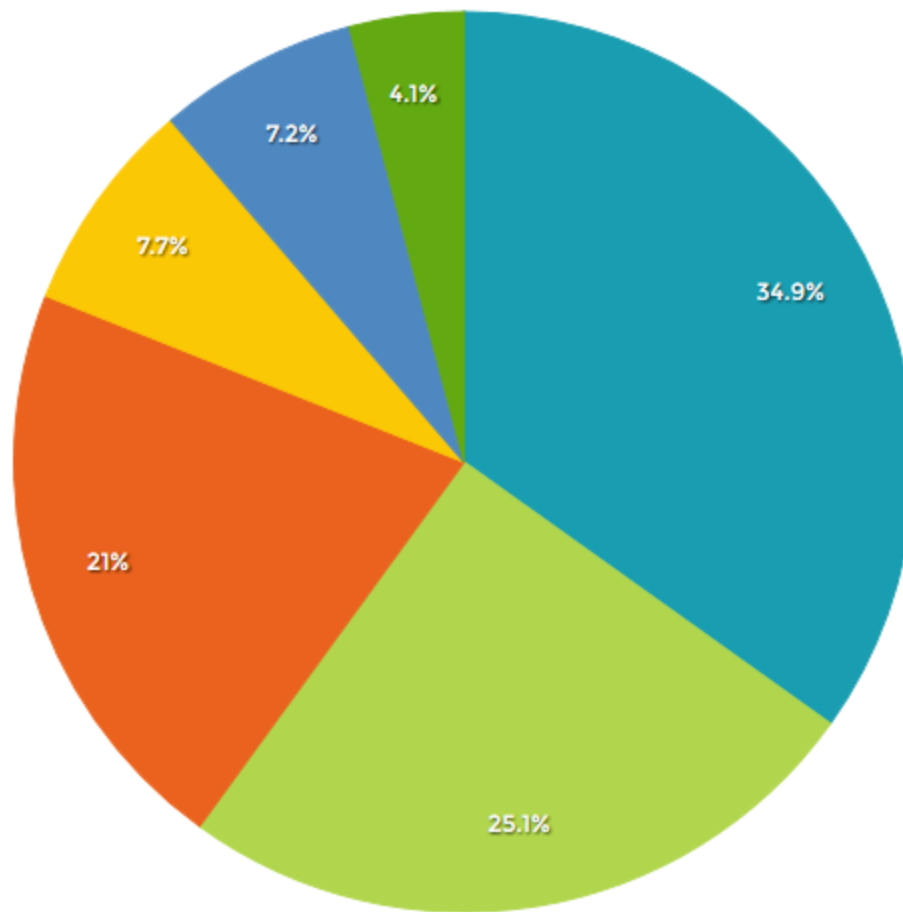
# Impact on Freedom of Expression

- No marked drop compared to 2014 but a continuing deterioration, initiated 8 or so years ago
- Imprisonment of Journalists: 199 journalists were imprisoned in 2015, or 22 less than in 2014 (CPJ)
- Killings of journalists: 67 journalists were confirmed killed for their work in 2015, an increase of 1 compared to 2014 (RSF)
- Killings of HRD: 156 HRDs were killed or died in detention in 25 countries in the first eleven months of 2015 (as compared to 130 in the first 10 months of 2014) – Frontline Defenders
- Journalists: anti-state related charges
- HRD: environment
- Continuing enactment of regressive laws and policies related to civil society and civic space; on-line freedom of expression and assembly – sometime under the guise of national security

# Resilience

- Human Rights Institutions
- Civil Society; Human Rights Defenders
- Journalists; citizen journalists
- Lawyers, Judges?

# 195 Cases analysed in 2015

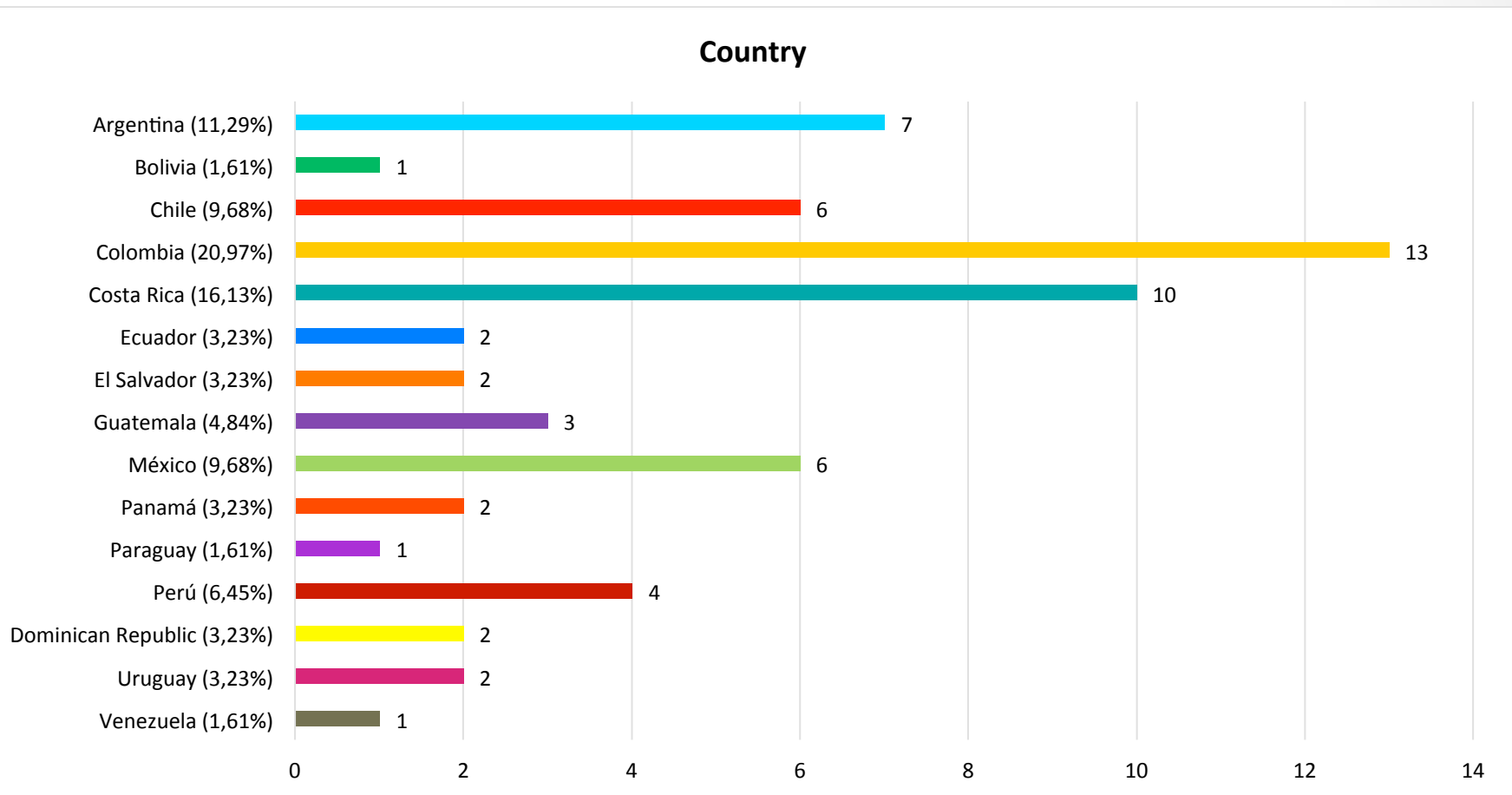


**Region**

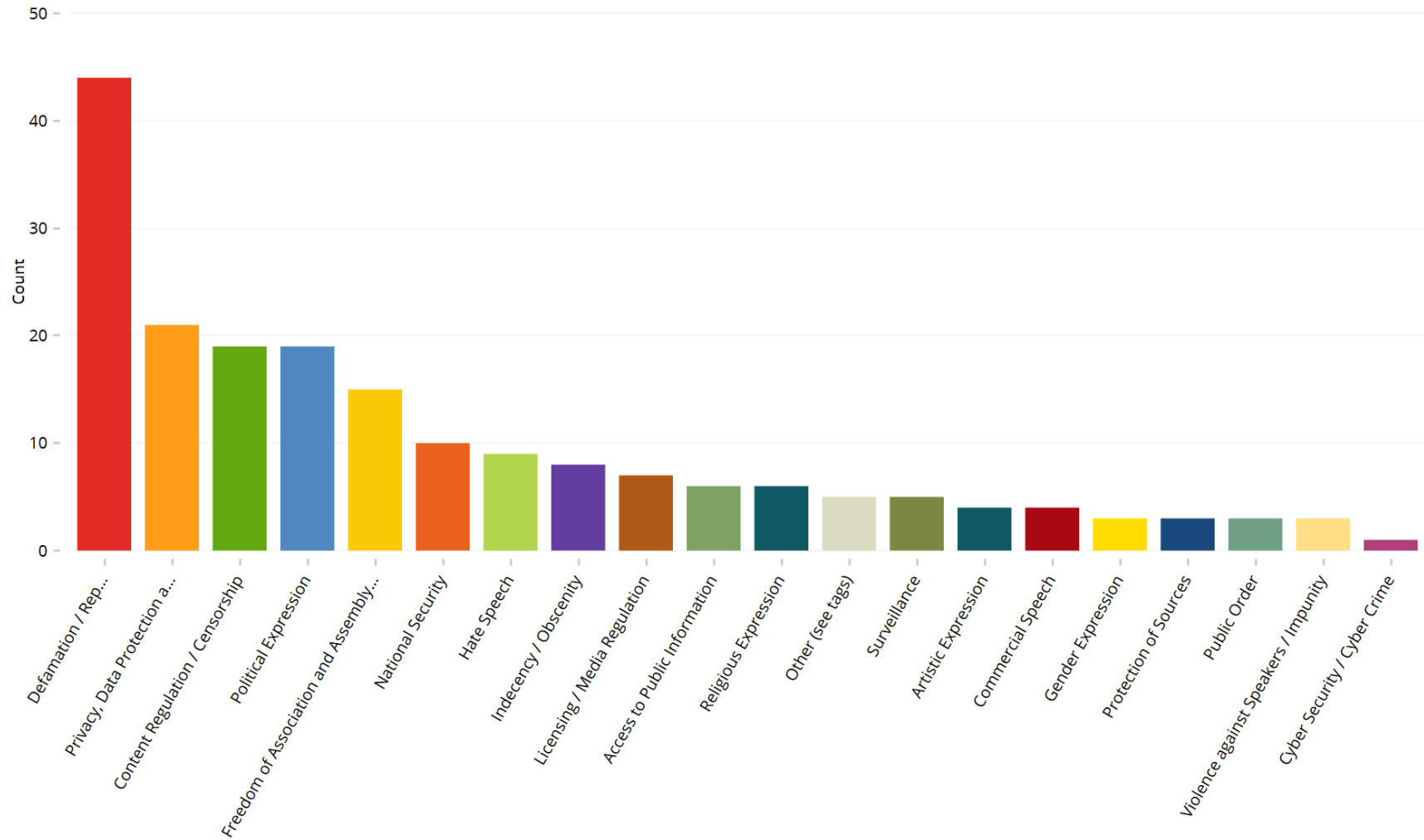
- Europe and Central Asia
- North America
- Asia Pacific
- Africa
- Latin-America and Caribbean
- Middle East and North Africa



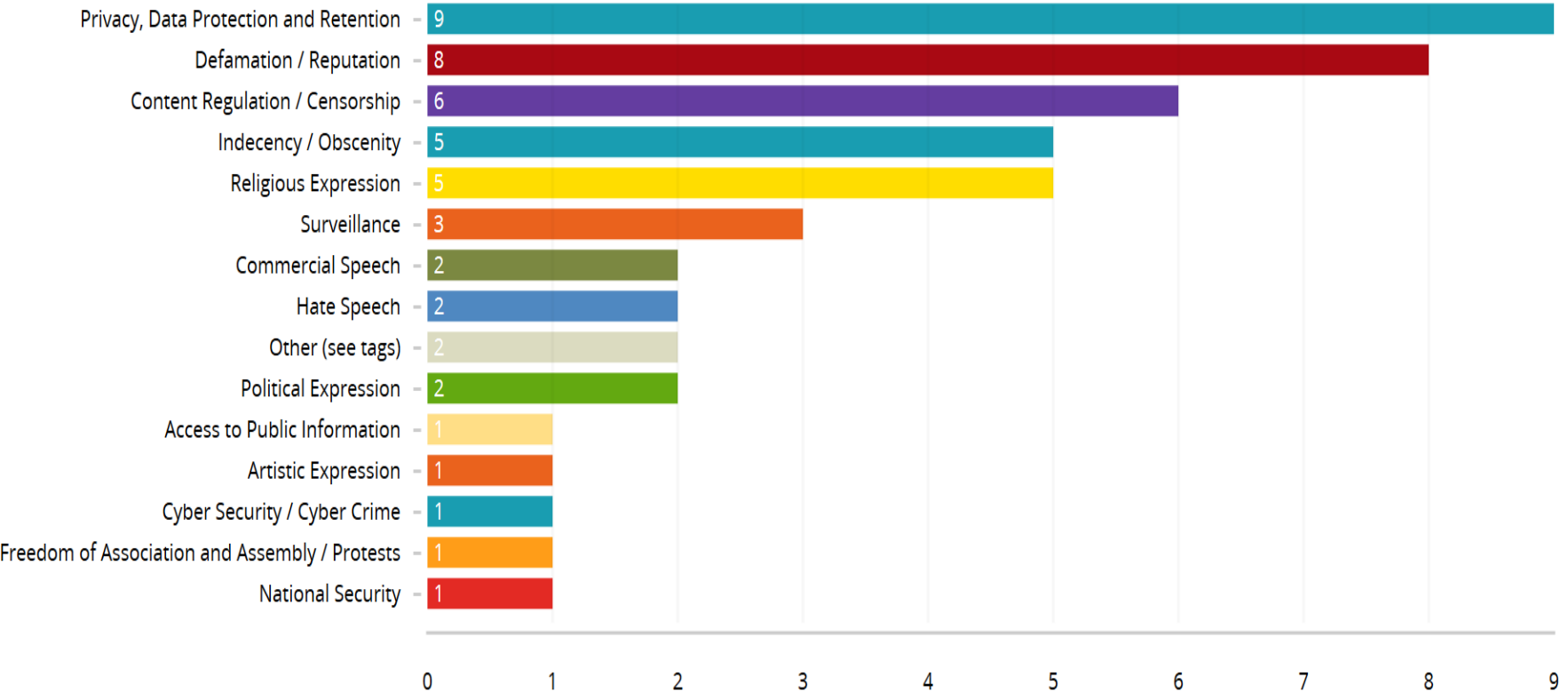
## Latin America Cases



## Themes Captured in 2015 Globally

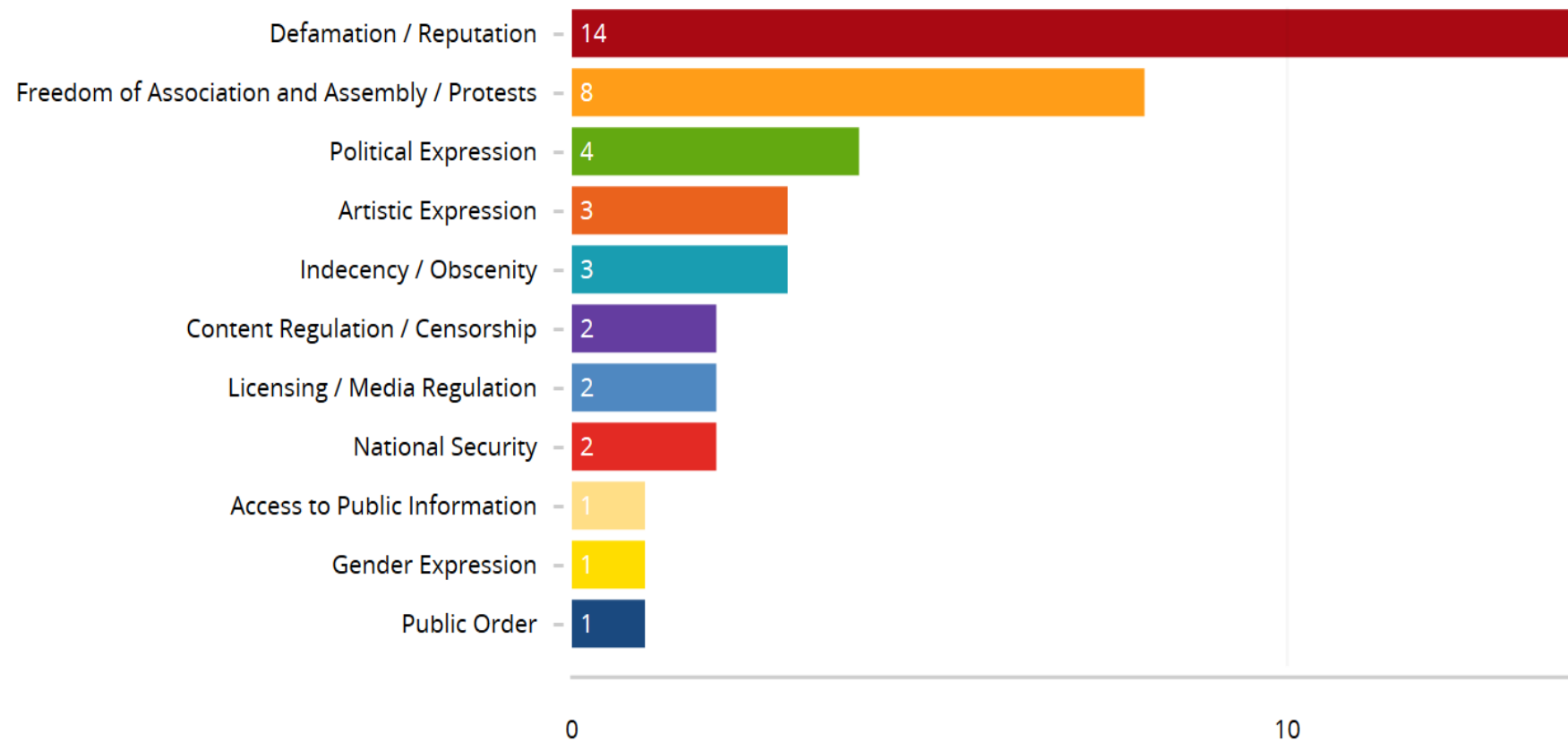


# North America - Themes in 2015

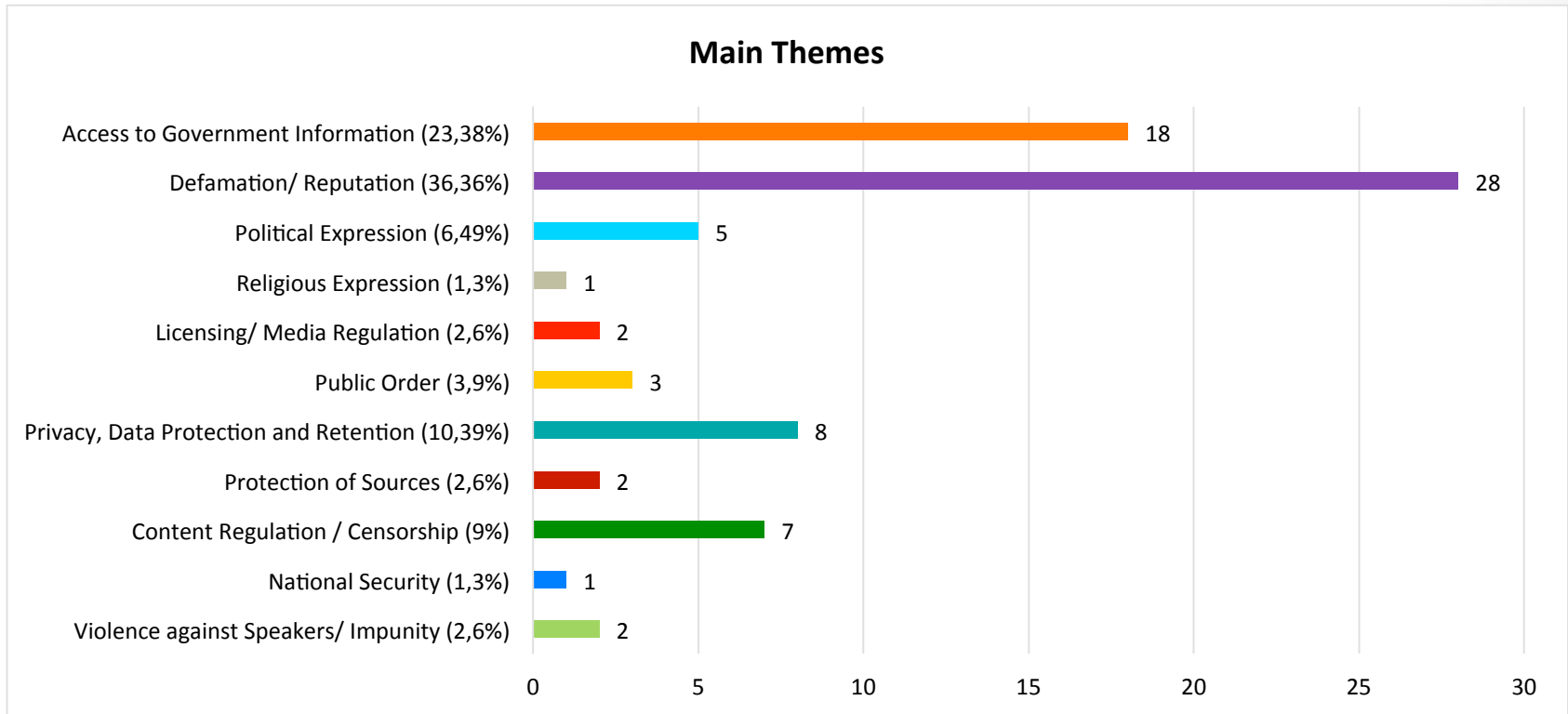




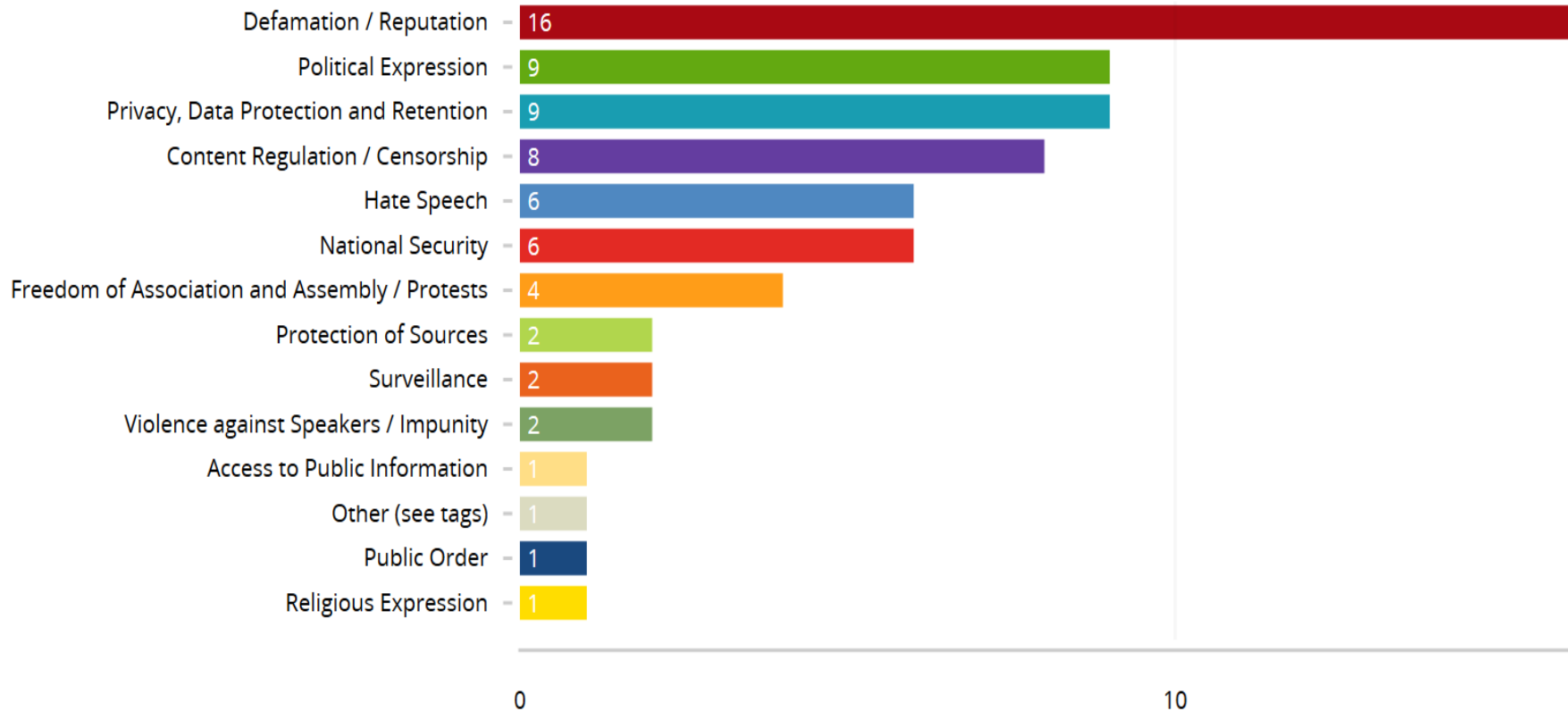
# Asia & Asia Pacific - Themes in 2015



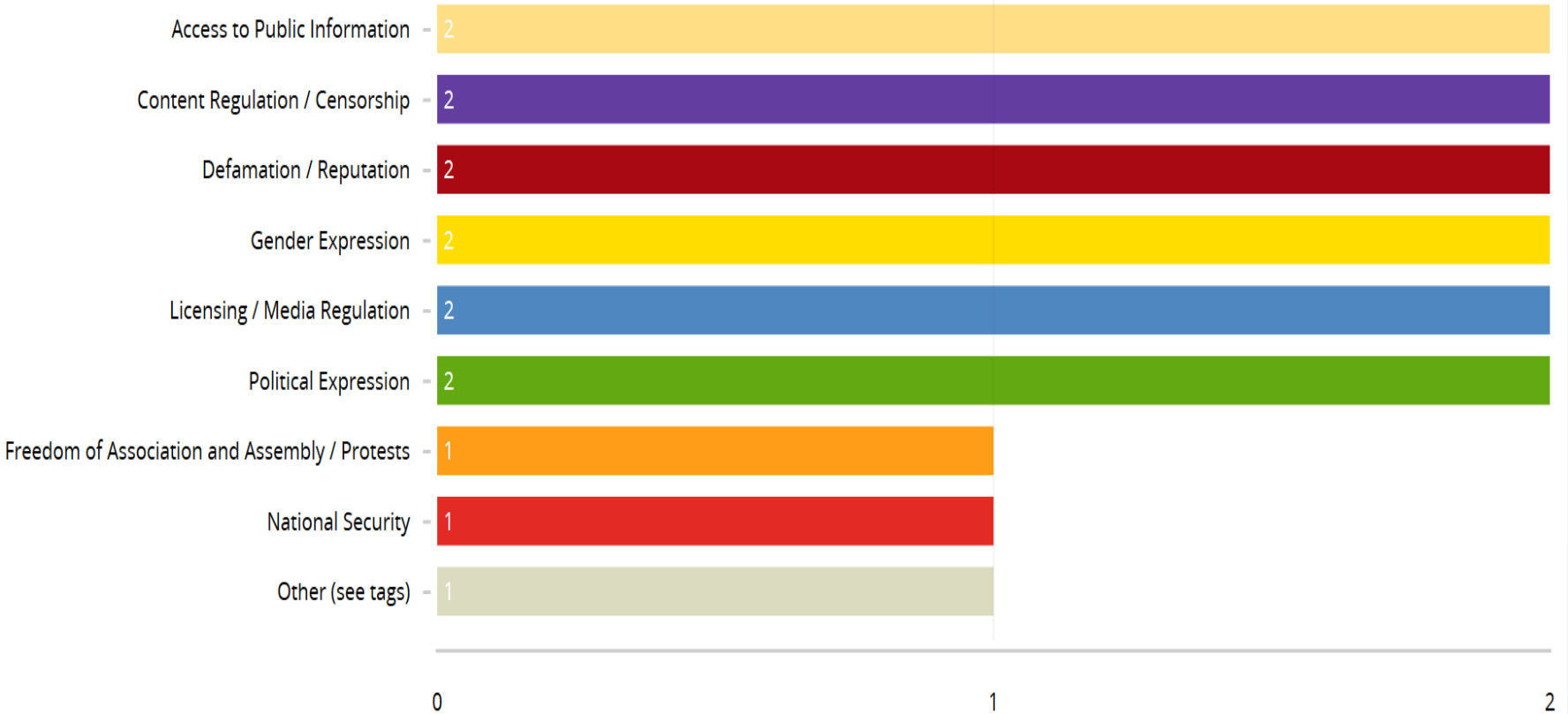
## Themes in Latin America



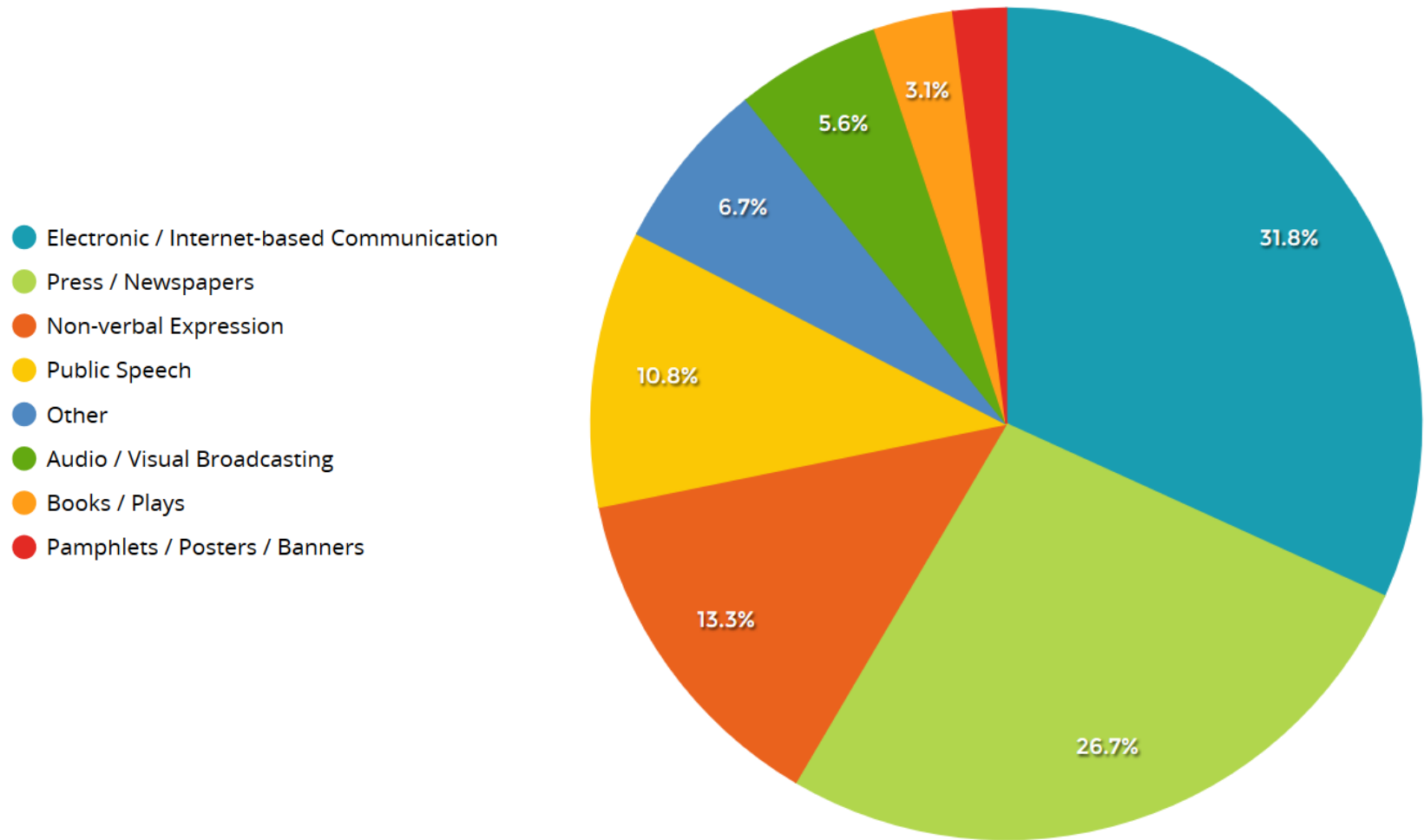
# Europe and Central Asia - Themes in 2015



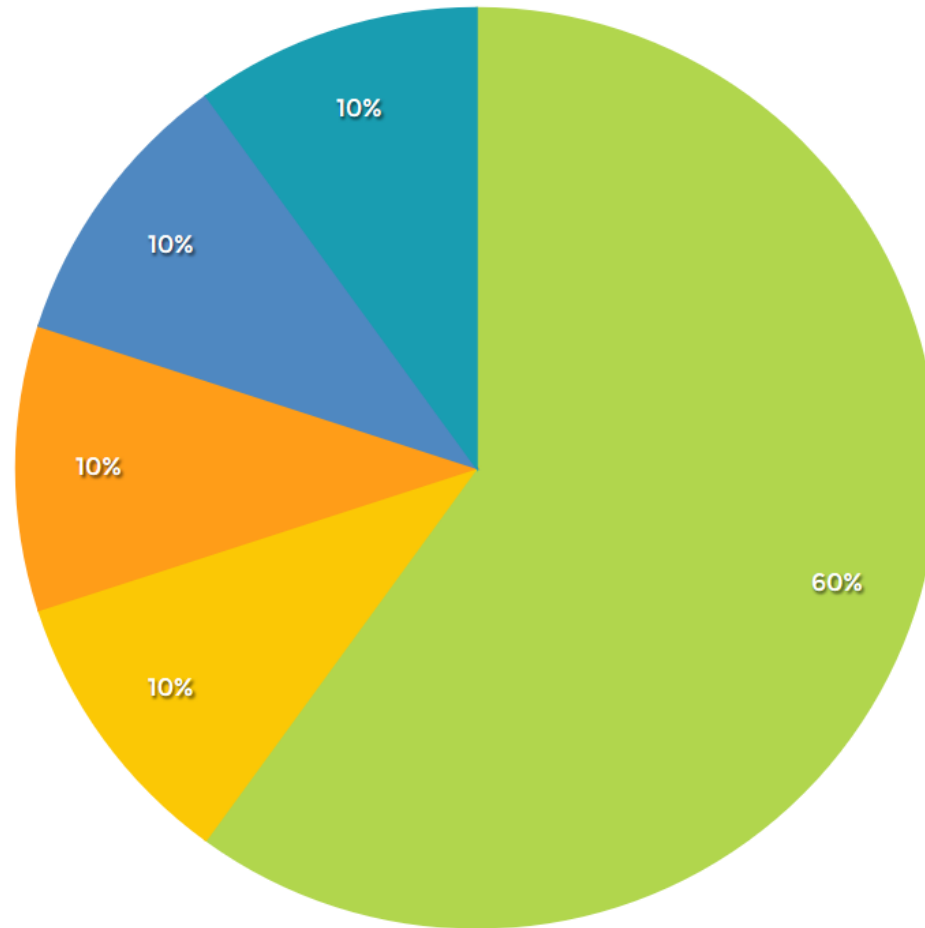
# Africa- Themes in 2015



## Modes of Expression in 2015 Globally



# National Security in 2015

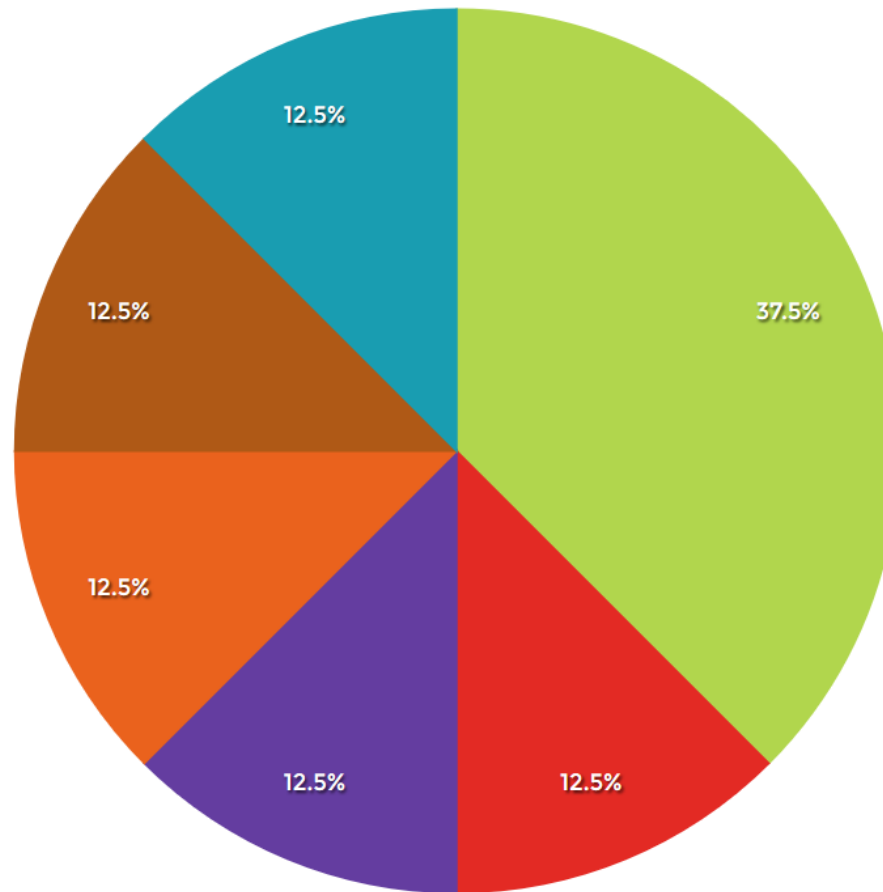


**Expression Types**

- Electronic / Internet-based Communication
- Audio / Visual Broadcasting
- Non-verbal Expression
- Other
- Press / Newspapers



# Hate Speech in 2015

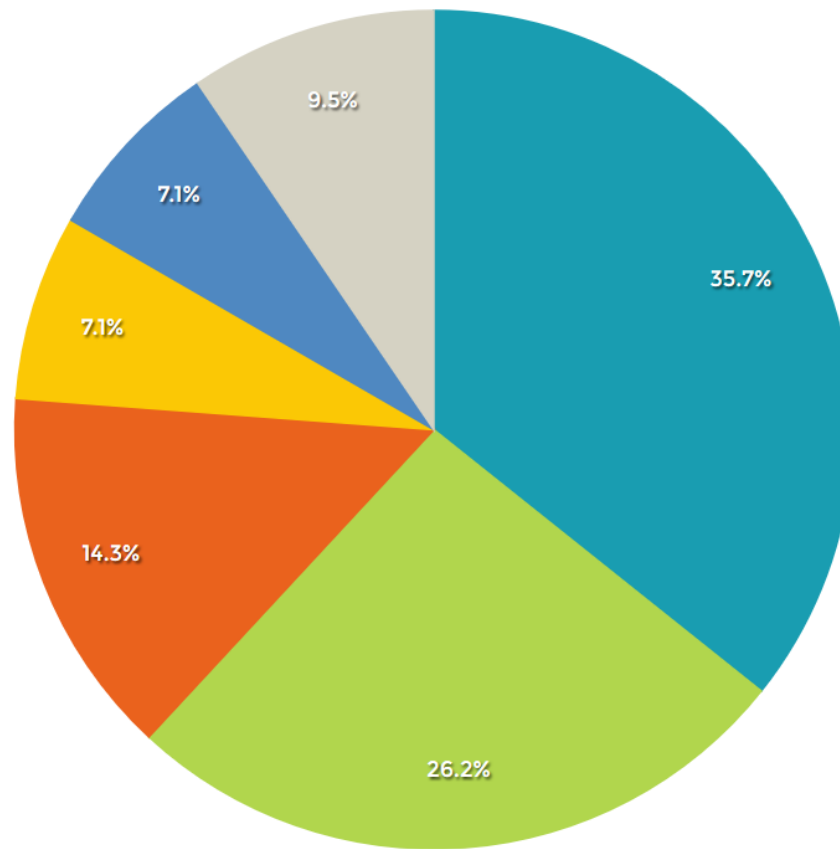


**Expression Types**

- Electronic / Internet-based Communication
- Books / Plays, Audio / Visual Broadcasting, Non-verbal Expression
- Electronic / Internet-based Communication, Non-verbal Expression
- Electronic / Internet-based Communication, Press / Newspapers
- Other, Non-verbal Expression
- Press / Newspapers



## Defamation/ Reputation in 2015



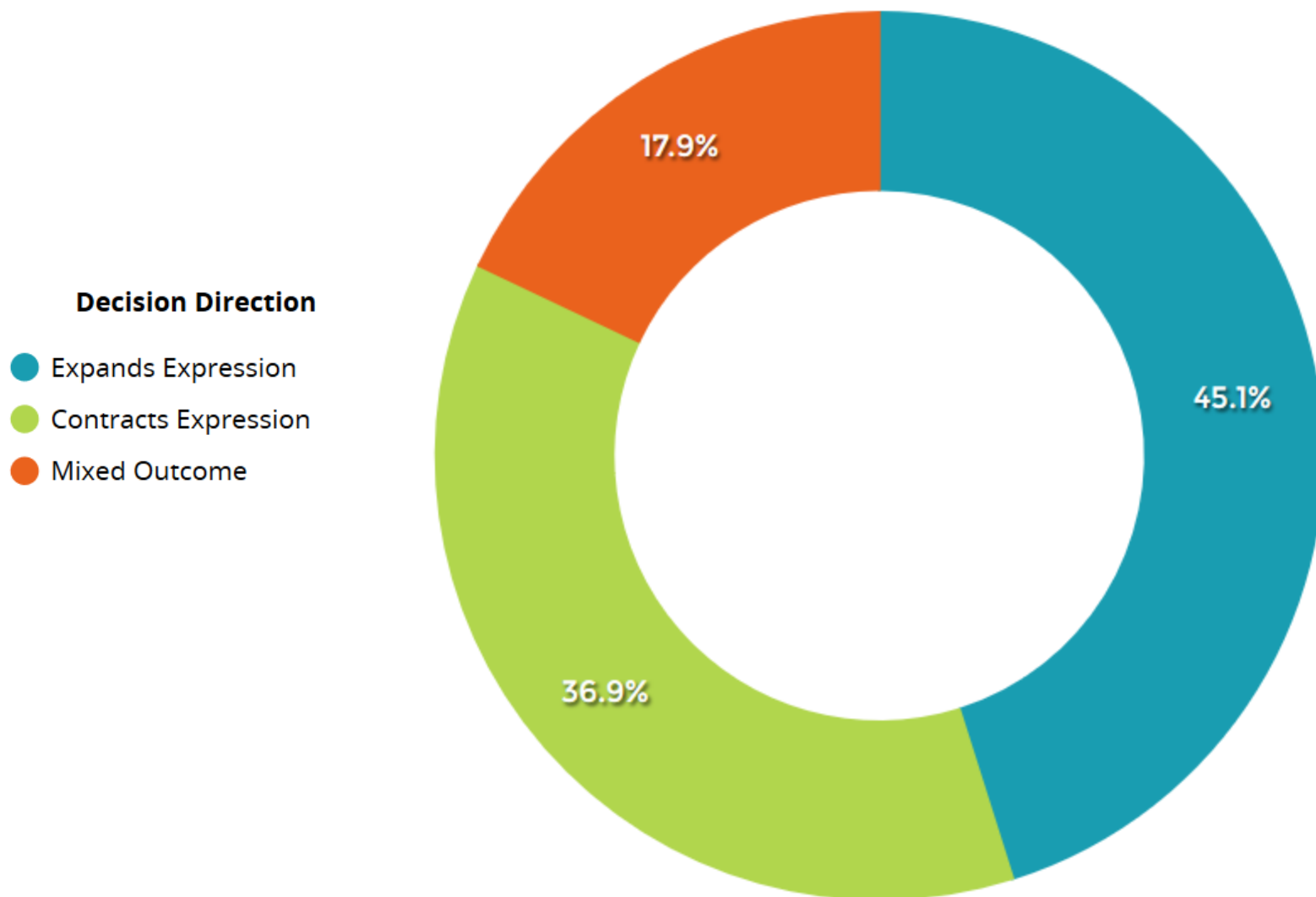
**Expression Types**

- Press / Newspapers
- Electronic / Internet-based Communication
- Electronic / Internet-based Communication, Press / Newspapers
- Audio / Visual Broadcasting
- Other
- (2 other)

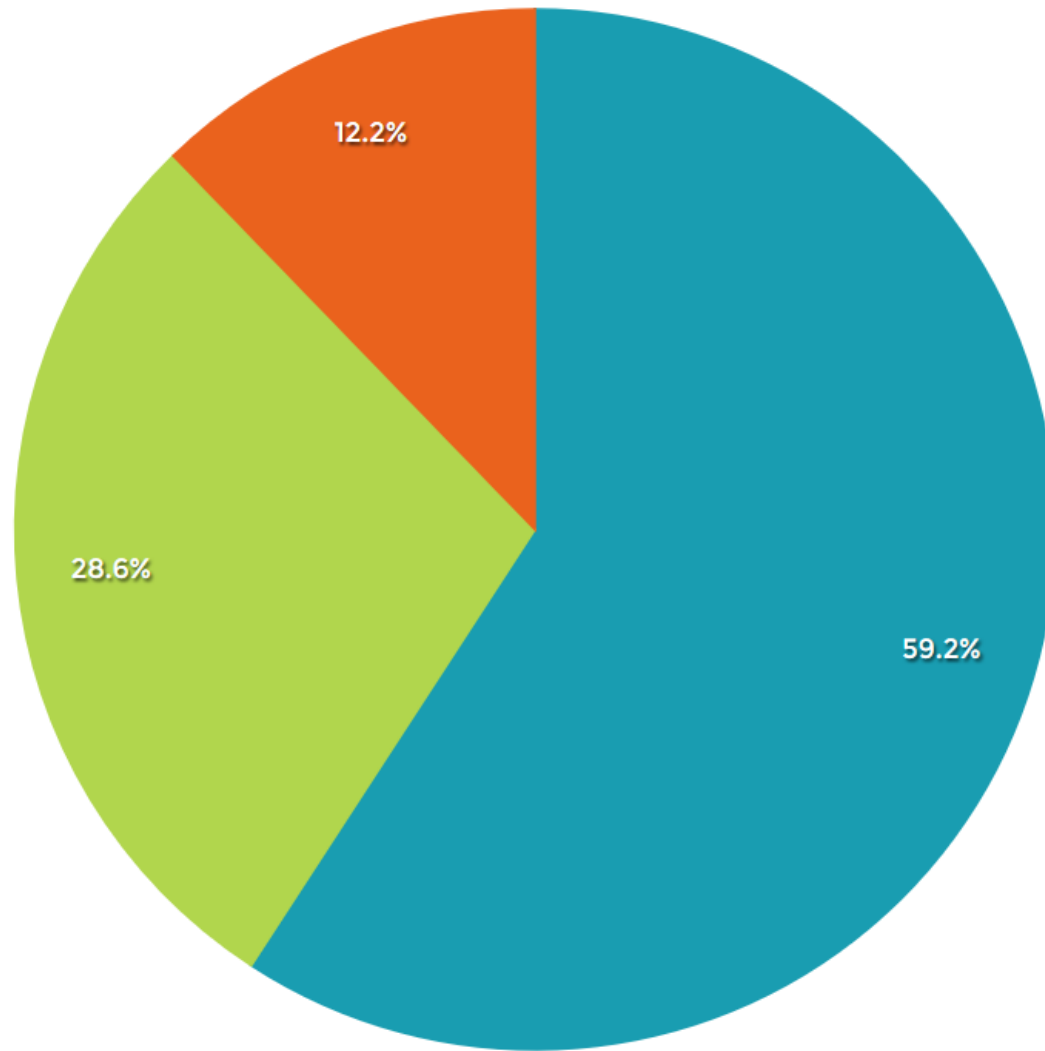




## Global Direction of Court Judgments in 2015



## North America in 2015

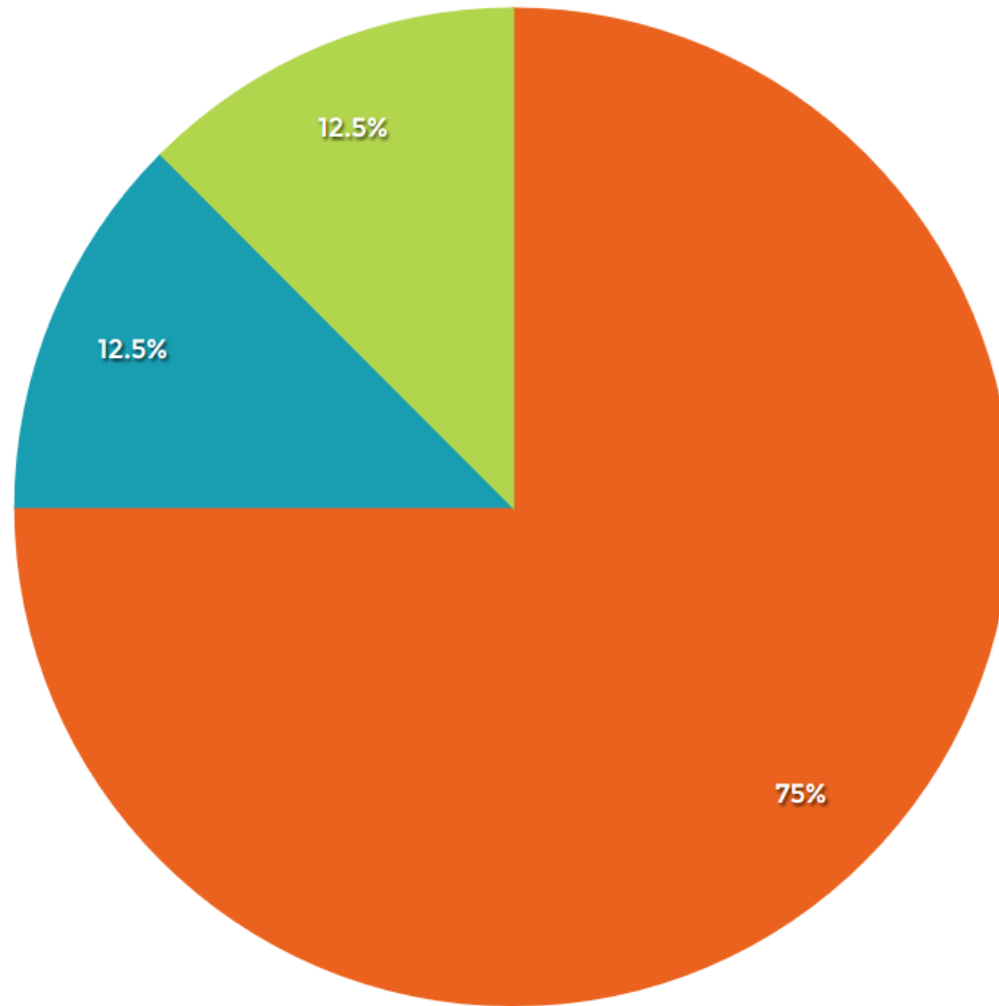
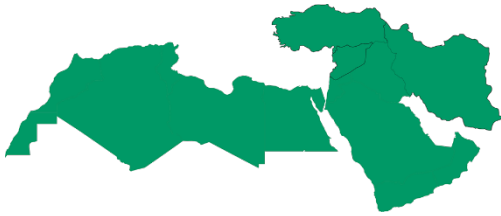


**Decision Direction**

- Expands Expression
- Mixed Outcome
- Contracts Expression



## Middle East and North Africa in 2015

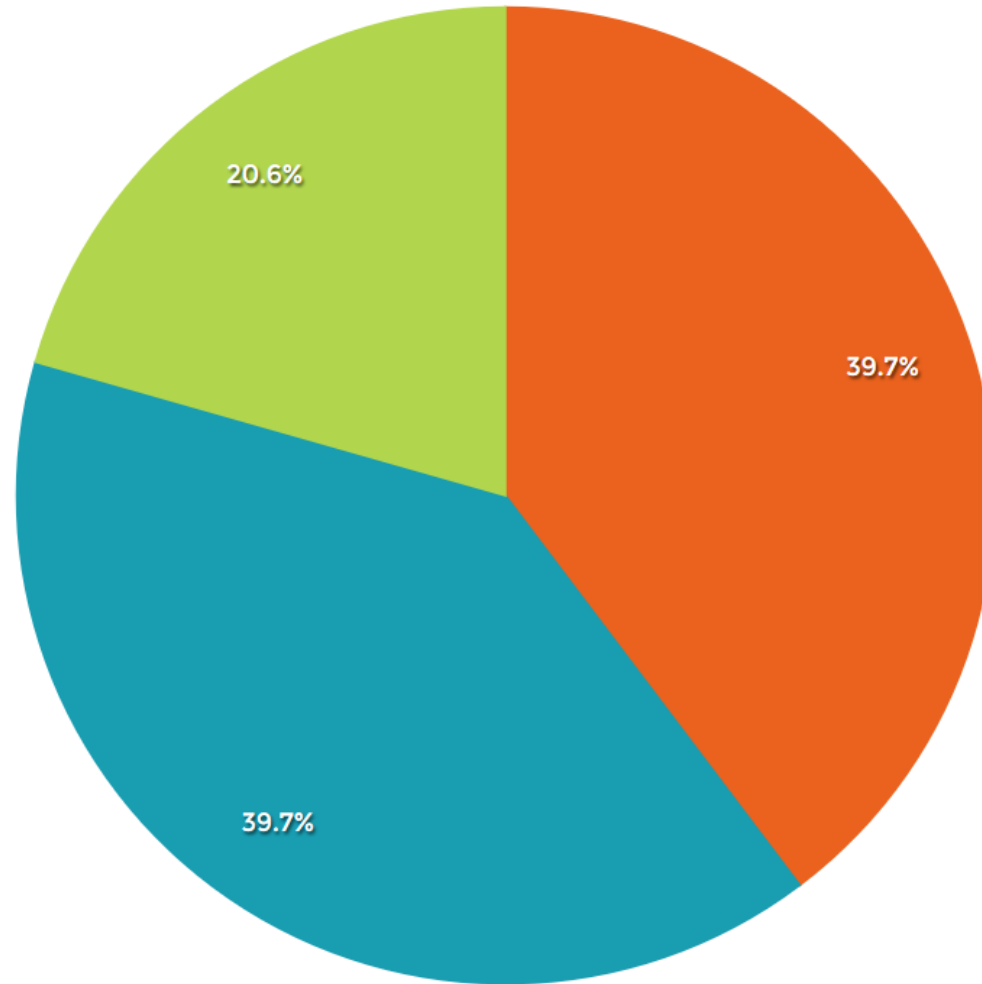


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## Europe and Central Asia in 2015

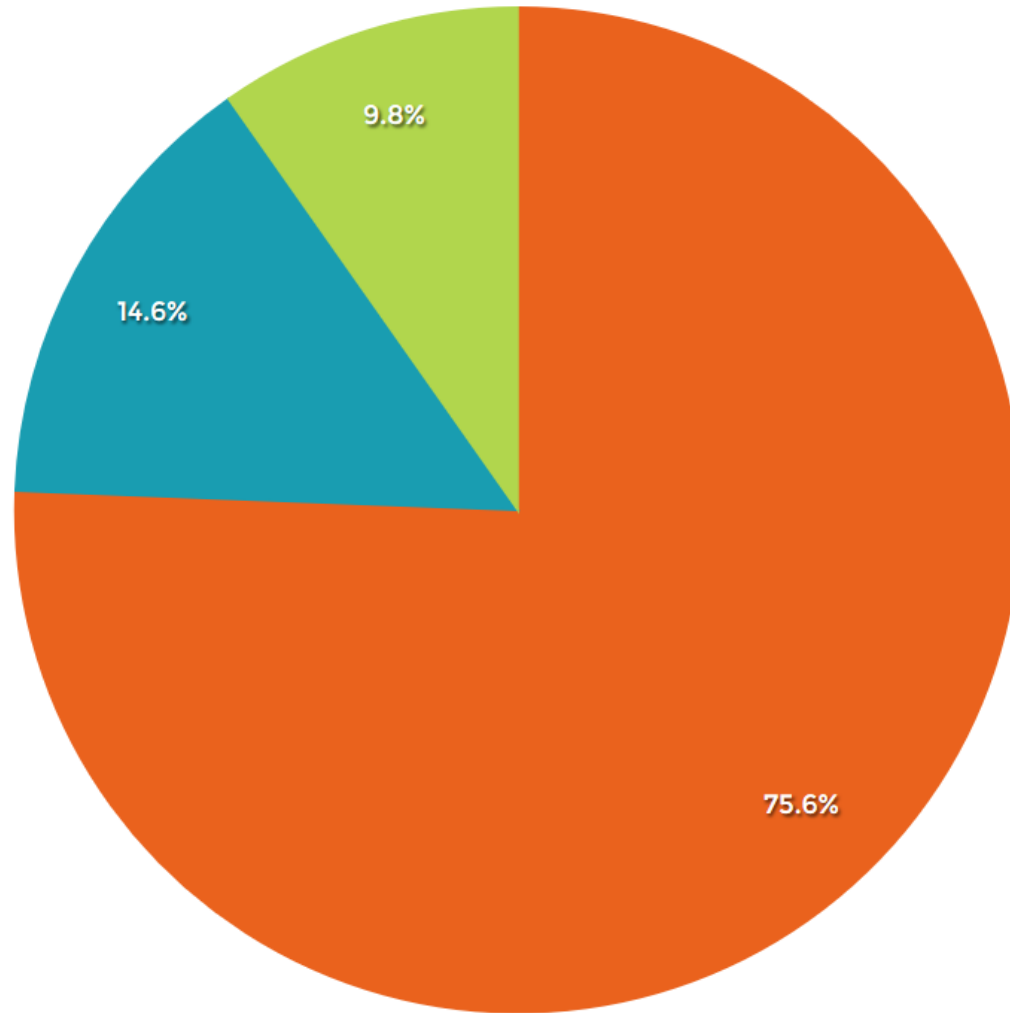


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## Asia and Asia Pacific in 2015



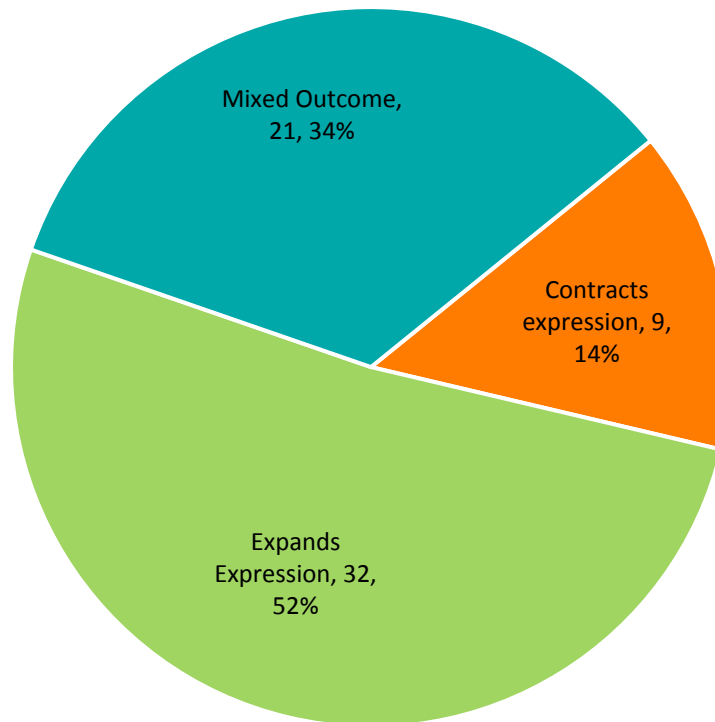
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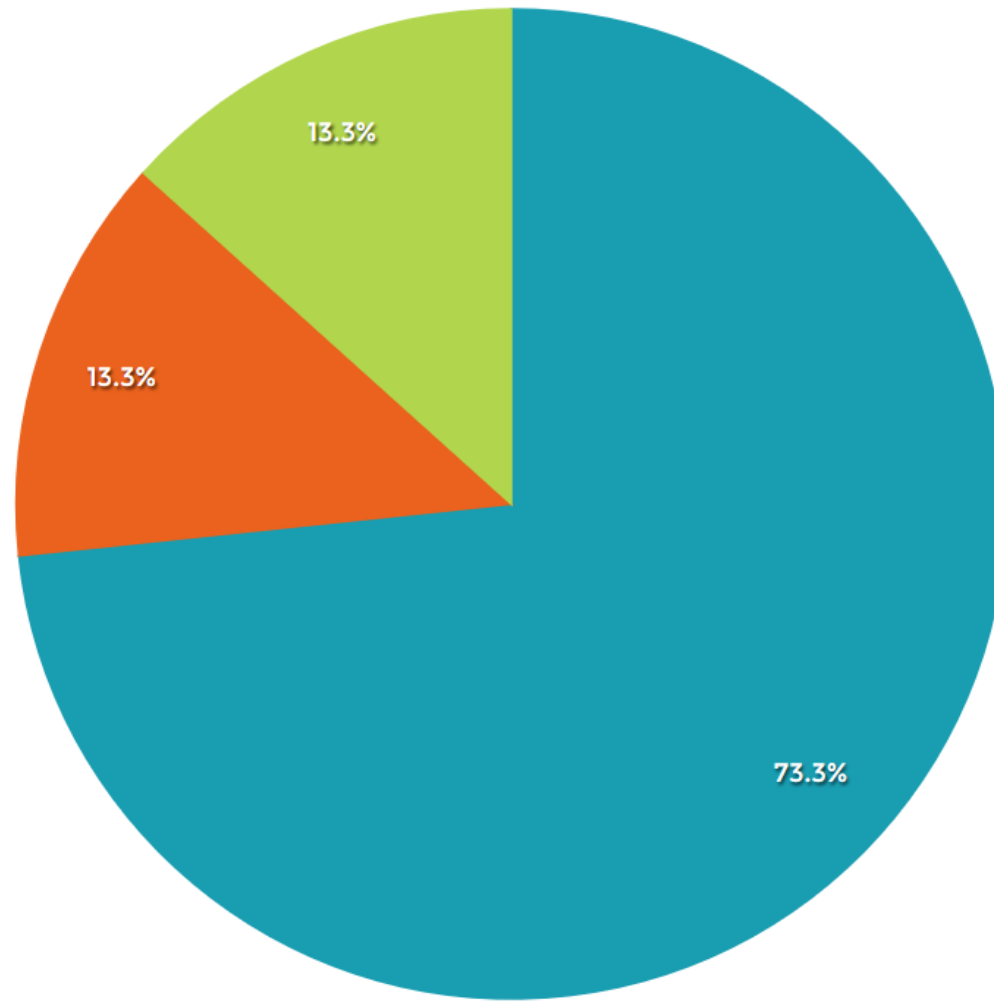


## Latin America – 10 years

Impact (Decision Direction)



## Africa in 2015



**Decision Direction**

- Expands Expression
- Contracts Expression
- Mixed Outcome



# Jurisprudence in Africa

- East African Court of Justice: Burundian Journalists' Union v. Attorney General
- Criminal Defamation – Decriminalization trend
  - South Africa/ANC;
  - Zimbabwe: *MISA and Others v. the Minister of Justice, Legal and Parliamentary Affairs*
- Freedom of Association, Assembly, Expression of LGBTI
  - Botswana: Attorney General v. Thuto Rammoge and Others
  - Kenya: *Gitari v. Non-Governmental Organization Coordination Board*
  - Zambia: *The People v. Paul Kasonkomona*

## Stand-Alone Important Ruling:

- Open Justice – South Africa
- Access to Information / Legal privilege – South Africa
- Contempt of Court – Swaziland
- National Security / Counter-Terrorism – Kenya



# National Security

- **Lesser charges** than those of incitement to violence/terrorism. Glorification, Propaganda, Distribution, Material support, Conspiracy.
- **National Security disguised:** Sedition, Lese Majeste; Inciting hatred against a regime/government; Religious-related offences (blasphemy, apostasy, etc.)
- Moving away from the (causal) link to violence or other unlawful acts (e.g. discrimination), reflecting increased **focus on the perceived (non-violent) ideological and religious roots of “terrorism”**. The focus is on “extremism” as a body of expressed thoughts and belief and on “extremists” as deviant from mainstreamed and accepted social norms
- Heavy reliance on **content analysis**, which means on subjective and inferred interpretations – little engagement with other component of the test, eg means of distribution, audience, motivation, etc.
- In the US and possibly elsewhere, some observers have argued that the Government is involved in “**preventive prosecution**”, that is, ‘a policy posture involving aggressive employment of the material support and conspiracy laws to enable arrests without having to await the emergence of specific plots (let alone attempts or completed acts)’.
- **Syed Farjah Hassan v City of New York (October 13, 2015): stand-alone or beginning of judicial wake-up? Could it be extended beyond the US?**

# Standing and Victims

- **ECHR:** extended standing, taking into account the specificities of the on-line and digital environment to determine standing and victims.
  - **Cengiz and others v. Turkey**
  - **Roman Zakharov v. Russia**
- **US:** Requirements of injury, causation, and redressability
  - **HRW v. DEA**
  - **Klayman v Obama**
  - **Jewell v. NSA** (Latest round of 2016)
- **ECJ:** *Maximillian Schrems v Data Protection Commissioner*

# A few other comments

- Handful number of surveillance cases in 2014 – large increase in 2015 and increasing further, largely intertwined with national security
- Ambiguous impact
  - In the US, limited impact still because of the Standing Issue
  - In Europe: Cases related to surveillance, data retention have been rather protective of individual rights, eg Liberty v GCHQ
  - Other parts of the world?
- Judicial expertise *and confidence* in reviewing and challenging technological-based assumptions and, to a large extent and by implication, technologically-derived norms – not always for the best...