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REPORT OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION
ANNUAL REPORT OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
2012

VOLUME II

REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

Dr. Catalina Botero
Special Rapporteur for Freedom of Expression

GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
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## INDEX

| TABLE OF ACRONYMS AND REFERENCES | ................................................................. vii |
| INTRODUCTION | ......................................................................................................................................... 1 |
| CHAPTER I: GENERAL INFORMATION | .................................................................................................. 3 |
| A. Creation of the Office of the Special Rapporteur for Freedom of Expression and Institutional Support | ................................................................. 3 |
| B. Mandate of the Office of the Special Rapporteur | ................................................................. 6 |
| C. Principal Activities of the Office of the Special Rapporteur | ....................................................... 7 |
| 1. Individual Case System | ................................................................................................ 7 |
| 2. Precautionary Measures | ............................................................................................. 12 |
| 3. Public Hearings | ....................................................................................................... 13 |
| 4. Seminars and Workshops with Strategic Actors in the Region | ........................................ 14 |
| 5. Annual report and development of expert knowledge | ................................................ 19 |
| 6. Special statements and declarations | ........................................................................... 20 |
| D. Funding | .................................................................................................................... 21 |
| E. Staff | ......................................................................................................................... 22 |
| CHAPTER II: EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE | ................................................................. 23 |
| A. Introduction and methodology | ................................................................................................. 23 |
| B. Evaluation of the state of freedom of expression in the Member States | ......................................................... 24 |
| 1. Argentina | ............................................................................................................. 24 |
| 2. Bolivia | ................................................................................................................... 35 |
| 3. Brazil | ...................................................................................................................... 41 |
| 4. Canada | .................................................................................................................... 52 |
| 5. Chile | ...................................................................................................................... 54 |
| 6. Colombia | ............................................................................................................... 60 |
| 7. Costa Rica | ................................................................................................................. 71 |
| 8. Cuba | ....................................................................................................................... 73 |
| 9. Ecuador | .................................................................................................................. 78 |
| 10. El Salvador | ........................................................................................................... 107 |
| 11. United States | ...................................................................................................... 109 |
| 12. Grenada | ................................................................................................................ 113 |
| 13. Guatemala | ............................................................................................................ 113 |
| 14. Guyana | ................................................................................................................ 118 |
| 15. Haiti | .................................................................................................................... 119 |
| 16. Honduras | .......................................................................................................... 120 |
| 17. Jamaica | ............................................................................................................... 134 |
### CHAPTER III: DOMESTIC CASE LAW ON FREEDOM OF EXPRESSION

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Introduction</td>
<td>185</td>
</tr>
<tr>
<td>B. Inter-American legal framework regarding freedom of expression</td>
<td>186</td>
</tr>
<tr>
<td>C. Judicial rulings on the subject of freedom of expression</td>
<td>188</td>
</tr>
<tr>
<td>1. Case law on the importance, scope and function of freedom of expression in democratic systems</td>
<td>188</td>
</tr>
<tr>
<td>2. Case law on the scope and entitlement of freedom of expression</td>
<td>191</td>
</tr>
<tr>
<td>3. Case law on the presumption of ab initio coverage for all kinds of expression, including offensive, shocking or disturbing speech</td>
<td>193</td>
</tr>
<tr>
<td>4. Case law on specially protected speech</td>
<td>195</td>
</tr>
<tr>
<td>5. Case law on crimes of desacato</td>
<td>198</td>
</tr>
<tr>
<td>6. Case law on the admissibility of limitations to freedom of expression: general framework</td>
<td>200</td>
</tr>
<tr>
<td>7. Case law on the need for limitations to be established clearly and precisely by law</td>
<td>202</td>
</tr>
<tr>
<td>8. Case law on the need for limitations to be oriented toward achieving a legitimate aim recognized by the American Convention</td>
<td>205</td>
</tr>
<tr>
<td>9. Case law on the requirement that the limitation must be necessary in a democratic society, suitable for achieving the imperative aim that it seeks to achieve, and strictly proportional to the end sought</td>
<td>206</td>
</tr>
<tr>
<td>10. Case law on subsequent civil liability</td>
<td>208</td>
</tr>
<tr>
<td>11. Case law on the special protection of opinions and the nonexistence of a crime of opinion</td>
<td>208</td>
</tr>
<tr>
<td>12. Case law on the application of the principle of “actual malice” when establishing subsequent liability</td>
<td>210</td>
</tr>
<tr>
<td>13. Case law on the application of the principle of fair (or neutral) reporting</td>
<td>212</td>
</tr>
<tr>
<td>14. Case law on the liability of intermediaries on the Internet and the application of the principle of “mere conduit”</td>
<td>214</td>
</tr>
<tr>
<td>15. Case law on the prohibition of prior censorship and the requirement of neutrality toward the content of expression or information</td>
<td>214</td>
</tr>
<tr>
<td>16. Case law on the prohibition of discriminatory placement of government advertising</td>
<td>216</td>
</tr>
<tr>
<td>17. Case law on requirement of membership in a professional organization or holding of an academic degree to exercise the profession</td>
<td>218</td>
</tr>
<tr>
<td>18. Case law on source confidentiality</td>
<td>219</td>
</tr>
</tbody>
</table>
CHAPTER IV: THE RIGHT TO ACCESS TO INFORMATION ..............................................................223

Introduction ................................................................................................................................223

1. Case law on access to information as a fundamental, autonomous, universal right ..........................................................224
2. Case law on the principle of maximum disclosure ..........................................................227
3. Case law on limits to the principle of maximum disclosure .................................................229
4. Case law on parties bound by the right to access to public information ..........................................................231
5. Case law on access to public information related to the investigation of human rights violations ..................................................232
6. Case law on access to information on government advertising ...........................................232
7. Case law on the right to access to information on private government contractors or providers of public services ..........................................................233
8. Case law on the subject matter of the right to access and the definition of public document ..........................................................................................................................234
9. Case law on the material possibility of disclosing the requested information ..........................................................235
10. Case law on the right to access to information on the salaries and incomes of public servants or contractors paid with public funds ..........................................................236
11. Case law on the obligation to have a simple, rapid, and free administrative procedure for obtaining access to information ..........................................................................................237
12. Case law on the duty of the State to justify a decision to deny access to information ..........................................................................................238
13. Case law on affirmative administrative silence ..................................................................................239
14. Case law on the obligation to provide an appropriate and effective judicial remedy ..........................................................................................239
15. Case law on active transparency ..........................................................................................241
16. Case law on the duty to disseminate truthful information on sexual and reproductive rights ..........................................................................................241
17. Case law on access to information consisting of personal data ..........................................................................................243
18. Case law on the general system of limits to the right to access to information ..........................................................................................244

CHAPTER V: CONCLUSIONS AND RECOMMENDATIONS ..................................................................247

A. Violence against journalists and media outlets ................................................................247
B. Criminalization of expression and proportionality of subsequent liability ..........................................................247
C. Statements of high-level State authorities ..................................................................................248
D. Prior censorship ..............................................................................................................................249
E. Discriminatory distribution of government advertising ..................................................................................249
F. Progress on access to information ..................................................................................................................249
G. Allocation of radio frequencies ..........................................................................................................................250
APPENDIX

A. AMERICAN CONVENTION ON HUMAN RIGHTS
   Article 13. Freedom of Thought and Expression ..........................................................251
B. INTER-AMERICAN DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION 252
C. JOINT DECLARATIONS .......................................................................................................255
D. PRESS RELEASES ..............................................................................................................262
<table>
<thead>
<tr>
<th>ACHPR:</th>
<th>African Commission on Human and Peoples’ Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Convention:</td>
<td>American Convention on Human Rights</td>
</tr>
<tr>
<td>American Declaration:</td>
<td>American Declaration of the Rights and Duties of Man</td>
</tr>
<tr>
<td>Declaration of Principles:</td>
<td>Declaration of Principles on Freedom of Expression</td>
</tr>
<tr>
<td>European Convention:</td>
<td>European Convention on Human Rights and Fundamental Freedoms</td>
</tr>
<tr>
<td>European Court:</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>IACHR:</td>
<td>Inter-American Commission on Human Rights</td>
</tr>
<tr>
<td>ICCPR:</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ILO:</td>
<td>International Labor Organization</td>
</tr>
<tr>
<td>Inter-American Court:</td>
<td>Inter-American Court of Human Rights</td>
</tr>
<tr>
<td>OAS:</td>
<td>Organization of American States</td>
</tr>
<tr>
<td>OSCE:</td>
<td>Organization for Security and Cooperation in Europe</td>
</tr>
<tr>
<td>Office of the Special Rapporteur:</td>
<td>Office of the Special Rapporteur for Freedom of Expression</td>
</tr>
<tr>
<td>UN:</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNESCO:</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
</tr>
</tbody>
</table>
INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression (hereinafter, “Office of the Special Rapporteur”) was created in October of 1997 by the Inter-American Commission on Human Rights (hereinafter, “IACHR”) during its 97th Period of Sessions. Since its establishment, the Office of the Special Rapporteur has had the support of not only the IACHR, but also Member States of the Organization of American States (OAS), Observer States, civil society organizations, communications media, journalists, and, particularly, the victims of violations of the right to freedom of expression. Indeed, those who have turned to the inter-American system for the protection of human rights as a mechanism for the protection and guarantee of their right to freedom of expression have found that the Office of the Special Rapporteur offers decisive support for reestablishing the guarantees necessary for exercising their rights and for insuring that the damage from the violation of those rights is repaired.

2. Since its inception, the Office of the Special Rapporteur has worked for the promotion of the right to freedom of expression through technical assistance in the processing of cases, precautionary measures and hearings, among others. With the same objective, and in the framework of the IACHR, the Office of the Special Rapporteur has prepared thematic and regional reports, carried out official visits and promotional trips, and participated in dozens of conferences and seminars that have sensitized and trained hundreds of public officials, journalists, and defenders of the right to free expression.

3. The annual report of 2012 follows the basic structure of previous annual reports and fulfills the mandate established by the IACHR for the work of the Office of the Special Rapporteur. The report begins with a general introductory chapter that explains in detail the office’s mandate, the most important achievements of the Office of the Special Rapporteur in its fourteen years of operation, and the activities carried out in 2012.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2012, the Office of the Special Rapporteur received information from multiple sources about situations that could affect the exercise of the right to freedom of expression as well as progress in the effort to guarantee this right. Following the methodology of previous reports, this information was evaluated in light of the Declaration of Principles on Freedom of Expression (hereinafter, “Declaration of Principles”), approved by the IACHR in 2000. The Declaration of Principles constitutes an authoritative interpretation of Article 13 of the American Convention on Human Rights (hereinafter, “American Convention”) and an important instrument to help States to resolve challenges and promote, guarantee, and respect the right to freedom of expression.

5. Based on analysis of the situations reported in the hemisphere, the Office of the Special Rapporteur highlights some challenges facing the States in the region. In particular, Chapter II of this report places emphasis on the murders, attacks, and threats against journalists. States have the obligation to protect journalists who confront particular risks as a result of the exercise of their profession. States have an obligation to investigate, try, and punish those responsible for these acts, as well as to provide reparation to the victims and their families, and to prevent future occurrences of violence and intimidation. Additionally, the Office of the Special Rapporteur considers it important to call attention to other aspects of freedom of expression in the Americas, such as the misuse of the criminal law to try those who make statements that offend public officials, and best practices such as the approval and application of access to information laws.

6. The intense efforts of the Office of the Special Rapporteur have allowed it to become an expert office charged with promoting and monitoring respect for freedom of expression in the hemisphere. This standing has generated, in turn, a substantial increase in the expectations of the hemispheric community with regard to the work of the Office of the Special Rapporteur. In order to meet this demand, it is necessary to pay attention not only to the institutional and political support of the Office of the Special Rapporteur, but also its financial support, since without this support it cannot function and carry out the
activities required by its mandate. It is important to once more urge OAS Member States to follow those countries that have responded to the call of the hemispheric summits to support the Office of the Special Rapporteur. The Plan of Action approved by the Heads of State and Government at the Third Summit of the Americas, held in Québec in April of 2001, establishes that "[t]o strengthen democracy, create prosperity and realize human potential, our Governments will... [c]ontinue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR[.]

7. The Office of the Special Rapporteur is grateful for the financial contributions received during 2012 from Chile, Costa Rica, Finland, the United States of America, France, Sweden, Switzerland, and the European Commission.

8. The Special Rapporteur for Freedom of Expression, Catalina Botero Marino, is grateful for the confidence of the IACHR and highlights the work of her predecessors in the consolidation of the Office of the Special Rapporteur. In particular, the Special Rapporteur expresses her gratitude towards her staff for the committed and exemplary work that they have carried out. This annual report is the product of their effort and dedication.

9. This annual report intends to contribute to the establishment of an improved climate for the exercise of freedom of expression in the region, and in this way ensure the strengthening of democracy, wellbeing, and progress of the hemisphere’s inhabitants. Its objective is to collaborate with OAS Member States in raising awareness about the problems that we all wish to resolve and in formulating viable proposals and recommendations based on regional doctrine and jurisprudence. To achieve this aim, it is necessary that the work of the Office of the Special Rapporteur be understood as a useful tool for responding to the challenges we face and for generating a broad and fluid dialogue not only with the Member States, but also with civil society and journalists in the region.
CHAPTER I
GENERAL INFORMATION

A. Creation of the Office of the Special Rapporteur for Freedom of Expression and Institutional Support

1. The Inter-American Commission on Human Rights, by the unanimous decision of its members, created the Office of the Special Rapporteur for Freedom of Expression during its 97th period of sessions, held in October 1997. This Special Rapporteurship was created by the Commission as a permanent, independent office that acts within the framework and with the support of the IACHR. Through the Office of the Special Rapporteur, the Commission sought to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system and in protecting, guaranteeing, and promoting other human rights. During its 98th period of sessions, held in March 1998, the IACHR defined in general terms the characteristics and functions of the Office of the Special Rapporteur and decided to create a voluntary fund to provide it with economic assistance.

2. The Commission’s initiative to create a permanent Office of the Special Rapporteur for Freedom of Expression found full support among the OAS Member States. Indeed, during the Second Summit of the Americas, the hemisphere’s Heads of State and Government recognized the fundamental role of freedom of thought and expression, and noted their satisfaction over the creation of the Special Rapporteurship. In the Declaration of Santiago, adopted in April 1998, the Heads of State and Government stated the following:

   We agree that a free press plays a fundamental role [in protecting human rights] and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We commend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.1

3. The Heads of State and Government of the Americas likewise expressed their commitment to support the Office of the Special Rapporteur for Freedom of Expression. On this point, the Summit Plan of Action recommended the following:

   To strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression, information and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.2

4. During the Third Summit of the Americas, held in Québec City, Canada, the Heads of State and Government ratified the mandate of the Office of the Special Rapporteur, adding that their governments would:

   Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.3

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5. The OAS General Assembly has on various occasions expressed its support for the work of the Office of the Special Rapporteur and entrusted it with follow-up or analysis of some of the rights that comprise freedom of expression. Thus, for example, in 2005 the OAS General Assembly approved Resolution 2149 (XXXV-O/05), in which it reaffirms the right to freedom of expression, recognizes the important contributions made in the Office of the Special Rapporteur’s 2004 annual report, and urges follow-up on the issues included in that report, such as the evaluation of the situation regarding freedom of expression in the region; indirect violations of freedom of expression; the impact of the concentration in media ownership; and the way hate speech is addressed in the American Convention. The Office of the Special Rapporteur has analyzed these issues in different annual reports, in the context of its evaluation of the state of freedom of expression in the region and in fulfillment of its task of creating expertise and promoting regional standards in this area.

6. In 2006, the OAS General Assembly reiterated its support for the Office of the Special Rapporteur in its Resolution 2237 (XXXVI-O/06). In this resolution, the General Assembly reaffirmed the right to freedom of expression, recognized the important contributions made in the Office of the Special Rapporteur’s 2005 annual report, and urged follow-up on the issues mentioned in the report. These included, among others, public demonstrations as an exercise of freedom of expression and freedom of assembly, as well as freedom of expression and the electoral process. As in the previous case, the Office of the Special Rapporteur has followed up on these issues in its annual evaluation of the situation regarding freedom of expression in the region. In the same resolution, the General Assembly called for convening a special meeting of the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding the subject matter of Article 13 of the American Convention, and to specifically address issues such as public demonstrations and freedom of expression, as well as the development and scope of Article 11 of the American Convention. That meeting was held on October 26-27, 2007.

7. In 2007, the OAS General Assembly approved Resolution 2287 (XXXVII-O/07), in which it invited the Member States to consider the Office of the Special Rapporteur’s recommendations on the matter of defamation laws. In that resolution, the General Assembly reiterated its request to convene a special meeting in the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding Article 13 of the American Convention. That meeting was held on February 28-29, 2008.

8. In 2008, the General Assembly approved Resolution 2434 (XXXVIII-O/08), which reaffirms the right to freedom of expression and requests once again that the IACHR conduct appropriate follow-up on compliance with standards in this area and deepen its study of the issues addressed in its annual reports. The resolution invites the Member States to consider the recommendations of the Office of the Special Rapporteur regarding defamation, namely by repealing or amending laws that criminalize desacato, defamation, slander, and libel, and in this regard, to regulate these conducts exclusively in the area of civil law.

9. In 2009, in its Resolution 2523 (XXXIX-O/09), the General Assembly underscored the importance of the Office of the Special Rapporteur’s recommendations contained in the 2004, 2005, 2006, 2007, and 2008 annual reports. It also requested once again that the IACHR follow up on the recommendations included in these reports and in particular invited the Member States to take into consideration the Office of the Special Rapporteur’s recommendations, namely by repealing or amending laws that criminalize desacato, defamation, slander, and libel, as well as by regulating this conduct exclusively in the area of civil law.

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10. In 2011, the General Assembly passed resolution 2679 (XLI-O/11) reiterating the importance of freedom of expression for the exercise of democracy and reaffirming that free and independent media are fundamental for democracy, for the promotion of pluralism, tolerance and freedom of thought and expression, and for the facilitation of free and open dialogue and debate in all sectors of society, without discrimination of any kind. The Assembly invited the Member States to consider the recommendations of the IACHR Office of the Special Rapporteur for Freedom of Expression and asked the IACHR to follow up on and deepen its research on the subjects contained in the pertinent volumes of its annual reports for the years 2006, 2007, 2008, 2009, and 2010 on freedom of expression.

11. On the subject of access to information, the General Assembly has made several statements supporting the work of the Office of the Special Rapporteur and urging the adoption of its recommendations. In its Resolution 1932 (XXXIII-O/03) in 2003, reiterated in 2004 in Resolution 2057 (XXXIV-O/04), and in 2005 in Resolution 2121 (XXXV-O/05), the General Assembly asked the Office of the Special Rapporteur to continue reporting on the situation regarding access to public information in the region in its annual reports. In 2006, through Resolution 2252 (XXVI-O-06), among other points, the Office of the Special Rapporteur was instructed to provide support to the Member States that request assistance in the development of legislation and mechanisms on access to information. The IACHR was also asked to conduct a study on the various forms of guaranteeing that all persons have the right to seek, receive, and disseminate public information based on the principle of freedom of expression. As a follow-up to this resolution, the Office of the Special Rapporteur in August 2007 published the Special Study on the Right of Access to Information.\(^6\)

12. In the same regard, in 2007 the General Assembly approved Resolution 2288 (XXXVII-O/07), which highlights the importance of the right of access to public information, takes note of the Office of the Special Rapporteur’s reports on the situation regarding access to information in the region, urges the States to adapt their legislation to guarantee this right, and instructs the Office of the Special Rapporteur to offer advisory support to the Member States in this area. It also requests that different bodies within the OAS, including the Office of the Special Rapporteur, prepare a basic document on best practices and the development of common approaches or guidelines to increase access to public information. This document, developed in conjunction with the Inter-American Juridical Committee, the Department of International Legal Affairs, and the Department of State Modernization and Good Governance, as well as with input from delegations of the Member States, was approved in April 2008 by the Committee on Juridical and Political Affairs.

13. In 2008, the OAS General Assembly also approved Resolution 2418 (XXXVIII-O/08), which highlights the importance of the right of access to public information, urges the States to adapt their legislation to meet standards in this area, and instructs the Office of the Special Rapporteur to offer advisory support, as well as to continue including a report on the situation regarding access to public information in the region in its annual report.

14. In 2009, in its Resolution 2514 (XXXIX-O/09), the General Assembly once again reiterated the importance of the right of access to public information and recognized that the full respect for freedom of expression, access to public information, and the free dissemination of ideas strengthens democracy, contributes to a climate of tolerance of all views, fosters a culture of peace and non-violence, and strengthens democratic governance. It also instructs the Office of the Special Rapporteur to support the Member States of the OAS in the design, execution, and evaluation of their regulations and policies with respect to access to public information and to continue to include in its annual report a chapter on the situation regarding access to public information in the region.

15. In that same resolution, the General Assembly entrusted the Department of International Law, with the collaboration of the Office of the Special Rapporteur, the Inter-American Juridical

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Committee and the Department of State Modernization and Governance, as well as the cooperation of Member States and civil society, with drafting a Model Law on Access to Public Information and a guide for its implementation, in keeping with the Inter-American standards on the issue. In order to comply with this mandate, a group of experts was formed - in which the Office of the Special Rapporteur took part - that met three times during the year to discuss, edit and finalize the documents. The final versions of the two instruments were approved by a group of experts in March 2010 and presented to the Committee on Political and Juridical Affairs of the Permanent Council in April of 2010. In May of 2010, the Permanent Council submitted a resolution and the text of the Model Law to the General Assembly, which issued resolution AG/RES 2607 (XL/O/10) in June of 2010. This resolution approved the text of the Model Law and reaffirmed the importance of the annual reports of the Office of the Special Rapporteur.

16. In 2011, the General Assembly approved resolution 2661 (XLI-O/11), which, among other matters, entrusts the IACHR Office of the Special Rapporteur for Freedom of Expression with continuing to include a report in the IACHR annual report on the situation or state of access to public information in the region and its effect on the exercise of the right to freedom of expression.

17. In 2012, the General Assembly approved resolution AG/RES. 2727 (XLII-O/12) on access to public information and protection of personal data, which reaffirms the importance of access to public information as an indispensable requirement for democracy, as well as the commitment of the Member States to respect and uphold access to information. In addition, the General Assembly instructs the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) to continue including in the annual report of the IACHR a report on the situation or state of access to public information in the region and its effect on the exercise of the right to freedom of expression.

18. Since its creation, the Office of the Special Rapporteur has also had the support of civil society organizations, the media, journalists and, most importantly, individuals who have been victims of violations of the right to freedom of thought and expression along with their family members.

B. Mandate of the Office of the Special Rapporteur

19. The Office of the Special Rapporteur for Freedom of Expression is a permanent office with its own operative structure and functional autonomy, which operates within the legal framework of the IACHR.

20. The Office of the Special Rapporteur has a general mandate to carry out activities for the protection and promotion of the right to freedom of thought and expression, including the following:

a. Advise the IACHR in evaluating cases and requests for precautionary measures, as well as in preparing reports;
b. Carry out promotional and educational activities on the right to freedom of thought and expression;
c. Advise the IACHR in conducting on-site visits to OAS member countries to expand the general observation of the situation and/or to investigate a particular situation having to do with the right to freedom of thought and expression;
d. Conduct visits to OAS Member Countries;
e. Prepare specific and thematic reports;
f. Promote the adoption of legislative, judicial, administrative, or other types of measures that may be necessary to make effective the exercise of the right to freedom of thought and expression;

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7 The Model Law and its Implementation Guide are available at: [http://www.oas.org/dil/access_to_information_model_law.htm](http://www.oas.org/dil/access_to_information_model_law.htm)

8 See Articles 40 and 41 of the American Convention and Article 18 of the Statute of the IACHR.
g. Coordinate with ombudsman’s offices or national human rights institutions to verify and follow up on conditions involving the exercise of the right to freedom of thought and expression in the Member States;

h. Provide technical advisory support to the OAS bodies;

i. Prepare an annual report on the situation regarding the right to freedom of thought and expression in the Americas, which will be considered by the full Inter-American Commission for its approval and inclusion in the IACHR’s annual report, presented annually to the General Assembly;

j. Gather all the information necessary to prepare the aforementioned reports and activities.

21. In 1998, the Commission announced a public competition for the post of Special Rapporteur. Once the process was completed, the IACHR decided to designate as Special Rapporteur the Argentine attorney Santiago A. Canton, who assumed the post on November 2, 1998. In March 2002, the IACHR named Argentine attorney Eduardo A. Bertoni as Special Rapporteur. Bertoni occupied this position from May 2002 to December 2005. On March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Alvarez as Special Rapporteur. In April 2008, the IACHR announced a competition to select Alvarez’s successor. During the period in which the post was vacant, the Office of the Special Rapporteur was under the responsibility of then-Commission Chairman Paolo Carozza. The competition was closed on June 1, 2008, and the pre-selected candidates to occupy this post were interviewed in July, during the IACHR’s 132nd period of sessions. Following the round of interviews, on July 21, 2008, the IACHR selected Colombian attorney Catalina Botero Marino as Special Rapporteur. The new Special Rapporteur assumed the post on October 6, 2008. During its 141st session, the IACHR decided to renew the mandate of the Special Rapporteur, pursuant to the provisions of Article 15.4 of its Rules of Procedure.

C. Principal Activities of the Office of the Special Rapporteur

22. During its fourteen years of existence, the Office of the Special Rapporteur has carried out in a timely and dedicated manner each of the tasks assigned to it by the IACHR and by other OAS bodies such as the General Assembly.

23. This part of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2012.

1. Individual Case System

24. One of the most important functions of the Office of the Special Rapporteur is to advise the IACHR in the evaluation of individual petitions and prepare the corresponding reports.

25. The appropriate advancement of individual petitions not only provides justice in the specific case, but also helps call attention to paradigmatic situations that affect freedom of thought and expression, and creates important case law that can be applied in the inter-American human rights system itself as well as in courts in countries throughout the region. The individual case system also constitutes an essential factor within the broad strategy of promoting and defending the right to freedom of thought and expression in the region, a strategy that the Office of the Special Rapporteur carries out through various mechanisms offered by the inter-American human rights system.

26. Since its creation, the Office of the Special Rapporteur has advised the IACHR in the presentation of important cases involving freedom of expression to the Inter-American Court of Human Rights (hereinafter, the “Court” or the “Inter-American Court”). The most relevant cases in the area are:


– Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Judgment of February 5, 2001. This case dealt with prohibition of prior censorship. The Court's decision led to an exemplary constitutional reform in Chile and to the establishment of an important hemispheric standard in this area.

– Case of Ivcher-Bronstein v. Peru. Judgment of February 6, 2001. The petitioner was a naturalized citizen of Peru who was a majority shareholder in a television channel that aired a program that was severely critical of certain aspects of the Peruvian government, including cases of torture, abuse and acts of corruption committed by the Peruvian Intelligence Services. As a result of these reports, the State revoked the petitioner’s Peruvian citizenship and removed his shareholding control of the channel. The judgment of the Inter-American Court found that the government’s actions had violated the right to freedom of expression through indirect restrictions and ordered the State to restore the victim’s rights.

– Case of Herrera-Ulloa v. Costa Rica. Judgment of July 2, 2004. This case involved a journalist who had published several articles reproducing information from various European newspapers on alleged illegal conduct by a Costa Rican diplomat. The State convicted the journalist on four defamation charges. The Inter-American Court found that the conviction was disproportionate and that it violated the right to freedom of expression, and ordered, among other things, the nullification of criminal proceedings against the journalist.

– Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. During the 1993 presidential campaign in Paraguay, candidate Ricardo Canese made statements to the media against candidate Juan Carlos Wasmosy, whom he accused of being involved in irregularities related to the construction of a hydroelectric plant. Canese was prosecuted and sentenced in the first instance to four months in prison, among other restrictions to his basic rights. The Inter-American Court found that the conviction was disproportionate and violated the right to freedom of expression. The Court also underscored the importance of freedom of expression during election campaigns, in the sense that people should be fully entitled to raise questions about candidates so that voters can make informed decisions.

– Case of Palamara-Iribarne v. Chile. Judgment of November 22, 2005. Palamara, a former military official, had written a book that was critical of the National Navy. The book gave rise to a military criminal trial for “disobedience” and “breach of military duties,” and led the State to withdraw from circulation all existing physical and electronic copies. The Court ordered a legislative reform that would ensure freedom of expression in Chile, as well as publication of the book, restitution of all copies that had been seized, and reparation of the victim’s rights.

– Case of Claude-Reyes et al. v. Chile. Judgment of September 19, 2006. This case addresses the State’s refusal to provide Marcelo Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero with certain information that they requested from the Foreign Investment Committee regarding forestry company Trillium and the Río Cóndor project. In this ruling, the Inter-American Court recognized that the right to access to information is a human right protected under Article 13 of the American Convention.

– Case of Kimel v. Argentina. Judgment of May 2, 2008. The decision refers to the conviction of journalist Eduardo Kimel who in a book had criticized the conduct of a criminal judge in charge of investigating a massacre. The judge initiated a criminal proceeding in defense of his honor. The Inter-American Court found that the journalist’s punishment was disproportionate and violated the victim’s right to freedom of expression. In its decision, the Inter-American Court ordered the State to, among other things, provide the victim with reparations and reform its criminal legislation on the protection of honor and reputation, finding that it violated the principle of criminal definition or strict legality.
Case of Tristán Donoso v. Panama. Judgment of January 27, 2009. This judgment refers to the proportionality of the sanctions imposed on a lawyer convicted of the crimes of defamation and slander for having declared during a press conference that a State official had recorded his private telephone conversations and had disclosed them to third parties. The Inter-American Court concluded that the State violated the lawyer’s right to freedom of expression, since the criminal conviction imposed as a form of subsequent liability was unnecessary. The Inter-American Court also established criteria on the intimidating and inhibiting nature of disproportionate civil sanctions.

Case of Ríos et al. v. Venezuela. Judgment of January 28, 2009. The judgment refers to different public and private acts that limited the journalistic endeavors of the workers, management, and others associated with the RCTV television station, as well as to certain declarations by agents of the State against the station. The Inter-American Court found that statements were incompatible with the freedom to seek, receive, and impart information “since they could have resulted intimidating for those linked with that communication firm.” The Inter-American Court also found that the State’s responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Inter-American Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against the journalists and to adopt “the necessary measures to avoid illegal restrictions and direct or indirect impediments to the exercise of the freedom to seek, receive, and impart information.”

Case of Perozo et al. v. Venezuela. Judgment of January 28, 2009. This judgment involved statements by public officials and other alleged hindrances to the exercise of freedom of expression, such as acts of violence by private actors against individuals linked to the Globovisión television station. The Inter-American Court found that statements made by high-level public officials and State authorities’ omissions in terms of their obligation to act with due diligence in investigating acts of violence against journalists constituted violations of the State’s obligation to prevent and investigate the facts. The Inter-American Court found that the State’s responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against journalists and to adopt “the necessary measures to prevent the undue restrictions and direct and indirect impediments to the exercise of the freedom to seek, receive, and impart information.”

Case of Usón Ramírez v. Venezuela. Judgment of November 20, 2009. Usón, a retired military officer, was convicted of the crime of “slander against the National Armed Forces,” after appearing on a television program and expressing critical opinions regarding the institution’s reaction in the case of a group of soldiers who had been severely injured while in a military establishment. The Inter-American Court found that the criminal law used to convict Usón did not comply with the principle of legality because it was ambiguous, and concluded that the application of the criminal law in the case was not appropriate, necessary and proportional. The Inter-American Court ordered the State, inter alia, to vacate the military justice proceedings against the victim and modify, within a reasonable time, the criminal prevision employed in his case.

Case of Manuel Cepeda Vargas v. Colombia. Judgment dated May 26, 2010. This case refers to the extrajudicial execution of Senator Manuel Cepeda Vargas, who was a national leader of the Colombian Communist Party and a prominent figure in the political party Unión Patriótica. The Court held that, in cases like this one, it is possible to illegally restrict freedom of expression through de facto conditions that put the person exercising freedom of expression at risk. The Court found that the State, “must abstain from acting in a way that fosters, promotes, favors or deepens such vulnerability and it has to adopt, whenever appropriate, the measures that are necessary and reasonable to prevent or protect the rights of those who are in that situation.” Likewise, the Court found that effects on the right to life or personal integrity that are attributable to the State can mean a violation of Article 16(1) of the Convention when the cause is connected with the legitimate exercise of the victim’s right to freedom of association. In this sense, the Court
highlighted that opposition voices are “essential in a democratic society” and indicated that “in a democratic society States must guarantee the effective participation of opposition individuals, groups and political parties by means of appropriate laws, regulations and practices that enable them to have real and effective access to the different deliberative mechanisms on equal terms, but also by the adoption of the required measures to guarantee its full exercise, taking into consideration the situation of vulnerability of the members of some social groups or sectors.” Finally, the Court found that although Senator Cepeda Vargas was able to exercise his political rights, his freedom of expression and freedom of association, “the fact that he continued to exercise them was obviously the reason for his extrajudicial execution,” meaning that the State “did not create either the conditions or the due guarantees for Senator Cepeda [...] to have the real opportunity to exercise the function for which he had been democratically elected; particularly, by promoting the ideological vision he represented through his free participation in public debate, in exercise of his freedom of expression. In the final analysis, the activities of Senator Cepeda Vargas were obstructed by the violence against the political movement to which he belonged and, in this sense, his freedom of association was also violated.”

– Case of Gomes Lund et. al. v. Brazil. Judgment dated November 24, 2010. The case addresses the arbitrary detention, torture and forced disappearance of 70 people as the result of operations of the Brazilian army between 1972 and 1975. The purpose of the operations was to eradicate the so-called Araguaia Guerrillas. The operations took place in the context of the Brazilian military dictatorship. The case also addressed the damage to the right to access to information that the family members of the victims suffered. In this respect, the Inter-American Court reiterated its jurisprudence on the right to freedom of thought and expression, which has held that Article 13 of the American Convention protects the right of all individuals to request information held by the State, subject to the limitations permitted under the Convention’s regime of exceptions. In addition, the Inter-American Court established that in cases of violations of human rights, State authorities cannot resort to citing State secrecy, the confidentiality of information, or public interest or national security in order to avoid turning over the information required by the judicial or administrative authorities in charge of the investigation. Likewise, the Court held that when the investigation of a crime is at issue, the decision whether to classify the information as secret and refuse to turn it over - or to determine if the documentation even exists - can never depend exclusively on a state body whose members have been accused of committing the illicit act. Finally, the Court concluded that the State cannot resort to the lack of evidence of the existence of the documents requested by the victims or their family members. On the contrary, it must back up its denial of documents by demonstrating that it has taken all available measures to prove that, in effect, the requested information does not exist. In this sense, the Court indicated that in order to guarantee the right to access to information, government authorities must act in good faith and diligently carry out the actions necessary to ensure the effectiveness of the right to freedom of thought and expression, especially when the request for information involves learning the truth of what happened in cases of serious human rights violations like forced disappearance and extrajudicial execution, as was the case here.

– Case of Fontevecchia and D’Amico v. Argentina. Judgment of November 29, 2011. The case refers to the civil punishment imposed on Messrs. Jorge Fontevecchia and Hector D’Amico, director and editor, respectively, of the magazine Noticias, through judgments issued by Argentine courts as subsequent liability for the publication of two articles, in November of 1995. These publications referred to the existence of an unrecognized son of Carlos Saúl Menem, then President of the Nation, with a congresswoman; the relationship between the President and the congresswoman; and the relationship between the President and his son. The Supreme Court of Justice of the Nation found that the right to privacy of Mr. Menem had been violated by the publications. The Inter-American Court found that the information published was of public interest and that it was already in the public domain. Therefore, there was no arbitrary interference with the right to privacy of Mr. Menem. Thus, the measure of subsequent liability imposed did not comply with the requirement of being necessary in a democratic society, and constituted a violation of Article 13 of the American Convention.
- **Case of González Medina and relatives v. Dominican Republic.** Judgment of February 27, 2012. In this judgment, the Court found the Dominican State responsible for violating Narciso González Medina's rights to personal liberty, personal integrity, life, and recognition of juridical personality. In May 1994, the lawyer, professor, and journalist Narciso González Medina was forcibly disappeared, and his whereabouts were still unknown as of the date of the Court's decision. Days before his disappearance, González had published an opinion piece in a magazine called *La Muralla* and had given a speech at the Autonomous University of Santo Domingo (UASD, in its Spanish acronym), in both of which he had denounced corruption and electoral fraud. The Court was able to establish that the context of González Medina's disappearance was characterized by “an extremely tense political climate owing to the alleged electoral fraud” in the May 1994 elections in the Dominican State; that the country “was almost under military control” at that time; and that “repressive methods were used against those who protested,” as were practices involving “harassment and surveillance of journalists and those who criticized the Government.” Although the Commission alleged that González Medina's exercise of freedom of expression and his forced disappearance were related, the Court did not find the Dominican State responsible for violating Article 13 because, according to the Court, it lacked competence *ratione temporis* in this case. The Court found that even though in previous cases “it has recognized that when the purpose of the violation of the rights to life, and to personal liberty or integrity is to impede the legitimate exercise of another right protected by the Convention (…), such as freedom of association (…) [or] freedom of expression, there is also an autonomous violation of these rights,” in this case it was not possible to establish international responsibility because “the beginning of the forced disappearance [had been] prior to the acceptance of the Court's jurisdiction,” and the Dominican Republican had not acquiesced to the facts or acknowledged its responsibility during the process. Thus, the Court “lacks competence *ratione temporis* to examine the alleged violation of the freedom of expression of […] González Medina as an autonomous violation.”

- **Case of Vélez Restrepo and Family v. Colombia.** Judgment of September 3, 2012. The case has to do with the attack perpetrated against journalist Luis Gonzalo “Richard” Vélez Restrepo by soldiers of the Colombian National Army while he was filming a protest demonstration in which soldiers from that institution beat several of the protesters. The case also involves the threats and harassment suffered by the journalist and his family, and the attempted arbitrary deprivation of liberty of the journalist, which occurred as Mr. Vélez tried to advance the judicial proceedings against his attackers. The Inter-American Court found the Colombian State responsible for violating the journalist's right to personal integrity and freedom of expression. It also found the State responsible for not having adequately protected Mr. Vélez, given the threats he had received, and for not having effectively investigated the attack he suffered and the subsequent harassments. The Court noted that “journalism can only be exercised freely when those who carry out this work are not victims or threats or physical, mental or moral attacks or other acts of harassment”; therefore, States “have the obligation to provide measures to protect the life and integrity of the journalists who face [a] special risk.” Among other reparation measures, the Court ordered the State to incorporate into its human rights education programs for the Armed Forces a special module on the protection of the right to freedom of thought and expression and on the work of journalists and media workers.

- **Case of Uzcátegui et al. v. Venezuela.** Judgment of September 3, 2012. In this judgment, the Court found the Venezuelan State responsible for violating, among other things, the right to life of Néstor José Uzcátegui; the rights to personal liberty and personal integrity of the human rights defender Luis Enrique Uzcátegui and Carlos Eduardo Uzcátegui; and the right to freedom of expression of Luis Enrique Uzcátegui. In terms of this last matter, the judgment verifies that, in response to the murder of Néstor Uzcátegui, his brother, Luis Enrique not only reported the facts to the public prosecutor's office; he also asserted through various media outlets that, in his judgment, the General Commander of the State of Falcón Police Armed Forces at the time was responsible for several homicides carried out by “extermination groups” under his command. Upon making such assertions, Uzcátegui was intimidated and harassed. He was also the subject of a criminal complaint for defamation, filed by the police Commander concerned. The Court considered the acts of harassment and threats produced as a result of Uzcátegui's denunciations
to have been proven. It also found that the assertions made publicly by Luis Enrique Uzcâtegui could and should “be understood as part of a broader public debate on the possible implication of the State security forces in cases involving grave human rights violations.” Taking into account the relevance of such assertions, the Court found that the existence of the criminal proceedings, their duration in time, and the circumstance of the high rank of the person filing the complaint “could have generated a chilling or inhibiting effect on the exercise of freedom of expression, contrary to the State’s obligation to guarantee the free and full exercise of this right in a democratic society.” As to the threats and intimidation, taking into account that “it is possible that freedom of expression may be unlawfully restricted by de facto conditions that directly or indirectly place those who exercise it at risk or in a situation of increased vulnerability,” the Court found that every State must “abstain from acting in a way that contributes to, stimulates, promotes or increases this vulnerability and must adopt, when pertinent, necessary and reasonable measures to prevent violations and protect the rights of those who find themselves in this situation.” In the case at hand, the Court deemed that the State did not prove that it had “taken sufficient and effective steps to prevent the acts of threats and harassment against Luis Enrique Uzcâtegui in the particular context of Falcón state,” and therefore “it did not meet its obligation to adopt necessary and reasonable measures to effectively guarantee [his] rights to personal integrity and to freedom of thought and expression,” under the terms of the American Convention.

27. A detailed report on the petitions and cases is presented in Chapter III of the IACHR’s 2012 annual report.

28. With the preparation and advancement of these cases, the Office of the Special Rapporteur helps make it possible for the Commission and the Inter-American Court of Human Rights to establish important case law on the limitations and scope of the right to freedom of thought and expression. The standards achieved lend a greater dynamism to the work of the bodies of the inter-American system and make it possible to take on new challenges in the effort to raise the level of protection for freedom of thought and expression throughout the hemisphere.

2. Precautionary Measures

29. The Office of the Special Rapporteur has worked, within its mandate, with the IACHR Protection Group with regard to recommendations on the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that OAS Member States adopt precautionary measures to protect the right to freedom of expression. It did so, for example, in the cases of (i) Matus Acuña (Chile); (ii) Herrera Ulloa v. Costa Rica; (iii) López Ulacio v. Venezuela; (iv) Peña v. Chile; (v) Globovisión v. Venezuela; (vi) Tristán Donoso v. Panama.

11 IACHR decision issued June 18, 1999, and expanded on July 19, 1999, requesting that the Chilean government adopt precautionary measures for the benefit of Bartolo Ortiz, Carlos Orellana, and Alejandra Matus, in light of detention orders against the first two and an order prohibiting the distribution and sale of a book, stemming from the publication of the Libro Negro de la Justicia Chilena (Black Book of Chilean Justice), written by Mrs. Matus.

12 IACHR decision of March 1, 2001, requesting that the State of Costa Rica adopt precautionary measures for the benefit of journalist Mauricio Herrera Ulloa and the legal representative of the newspaper La Nación, who had received criminal and civil convictions due to the publication of reports against an official in the Costa Rican Foreign Service, with the sentences not having fully materialized at the time the measures were adopted.

13 IACHR decision of February 7, 2001, requesting that the State of Venezuela adopt precautionary measures for the benefit of journalist Pablo López Ulacio, who had accused a businessman of benefiting from state insurance contracts in the context of a presidential campaign. The journalist was ordered detained and prohibited from publicly mentioning the businessman in the daily La Razón.

14 IACHR decision of March 2003, requesting that the State of Chile adopt precautionary measures, for the benefit of writer Juan Cristóbal Peña. Consisting on the lift of the judicial order seizing and withdrawing from circulation a biography of a popular singer who sought the order on the grounds that the account was considered grave slander.

15 IACHR decisions of October 3 and October 24, 2003, requesting that the State of Venezuela suspend administrative decisions to seize operating equipment from the Globovisión television station and that it guarantee an impartial and independent trial in this case.
Yáñez Morel v. Chile; 17 (viii) Pelicó Pérez v. Guatemala; 18 and (ix) Rodríguez Castañeda v. Mexico; 19 (x) Leo Valladares Lanza and Daysi Pineda Madrid v. Honduras; 20 (xi) Journalists of La Voz de Zacate Grande (Honduras), 21 y (xii) Lucia Carolina Escobar Mejía, Cledy Lorena Caal Cumes, Gustavo Girón v. Guatemala. 22 Similarly in 2012, precautionary measures were granted by the IACHR, inter alia, in the cases of Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga v. Ecuador; 23 15 workers of Radio Progreso v. Honduras, 24 and Yoani María Sánchez Cordero v. Cuba. 25 A more detailed description of these facts can be found in the IACHR’s 2012 annual report.

30. The granting of the precautionary measures does not constitute a prejudgment on the merits in question. Rather, these measures are adopted out of a need to avert grave, imminent, and irremediable harm to one of the rights protected in the American Convention of Human Rights, or to maintain jurisdiction in the case and so the subject of the action does not disappear.

3. Public Hearings

31. The IACHR received various requests for hearings and working meetings on matters involving freedom of expression during its most recent periods of sessions. The Office of the Special Rapporteur participates actively in the hearings on freedom of expression, preparing the reports and handling the corresponding interventions and follow-up.

32. On March 26, 2012, during the 144th period of sessions of the IACHR, a public hearing was held on “Access to Information in the Investigation of Cases involving Grave Human Rights

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16 IACHR decision of September 15, 2005, requesting that the State of Panama suspend a detention order against Santander Tristán Donoso, stemming from his failure to comply with a monetary fine imposed for the alleged commission of the crime of libel and slander. Mr. Tristán Donoso denounced that the Prosecutor General of the Nation had divulged taped conversations telephone calls.

17 IACHR decision adopted following the presentation of an individual petition in 2002, in the name of Eduardo Yáñez Morel, who was prosecuted for committing the crime of desacato, having severely criticized the Supreme Court of Justice on a television program in 2001.

18 IACHR decision of November 3, 2008, in which the IACHR requested that the State of Guatemala take the measures necessary to guarantee the life and humane treatment of Pelicó and his family, because of the grave and constant threats received by the journalist as a result of his investigations and publications on drug trafficking.

19 IACHR decision adopted on July 3, 2008, for the purpose of preventing the destruction of electoral ballots from the 2006 presidential elections in Mexico.

20 IACHR decision of April 26, 2011, requesting that the State of Honduras adopt any necessary measures to guarantee the life and physical integrity of Leo Valladares Lanza and his wife, Daysi Pineda Madrid, and so that Leo Valladares Lanza could continue to carry out his activities to defend and promote human rights under safe conditions. The decision also requested that the State reach agreement with the beneficiaries and their representatives on the measures to be adopted.

21 IACHR decision of April 18, 2011, asking the State of Honduras to adopt any necessary measures to guarantee the life and physical integrity of the journalists from La Voz de Zacate Grande, and to reach agreement with the beneficiaries and their representatives on the measures to be adopted.

22 IACHR decision of November 14, 2011, requesting that the State adopt any necessary measures to guarantee the life and integrity of Lucía Carolina Escobar Mejía, Cledy Lorena Caal Cumes, and Gustavo Girón; reach agreement with the beneficiaries and their representatives on the measures to be adopted; and inform the Commission on the events that led to the adoption of the precautionary measure.

23 IACHR decision of February 21, 2012, requesting that the State of Ecuador immediately suspend the effects of the judgment of February 15, 2012, in order to ensure the right to freedom of expression. On March 9, 2012, the IACHR lifted these precautionary measures and archived the file after receiving a communication dated February 29, 2012, in which the petitioners asked that the measures be lifted, given that the reasons of immediate urgency that had motivated them had ceased.

24 Extension of precautionary measure. IACHR decision of May 25, 2012, requesting that the State of Honduras inform the IACHR on the consultation with the beneficiaries to agree on implementation of PM 399/09, which protects several workers at Radio Progreso in Honduras and which was separated from PM 196/09 on April 1, 2011.

25 IACHR decision of November 9, 2012, asking the State of Cuba to adopt the necessary measures to guarantee the life and physical integrity of Yoani María Sánchez and her family; to come to an agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the IACHR on the actions taken to investigate the facts that gave rise to the adoption of precautionary measures.
Violations in Peru,” at the request of the Asociación Pro Derechos Humanos (APRODEH) and with the participation of the State of Peru. In addition, on March 27 a public hearing was held on the “Situation of the Right to Freedom of Expression in Venezuela,” at the request of the organization Espacio Público, the Human Rights Center at Andrés Bello Catholic University, the National Association of Journalists, and the National Press Workers Union. Representatives of the State of Venezuela also attended the hearing.

33. During the 146th session of the IACHR, a follow-up hearing to this last hearing was held on the “Right to Freedom of Expression in Venezuela.” The hearing took place November 1, 2012, and included the participation of the same petitioning organizations and the representatives of the State of Venezuela. In addition, on November 4 a public hearing was held on the “Right to Freedom of Expression in Honduras,” at the request of the Comité por la Libre Expresión (C-Libre) and the Centro de Investigación y Promoción de los Derechos Humanos en Honduras (CIPRODEH), and with the participation of the State of Honduras. Finally, on November 2, 2012, a thematic hearing was held on “Access to Public Information and the Right to Sexual and Reproductive Health in the Americas,” at the request of the organizations Center for Reproductive Rights (CRR), Asociación por los Derechos Civiles (ADC), Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), Mesa por la Vida y la Salud de las Mujeres, Grupo de Información y Reproducción Elegida (GIRE), Asociación Colectiva por el Derecho a Decidir, and Planned Parenthood Federation of America (PPFA).

4. **Seminars and Workshops with Strategic Actors in the Region**

34. Seminars are a critical tool the Office of the Special Rapporteur uses to promote the inter-American system for the protection of human rights and the right to freedom of expression. In the last fourteen years, the Office of the Special Rapporteur has organized seminars throughout the region, in many cases with the cooperation of universities, government institutions, and nongovernmental organizations.

35. Hundreds of journalists, attorneys, university professors, judges, and journalism and law students, among others, have attended the training sessions. These are offered by staff members of the Office of the Special Rapporteur both in country capitals and in more remote regions where there is often no access to information on the guarantees that can be sought to protect the right to freedom of thought and expression.

36. The meetings with those involved open the door for more people to be able to use the inter-American human rights system to present their problems and complaints. The seminars also enable the Office of the Special Rapporteur to expand its network of contacts. In addition, the workshops and working meetings have allowed the Office of the Special Rapporteur to work closely with strategic actors to advance the application of international standards in domestic legal systems.

37. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2012.

38. On February 9, the Special Rapporteur for Freedom of Expression participated, via videoconference, in an event marking the occasion of “Journalists’ Day at Javeriana University,” organized in Bogotá by Javeriana University and the Foundation for Press Freedom (FLIP, in its Spanish acronym). The Rapporteur participated in a panel on freedom of the press in Colombia and Latin America.


42. The Special Rapporteur for Freedom of Expression conducted a visit to Colombia April 9-11 to hold a series of meeting with Transparencia por Colombia and with the organizations of the Coalición de Acceso a la Información. The purpose of this trip was to provide advice on inter-American standards for access to information and on implementation of the future law on access to information.

43. On April 11-13, Special Rapporteur Catalina Botero, attorney Lisl Brunner, and journalist Mauricio Herrera Ulloa carried out an academic visit to Panama, in which they held two academic events. On April 11, the Office of the Special Rapporteur conducted a seminar on “The Right to Freedom of Expression and the Protection Mechanisms in the Inter-American Human Rights System.” The event took place at Santa María la Antigua University (USMA in its Spanish acronym) and was attended by more than 30 journalists, students and professors, and members of social organizations from Panama City. The event had logistical collaboration from the Fundación para la Libertad Ciudadana, a chapter of Transparency International. On April 12-13, the Office of the Special Rapporteur for Freedom of Expression, in conjunction with the United Nations Special Rapporteur on Freedom of Opinion and Expression, held a workshop with a group of experts and directors of 52 organizations involved in freedom of expression, trade-union organizations, and journalists from 20 countries in the Americas to discuss the challenges the region is facing today in the area of freedom of expression. The event was held at the Continental Hotel in Panama City.

44. From May 3 to 5, the Special Rapporteur for Freedom of Expression traveled to Tunisia to attend World Press Freedom Day 2012, “New Voices: Media Freedom Helping to Transform Societies,” an event organized by UNESCO. The Rapporteur participated as a panelist in the session on “The Decriminalization of Speech.” The event brought together the four rapporteurs for freedom of expression, as well as representatives of the most important global human rights organizations, journalists, and experts on freedom of expression.

45. On May 11, the Special Rapporteur for Freedom of Expression participated in carrying out a training course on the inter-American human rights system, organized by the Inter-American Commission on Human Rights and geared toward journalists from several countries in the Americas.

46. On May 17, the Special Rapporteur for Freedom of Expression participated via videoconference in a workshop on Access to Public Information, organized by the National Union of Press Workers in Caracas, Venezuela, and geared toward 30 journalists. The Special Rapporteur's presentation was on inter-American standards on access to public information.

47. On May 18, attorney Lisl Brunner participated in the seminar “International Human Rights Framework: Opportunities for Attorneys and Advocates,” organized by the International Justice Resource Center (IJRC) and held in Boston, Massachusetts in the United States. The event was designed to train U.S. attorneys in the use of the inter-American system and the universal human rights system. In this context, the Office of the Rapporteur offered training in how to use the protection mechanisms of the inter-American human rights system.

48. On May 21, attorney Lisl Brunner, participated in the seminar “Freedom of the Press in Latin America,” organized by the Latin American Institute at the University of California, Los Angeles (UCLA), in California. The Office of the Rapporteur's presentation focused on the major challenges involving freedom of expression in the Americas.
49. On May 21-22, the Special Rapporteur for Freedom of Expression participated in the “Austin Forum,” an event organized by the Knight Center for Journalism in Austin, Texas. The Special Rapporteur participated in a panel titled “Strategy to Improve Safety and Protection Mechanisms to Combat Impunity.”

50. Attorneys Michael Camilleri and Lorena Ramírez conducted an academic visit to Paraguay May 21-25, where they held several training events and meetings with key actors in the country. During the visit, the team from the Office of the Rapporteur held meetings with the president of the Supreme Court of Justice and the Supreme Court's human rights director, introducing them to the work of the Office of the Rapporteur, the materials it has prepared, and the activities it has held with judges in other countries. The Court expressed considerable interest in having the Special Rapporteur give a workshop for its justices. The team also met with Minister Augusto Dos Santos, Deputy Minister Julio Blanco, Deputy Minister Roque González Benítez of the Office of the Secretary for Information and Communications, and Minister Ernesto Camacho, Legal Advisor to the President, the latter of which explored possible friendly settlements. The attorneys also held meetings with several civil society organizations and journalists who belong to a group promoting the draft Law on Access to Public Information, to encourage the incorporation of inter-American standards on access to information.

51. On May 23, the Office of the Special Rapporteur gave a seminar on freedom of expression and access to information in the inter-American system, geared toward journalists and civil society organizations. It was organized by the Office of the Rapporteur in coordination with the organization IDEA, the Grupo Impulso de la Ley de Acceso a la Información Pública (GIAL), the Forum of Paraguayan Journalists (FOPEP in its Spanish acronym), and the School of Law and Social Sciences of the National University of Asunción, in Asunción, Paraguay. On May 24, the lawyers participated in a seminar organized by the master's program in communications at the National University of Asunción, as well as a conference at the Ibero-American University (UNIBE in its Spanish acronym) in Asunción. On May 25, a seminar on freedom of expression in the inter-American human rights system was held at the Autonomous University of Encarnación.

52. A special academic visit to Brazil was carried out from April 16 to June 30. It included visits and academic events in four cities around the country (Rio de Janeiro, Brasília, Porto Alegre, and São Paulo), as well as meetings and talks with journalists, members of civil society, and representatives of governmental and inter-governmental bodies in those cities, in order to promote the inter-American system's protection mechanisms and inter-American standards related to freedom of expression. In addition, attorney Michael Camilleri participated in the annual meeting of the Open Government Partnership, which took place April 17-18 in Brasília. On May 11-12, the Office of the Rapporteur participated in the seminar “Legislation and the Right to Communication,” organized by AMARC in Porto Alegre, state of Rio Grande do Sul. He also participated in the Conference on Human Rights and Technology, held in Rio de Janeiro on May 31 and June 1, where he gave a talk on the work of the inter-American system with regard to freedom of expression and the Internet.

53. From May 15 to 18, the Office of the Special Rapporteur conducted an academic visit to São Paulo. On May 16, the Office of the Special Rapporteur gave a seminar in São Paulo on the Right of Access to Information and Freedom of Expression, in coordination with the Fórum de Direito de Acesso a Informações Públicas e Abraj (Associação Brasileira de Jornalismo Investigativo). The event coincided with the entry into force of Brazil's law on access to information. In addition to attorney Michael Camilleri, participants in the event included two representatives of Brazil's federal Public Ministry, as well as the official in charge of implementing the law on access to information in the state of São Paulo.

54. From May 28 to June 1, attorney Michael Camilleri gave a course on Freedom of Expression in the Inter-American System, under an agreement with the Pontifical Catholic University of Rio de Janeiro, which took place over three special sessions (May 28, May 31, and June 1, 2012). The course was aimed at undergraduate and postgraduate students from the law school, as part of a broader joint project with the university to promote and disseminate the inter-American human rights system. On May 31, attorney Michael Camilleri participated in a seminar on "High-Risk Journalism in Brazil," in which he gave a presentation on inter-American standards related to prevention, protection, and the pursuit of
justice when it comes to violence against journalists. The event commemorated the tenth anniversary of the murder of journalist Tim Lopes in Rio de Janeiro. Michael Camilleri carried out a second visit to Porto Alegre June 11-14, which included several academic and promotional activities, as well as meetings with key actors. Activities included the Seminar on Freedom of Expression in the Inter-American System, offered at the Methodist University Center IPA.

55. On May 31 and June 1, the Special Rapporteur conducted a visit to Peru and had the opportunity to meet with the Minister of Justice, as well as the President of the Judiciary and some civil society organizations. On June 1, the Special Rapporteur participated in a forum organized by the Congress of the Republic and the Peruvian Press Council, as well as in protocolary meetings with various authorities responsible for protecting and defending the right to freedom of expression.

56. From June 3-5, the Special Rapporteur for Freedom of Expression and attorney Michael Camilleri assisted the Forty-Second Ordinary Period of Sessions of the General Assembly of the OAS held in Cochabamba, Bolivia.

57. On June 11, attorney Lorena Ramírez of the Office of the Special Rapporteur for Freedom of Expression participated in the Inter-American Commission on Human Rights' presentation to students attending the summer course of the Academy on Human Rights and Humanitarian Law at American University's Washington College of Law. More than 70 students attended the event, which provided an opportunity to share information about the work of the Office of the Special Rapporteur.

58. The Special Rapporteur for Freedom of Expression offered a course, June 12-15, on "Freedom of Expression in the Inter-American Human Rights System," at American University's Washington College of Law. It was part of the summer program offered by the university's Academy on Human Rights and Humanitarian Law.

59. On June 15, the Special Rapporteur participated, via videoconference, in an event on “Protection of Journalists: Strengthening the international protection framework.” It was organized by the government of Austria and held June 20 in Geneva, Switzerland.

60. On June 21, 2012, the Office of the Special Rapporteur for Freedom of Expression held a seminar on inter-American standards concerning freedom of expression and access to information, in conjunction with the State of São Paulo Union of Professional Journalists, Article 19, and CEJIL. The event was held at the headquarters of the Journalists Union in the city of São Paulo, Brazil, and featured the participation of journalists and representatives of civil society organizations that defend freedom of expression.

61. On June 22, attorney Lorena Ramírez of the Office of the Special Rapporteur for Freedom of Expression participated in the Fifth National and International Meeting of Human Rights Defenders and Journalists, with a talk on “Inter-American Standards on Sanctions on Freedom of Expression.” The event was organized by the group Red Solidaria Década contra la Impunidad, the Human Rights Program of the Ibero-American University in Mexico City, and the “Miguel Agustín Pro Juárez” Center for Human Rights. Those attending the event included human rights defenders, journalists, members of civil society, social activists, and students. The purpose of the seminar was to encourage reflection on the situation of these special stakeholders in the public debate, as well as on the challenges and obstacles they face every day in their work.

62. The Special Rapporteur for Freedom of Expression and attorney Lisl Brunner visited Trinidad and Tobago June 23-26, where they participated in the World Congress of the International Press Institute (IPI), titled “Media in a Challenging World.” The purpose was to discuss the challenges that exist for the media in the hemisphere, and the Special Rapporteur participated in a panel and a roundtable discussion about this issue.

63. On June 27, attorney Michael Camilleri gave a seminar in Rio de Janeiro, Brazil, on the right to freedom of expression and broadcasting, in coordination with AMARC. The seminar also included
the participation of other experts from organizations such as the Laboratorio de Estudios en Comunicación Comunitaria–LECC/UFRJ, the Centro de Estudios Barão de Itararé and the Fórum Nacional por la Democratización de la Comunicación, among others.

64. From July 31 to August 4, the Office of the Special Rapporteur conducted an academic visit to Haiti. Lorena Ramírez and Damien Larrouque participated in the visit. On August 2-3, the Office of the Rapporteur organized and gave two training seminars on the right to freedom of expression and access to information in the inter-American human rights system, one designed for human rights organizations and journalists and the other for civil servants. In the first seminar, 40 representatives of national and international human rights organizations participated. The second seminar included the participation of 16 civil servants from the Ministry of Justice, the Ministry of Human Rights, and the office for Protection of Citizens.

65. The Special Rapporteur for Freedom of Expression carried out a visit to Mexico City, Mexico, September 11-16. On September 11-12, she participated as one of the keynote speakers in the event “Change Your World—Yahoo! Business & Human Rights Summit on Women and Social/Digital Media,” with the goal of promoting women’s human rights through social media and technology. On September 13-15, the Rapporteur participated in various meetings with civil society organizations and public servants and in a forum held in Mexico on the process of strengthening the IACHR.

66. On September 18, the Special Rapporteur participated as a panelist, via videoconference, in the event “Freedom of Expression and the Media: Toward a Protection Mechanism for Journalists.” The purpose of the forum was to discuss how to help create a culture of respect for and guarantee of freedom of expression. The event was organized by the Technical Committee for Assisting and Protecting Journalists in Veracruz.

67. On September 25-26, the journalist Mauricio Herrera Ulloa participated in a conference and workshop on violence against journalists and the criminalization of expression at the University of Palermo in Buenos Aires, Argentina. On the 25th, the journalist gave the conference “Violence against journalists and criminalization of expression in Latin America.” The event was organized by the School of Law of the University of Palermo and the Center for the Study of Freedom of Expression and Access to Information (CELE in its Spanish acronym).

68. On September 26, the Special Rapporteur participated in the discussion panel “The Future of Internet Governance: Freedom, Security, and Development”, at the IPI Policy Forum in New York city. The event was organized by the International Peace Institute (IPI) and the Ministry for Foreign Affairs of Sweden.

69. On October 2, attorney Lorena Ramírez gave a seminar on the right to freedom of expression and access to information in the inter-American human rights system, at the José Simeón Cañas Central American University in San Salvador, El Salvador. Attending the seminar were 70 journalists and lawyers, as well as master’s students in law and communications.

70. The Special Rapporteur for Freedom of Expression carried out a visit October 8-9 to Mexico City, in which she participated in an international seminar on “Accountability Challenges in Latin America.” The Special Rapporteur gave a conference entitled “Fundamental Freedoms and Accountability.” The event was organized by the Mexico office of the Facultad Latinoamericana de Ciencias Sociales (FLACSO) and the Centro de Investigación y Docencia Económicas (CIDE), among other institutions.

71. On October 11, the Special Rapporteur participated in a seminar titled “Access to Information and Accountability: A Global Context,” with the aim of exchanging points of view on the right of access to information and its use by civil society to increase governments’ accountability. The Special Rapporteur participated in a panel entitled “The Right for Access to Information: a Cross-border Experience.” The event was organized by the Woodrow Wilson International Center and held in Washington, DC.
72. The Special Rapporteur carried out a visit November 21-22 to Lima, Peru. On November 21, she participated in a working breakfast at the Palace of the Government, in which she gave the conference “The rules of the inter-American system governing freedom of expression.” The breakfast was held for directors of media outlets. During the same visit, the Special Rapporteur spoke at an international seminar on “Children, Adolescents, and the Media,” organized by the Office of the Human Rights Ombudsman.

73. On November 22-23, the attorney Lisl Brunner attended the “Second United Nations Inter-Agency Meeting on the Safety of Journalists and the Issue of Impunity” at the United Nations Office in Vienna, Austria. The event was convened by UNESCO and co-hosted by the UN High Commissioner on Human Rights, UNODC y UNDP.

74. On November 26-27, the Special Rapporteur participated in an international seminar in Mexico on Access to Information, Protection of Personal Data, and Accountability of the Judiciary, organized by the national Supreme Court of Justice and the Council of the Federal Judiciary. She gave a keynote address on “Access to Information as a Human Right: A Challenge for Delivering Justice.”

75. On November 26-28, attorney Lisl Brunner participated in the Workshops “Governing the Internet: A human rights workshop for Latin America,” which took place in Rio de Janeiro, Brazil. The specialist attorney participated in a discussion on initiatives for collaboration. The event was organized by the Fundação Getúlio Vargas, Centro de Estudios Legales y Sociales (CELS), Global Partners & Associates, Association for Progressive Communications (APC), Instituto NUPEF and the Ford Foundation.

5. Annual report and development of expert knowledge

76. One of the main tasks of the Office of the Special Rapporteur is the preparation of the annual report on the state of freedom of expression in the hemisphere. Every year, this report analyzes the state of enjoyment of the right to freedom of expression in the OAS Member States, which includes noting the principal threats to ensuring the exercise of the right to freedom of expression and the advances that have been made in this area.

77. Besides its annual reports, the Office of the Special Rapporteur periodically produces specific reports on particular countries. For example, it has prepared and published special reports on the situation regarding the right to freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), Colombia (2005), Honduras (2009 and 2010), Venezuela (2009 and 2010) and Mexico (2010).

78. The Office of the Special Rapporteur has also prepared thematic reports that have led to a significant process of debate in the region, as well as the implementation of legislative and administrative reforms in many States throughout the Americas. In 2012, the Office of the Special Rapporteur worked on the thematic reports included as thematic chapters of this report.

79. In 2012, the Office of the Rapporteur printed the publication The Inter-American Legal Framework regarding the Right to Access to Information- Second Edition, which compiles, in a single volume, the reports on access to information included in the 2009 and 2010 annual reports of the Office of the Rapporteur, which have been very useful in the process of training and dissemination.

80. In addition, the Office of the Rapporteur printed three new publications which correspond to chapters from the 2010 and 2011 annual reports, which have proved very useful in training and dissemination. These publications are:

- Reparations for the Violation of Freedom of Expression in the Inter-American System (approved in the 2011 annual report), which contains a systematic analysis of inter-American rulings on freedom of expression, particularly of the orders for reparations issued as of
October 2011 in cases that have involved violations or illegitimate restrictions of the freedom established in Article 13 of the Convention.

- **Principles on the Regulation of Government Advertising and Freedom of Expression** (approved in the 2010 report). This report seeks to present the principles that should regulate government advertising in order to prevent their use as a mechanism for indirect censorship.

- **The Right to Access to Information in the Americas: Inter-American Standards and Comparison of Legal Frameworks.** (2011 annual report). This report presents an overview of the legal framework surrounding the right to access to information provided by specialized laws on the subject Antigua and Barbuda, Argentina, Canada, Chile, Colombia, Ecuador, El Salvador, the United States, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Peru, the Dominican Republic, Trinidad and Tobago, and Uruguay.

6. **Special statements and declarations**

81. Through the daily monitoring of the state of freedom of expression in the region—conducted by means of an extensive network of contacts and sources—the Office of the Special Rapporteur issues statements such as press releases, reports, and opinions on specific cases or situations that are relevant to the exercise of this fundamental right. Press releases issued by the Office of the Special Rapporteur receive wide coverage and constitute one of its most important work mechanisms.

82. The Office of the Special Rapporteur receives an average of 2,250 e-mails per month. Of these, 75% refer to alerts, press releases, or requests for information and consultations on freedom of expression in the region, and receive a timely response; 10% refer to formal petitions to the IACHR’s individual case system; and the remaining 15% have to do with issues that do not fall within its area of competence. The Office of the Special Rapporteur reviews, culls, and sorts the information it receives to determine the course of action to take.

83. In addition, since its creation the Office of the Special Rapporteur has participated in the drafting of joint declarations with the other regional rapporteurs and the UN rapporteur for freedom of expression. These joint statements are generally signed by the UN Special Rapporteur; the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE); the Special Rapporteur of the OAS; and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights. When the issues are regional in nature, the declarations are signed by the Rapporteurs for the UN and the OAS.

84. The joint declarations constitute an important tool for the work of the Office of the Special Rapporteur. In previous years, these statements have covered such subjects as: the importance of freedom of expression (1999); murders of journalists and defamation laws (2000); challenges to freedom of expression in the new century in areas such as terrorism, the Internet, and radio (2001); freedom of expression and the administration of justice, commercialization and freedom of expression, and criminal defamation (2002); media regulation, restrictions on journalists, and investigations into corruption (2003); access to information and secrecy legislation (2004); the Internet and anti-terrorism measures (2005); publication of confidential information, openness of national and international entities, freedom of expression and cultural and religious tensions, and impunity in cases of attacks against journalists (2006); diversity in access, ownership, and content of the media, particularly radio and television (2007); the defamation of religions and anti-terrorist and anti-extremist legislation (2008); media and elections (2009); ten key challenges to freedom of expression in the next decade (2010); Wikileaks (2010); and freedom of speech on the Internet (2011).26

26 The abovementioned joint declarations are available at: http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1

86. In 2012, the Office of the Special Rapporteur issued 31 press releases28 calling attention to incidents related to freedom of thought and expression. The statements highlight especially worrying incidents and local best practices, and explain the corresponding regional standards. The press releases issued during 2011 can be accessed through the website of the Office of the Special Rapporteur, available at: http://www.cidh.org/relatoria.

D. Funding

87. The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) in October 1997, during its 97th session. The IACHR deemed it essential to create this office, considering the role that the right to freedom of expression plays in consolidating and developing the democratic system and in denouncing and protecting other human rights. As was explained at the beginning of this chapter, the creation of the Office of the Special Rapporteur as a permanent, independent office found full support among the OAS Member States.29

88. In March 1998, during its 98th session, the IACHR defined the characteristics and functions of the Office of the Special Rapporteur. Given the lack of resources, the IACHR—with the support of certain States such as Brazil and Argentina—established a separate, voluntary fund that would allow the office to operate without causing financial problems for the Commission itself. The voluntary assistance fund has, in fact, been an essential mechanism for not increasing the expenses of the Commission or imposing on it the burden of seeking resources to fund the operations of the Office of the Special Rapporteur. Thus, this office does not receive resources from the regular fund of the OAS or from the IACHR, nor does it impose on the IACHR Executive Secretariat the task of finding the resources it needs to operate.30 That being the case, since its creation the Office of the Special Rapporteur has relied


who on the funds it obtains through donations from States that—like Argentina, Brazil, Chile, Costa Rica, the United States, Mexico, or Peru—have contributed to the voluntary fund, or through its participation in processes to compete for international cooperation funds.

89. In terms of international cooperation projects, it is important to mention that the Office of the Special Rapporteur develops them in strict adherence to the agenda or work plan that has been approved by the IACHR. Based on that work plan, the Office of the Special Rapporteur develops specific projects that are subject to rigorous procedures within the OAS so that they meet the approval of the Project Evaluation Committee (CEP) and the office of legal affairs and the financial office, among others. Once a project has successfully undergone these procedures, it is presented for the open, public competitions held by cooperation agencies. This process ensures that the cooperation funding exactly matches the Office of the Special Rapporteur’s own priorities. Through this technical mechanism for obtaining funds, the Office of the Special Rapporteur has managed to increase its income by more than 50% in recent years. On this same subject, it is pertinent to add that 12% of the funds obtained by the Office of the Special Rapporteur (13.6% of all funds executed by the office) must be designated for central administration of the OAS as indirect cost recovery or ICR. 31

90. The Office of the Special Rapporteur would like to express very special thanks for the contributions it has received from OAS Member States, observer countries, and international cooperation agencies. In 2012, the Office of the Rapporteur calls attention to the projects that have been carried out satisfactorily thanks to the contributions of Chile, the European Commission, the United States of America, Finland, France, Costa Rica, Sweden, and Switzerland. This funding has allowed the Office of the Special Rapporteur to fulfill its mandate and continue its work of promoting and defending the right to freedom of expression. Once the OAS has released the official figures on the resources received and executed by this office, they will be published immediately on the office’s website.

E. Staff

91. The Office of the Special Rapporteur has worked under the coordination of the Special Rapporteur, with a team of two or three lawyers who are experts in subjects related to freedom of expression, a journalist in charge of monitoring the situation of freedom of expression in the region, and a person who performs administrative assistance tasks. Since July of 2009, the Office of the Special Rapporteur has had a person in charge of managing projects and mobilizing resources. The team of administrative and mission staff has been the same size (5 or 6 individuals) for at least the past five years. 32 Any additional resources that have been obtained have served to provide greater stability and better working conditions for the members of this team. The Office of the Special Rapporteur has also benefited from the presence of interns who have been an essential part of the team. At different times in 2012, Álvaro González (Chile), Damien Larrouque (France), and Sofía Jaramillo (Colombia) contributed their work and enthusiasm very constructively to the Office of the Special Rapporteur.


A. Introduction and methodology

1. This chapter describes some of the most important aspects of the situation of freedom of expression in the hemisphere during 2012. Its objective is to begin a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this period. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote decisively the right to freedom of expression and, to that end, publicizes their best practices, reports some serious problems observed, and formulates viable and practical recommendations based on the Declaration of Principles.

2. As in previous annual reports, this chapter exposes the aspects of the right to freedom of expression that merit greater attention and that have been reported to the Office of the Special Rapporteur during the year. Following the methodology of previous annual reports, this chapter is developed from the information received by the Office of the Special Rapporteur from various States, intergovernmental and non-governmental sources. The information provided by States, presented during the hearings held by the IACHR, submitted by non-governmental organizations in the region, and contained in alerts sent by media and communicators is of particular importance to the Office of the Special Rapporteur. In all cases, the information is contrasted and verified so that the only information that is published is that which will serve to assist the States to identify worrisome problems or tendencies that must be addressed before they could eventually cause irreparable effects.

3. The selected information is ordered and systematized in a manner so as to present the advances, setbacks, and challenges in various aspects of the exercise of the right to freedom of expression, including progress made in legal, administrative or legislative matters, as well as the most serious problems that arose throughout the year, such as murders, threats and attacks against journalists that could have been related to the exercise of their profession; impositions of subsequent liability that may result disproportionate; the progress and challenges in the right to access to information, among others.

4. The cases selected in each topic serve as examples that reflect the situation in each country in relation to the respect and exercise of freedom of expression. Sources are cited in all cases. It is pertinent to clarify that the information on the situation of some cases that had its analysis omitted is due to the fact that the Office of the Special Rapporteur has not received sufficient confirmed information about them. As such, any omissions should be interpreted only in this sense. In the majority of cases, the Office of the Special Rapporteur provides the direct source, citing the electronic address of the corresponding Web site. When the information is not published directly by the source, the report cites the date the information was received in the electronic mailbox of the Office of the Special Rapporteur. This report does not include information that has been submitted to the Office of the Special Rapporteur through requests for precautionary measures, or other information which has not yet been made public.

5. In preparing this chapter of its 2012 annual report, the Office of the Special Rapporteur generally took into account information received until November, 2012. Information regarding incidents that occurred after the date the 2012 annual report went to press is available in the press release section of the websites of the Office of the Special Rapporteur (http://www.cidh.org/relatoria) and the IACHR (http://www.cidh.org).

6. Finally, the Office of the Special Rapporteur acknowledges the collaboration of the OAS Member States and the civil society organizations that, following existing practice, contributed information about the situation of the exercise of freedom of expression in the hemisphere. As it does every year, the Office of the Special Rapporteur encourages the continuation of this practice, as it is fundamental for the enrichment of future reports.
B. Evaluation of the state of freedom of expression in the Member States

1. Argentina

A. Progress

7. The Office of the Special Rapporteur expresses its satisfaction at two access to information laws passed at the provincial level in Argentina. On March 2, Law No. 5.336 - Access to Public Information in Catamarca - entered into force after its corresponding regulations were published in the official local gazette. According to the information, the provincial Congress passed the law in August 2011 and its regulations were approved in November. Additionally, on June 7 the Access to Public Information Act was passed by the Chamber of Representatives of the Province of Misiones.

8. On December 4, 2012, the Supreme Court of Justice of the Nation upheld the right of all people to access information held by the State. The case originated in a request for information submitted by the Association for Civil Rights to the National Institute of Social Services for Pensioners and Retired Persons [Instituto Nacional de Servicios Sociales para Jubilados y Pensionados] (PAMI in its Spanish acronym) regarding its expenditures on government advertising. The request was made in the context of Decree 1172/03 on Access to Public Information, which applies to the National Executive Branch. According to the ruling, PAMI had only partially provided the information requested and argued that Decree 1172/03 was not applicable because the agency holds legal status as an entity apart from the National State. Citing the case of Claude Reyes v. Chile and the reports of the Office of the Special Rapporteur, inter alia, the Supreme Court ruled that “in order for States to comply with their general obligation to adjust their domestic legal systems to the American Convention in this sense, they must guarantee this right not only in the purely administrative realm or in the realm of institutions under the Executive Branch, but also with regard to all government bodies.” Likewise, the Court reiterated its prior case law with regard to “the direct and immediate correlation of the right to access to information and government advertising with the right to freedom of the press,” and ordered the PAMI to turn over the requested information.

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9. The Office of the Special Rapporteur also expresses its satisfaction at the conviction by a lower court of Cristián David Espínola Cristaldo for the 2010 murder of Adams Ledesma Valenzuela, of community television channel Mundo Villa TV, which rebroadcasts its programming in Peru, Bolivia and Paraguay. According to the information received, on September 4, the Second Oral Criminal Court convicted Espínola and sentenced him to 18 years in prison for the murder of the Bolivian journalist.6

B. Attacks on and threats against media outlets and journalists

10. The Office of the Special Rapporteur learned of grave threats and attacks against journalists and social communicators during 2012. On December 10, 2011, journalist Nora del Rosario Ruiz, cameraman Víctor Manuel Ajalla and photographer Horacio Abel Ajalla were attacked and threatened by individuals presumably affiliated with local authorities while covering inaugural ceremonies for new municipal authorities. On December 20, the Ajalla brothers were again threatened and attacked under similar circumstances.7 On December 29, journalist Julián Chabert and cameraman Raúl Zalazar, of Canal 7 of Mendoza, were held in the Los Corralitos area, violently assaulted and threatened with death by two individuals mentioned in a report on the exploitation of immigrant laborers.8 In January of 2012, Grupo Clarín journalist Alejandro Alfie was threatened by a businessman about whom Alfie had reported.9

11. According to information received, on January 19, Cristina Acuña, a journalist and editor of weekly newspaper Página de Miércoles and a correspondent with daily newspaper La Arena in the Victorica area, La Pampa province, was physically and verbally assaulted by individuals presumed to be relatives of the local deputy mayor.10 On January 22, Mariano Martínez, a journalist with radio station FM Popular in Los Antiguos, Santa Cruz province, was verbally and physically assaulted in a nightclub by individuals presumed to be sympathizers of the local government, allegedly in relation to information and comments that he had broadcast.11

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12. The Office of the Special Rapporteur was informed that five hooded men used firearms to threaten and intimidate journalism students Omar Millalonco and Lilén Mercado on February 13 in La Plata, in Buenos Aires province. According to the information, the attackers shouted at them, “[q]uit fucking around because we’re going to shoot you.” On March 31, Rubén Darío Heredia, a journalist with radio station FM RED and the newspaper La Verdad del Noa, was threatened over the phone after raising questions about the municipal authorities of Rosario de la Frontera, Salta province. Additionally, Hernán Lascano, the head of the police report section of the newspaper La Capital, in Rosario, received threats starting in June of 2010 in connection with his reporting on drug trafficking in the city. On April 3, 2012, Lascano held a meeting with the governor of Rosario, who offered him protective measures.

13. According to information received, on April 4, individuals presumed to be municipal employees in Pinamar, Buenos Aires province, attacked Gonzalo Rodríguez, a reporter with Canal América program ‘Caiga Quien Caiga’, while he was trying to interview the mayor about a housing project. Later, Guillermo López, the host of the program, received telephoned threats warning him not to return to Pinamar. On April 26, journalists Mirna Reijers and Manuel Romero were attacked while trying to cover a Corrientes City Council session in which an increase in the cost of public transportation was being discussed. Additionally, Daniel Luna, a journalist and owner of television station Sistema de Medios Candelaria, was attacked by the president of the Candelaria municipal council on April 19 while he was trying to film a council session. Later, on May 8, journalist and photographer Rodrigo Castillo was also assaulted while covering a session of that municipality’s City Council, allegedly by one of the council member’s bodyguards.

14. The Office of the Special Rapporteur was informed that on May 7, Juan D’Anvers, a journalist and the owner of Radio Brava, in Puerto Madryn, received a threat stating that “you’re going to
turn up cut pieces in a ditch” if he did not stop reporting about a local mayor. Additionally, on May 10 and 11, journalists Gustavo Raffin and Ester Lutz with Radio Diez in Reconquista, Santa Fe, received death threats after denouncing alleged irregularities in the local municipality.

15. According to information received, on May 15, Robert Papilli, director of Radio 100.1 FM in Ceres, Santa Fe province, received threats telling him to suspend the program ‘La Tierra Sin Mal’, which issued reports critical of the use of agrochemicals and their impact on public health. On May 29, an armed man entered the radio station Cadena Nueve, in the city of 9 de Julio, Buenos Aires province, and threatened journalist Gustavo Tinetti and warned him not to publish certain unspecified information.

16. The Office of the Special Rapporteur received information on attacks suffered by a number of journalists while they were reporting. According to the information, on June 1, individuals presumed to be protesters attacked Lucas Martínez, Sergio Loguzzo and Ezequiel Schneider, communicators with the Televisión Pública program 6,7,8, while they were covering a protest in Buenos Aires, destroying a camera. Additionally, on June 5, masked individuals chased and beat journalist Julio Mosle, photographer Florencia Downes and host Federico Molinari, all three with the Télam State news agency. They also attacked Mariano Vega, a photographer with the newspaper Tiempo Argentino and Adrián Subelza, with morning newspaper Crónica. The attacks took place while the aforementioned individuals were covering allegations of medical negligence in the Claudio Zin Hospital in the Malvinas Argentinas municipality of Buenos Aires.

17. On June 14, Marcelo Massimini, producer and host of the program Cono Sur Noticias, was attacked at his home in Longchamps, Buenos Aires province, one week after doing a televised report on unhealthy conditions in a public school and their impact on students.
18. The Office of the Special Rapporteur was informed that on July 30, distributors of the newspaper *Hoy* in La Plata were followed by a vehicle and the posters they had placed at a distribution point to promote the newspaper were stolen. According to the information, two men approached the stand, took the publicity posters and said that if they did not stop criticizing public officials “we’re going to burn these stands, one by one.” During the early morning hours of November 8, a sales kiosk for the newspaper *Hoy* and other publications was destroyed by fire after the copies of that newspaper were delivered to it.

19. On August 3, a reporting team with Canal 13 program ‘Periodismo para todos’ was attacked by a group of people while doing an investigation on housing built by the Túpac Amaru political group in the province of Jujuy. According to the information, the attackers wore clothing identifying them with the Túpac Amaru organization and stole the cameras and recorded material.

20. The Office of the Special Rapporteur was informed that on August 14, Hernán García, a journalist and director of broadcaster FM Uno, was attacked by a communal authority in the Sancti Spíritu locality, Santa Fe province. According to the information, the alleged perpetrator put a pistol in the journalist’s mouth after he made critical comments on a radio program. In addition, on August 20, unknown individuals threw a firebomb at the home of journalist Silvio Novelino, director of monthly newspaper El Pepiri in Bernardo de Irigoyen, Misiones province. The provincial police ordered security for the communicator’s home. According to information received, on August 29, a businessman and two of his employees beat journalist Aníbel Palma, attacking him with a cattle prod and threatening to cut out his tongue for having “messed with the company” on his radio program. On September 26, approximately 100 people gathered in front of Radio Vos, in Salta, where they shouted insults at journalist Adrián Valenzuela, presumably because of a report raising questions about the conduct of a provincial official.

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19. Available at: http://www.ifex.org/argentina/2012/11/14/argentina_fopea_alerta/


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21. According to information received, during the month of October, people presumed to be affiliated with the mayor of Zárate, in Buenos Aires province, prevented distribution of the newspaper *El Debate*, which had been critical of municipal authorities. On October 7, armed men stole copies of the newspaper from a distributor, and two days later, another distributor was threatened by someone who said “this newspaper must not come out again.” After new threats against distributors on October 16 and 28, some of the distributors quit and circulation of the print version of the newspaper was temporarily suspended.33

22. The Office of the Special Rapporteur was informed that during the months of October and November, journalist Daniel Polaczinski of *Radio U* received a series of threats through text massages to his cellular phone after reporting on a traffic accident allegedly caused by the President of the Deliberative Council of Aristóbulo del Valle, Misiones. According to the information, local authorities are investigating the incident, but Polaczinski has decided to temporarily suspend his radio program.34

23. According to information received, a number of journalists were attacked during a peaceful demonstration held in Buenos Aires on November 8. Journalist Néstor Dib with television channel C5N was violently attacked from behind. The federal police later arrested the attacker.35 A journalist with the program ‘Duro de Domar’ on *Canal 9* was assaulted with pepper spray. While a media worker from *Telefe* and a journalist from *Radio Nacional* were physically attacked. Additionally, journalist Cynthia García, with the program ‘6,7,8’ of *Canal 7*, was verbally harassed while she covered the events.36

24. The Office of the Special Rapporteur was also informed that on November 10, journalist Mario Fedorischak was struck and threatened by alleged members of the Radio Command in Posada, Misiones province, while filming the transfer of a group of detainees to Police Station 13. According to the information, the agents destroyed his video camera and seized other work items.37 On November 20, journalist Javier Rivarola of *FM Radio 21*, from Caleta Olivia, Santa Cruz, received threatening phone calls accusing him of inciting a demonstration in front of a provincial legislator’s residence. According to

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In May, information was received on an alleged campaign to discredit Clarín editor and journalist Daniel Santoro and TN journalist Guillermo Lobo. According to reports, certain individuals close to the government accused Santoro—who was investigating cases of corruption—and Lobo of being involved in a Russian spy network.

27. The existence of a context of extreme confrontation in which defamatory and stigmatizing remarks are constant generates a climate that prevents reasonable and plural deliberation, especially with regard to public matters. Although it is true that the existence of tension between the press and governments is a normal phenomenon that derives from the natural function of the press and is seen in

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many States, it is also true that acute polarization closes down space for debate and helps neither the authorities nor the press to better carry out the role that corresponds to each in a vigorous, deliberative and open democracy. In these cases, given its national and international responsibilities, it is the State’s duty to contribute to generating a climate of greater tolerance and respect for outside ideas, including when those ideas are offensive or upsetting. As the IACHR has reiterated, the State must in all cases abstain from using any of its competences to reward friendly media and punish those who dissent or criticize its actions. In this sense, the authorities must respond to criticism that it finds without justification and information that it considers incorrect. By responding this way rather than with measures that could inhibit and affect the vigor of the deliberation, it generates the conditions for more and better debate and information. As established in Principle 6 of the Declaration of Principles, approved by the IACHR, journalistic activities must be guided by ethical conduct, which should in no case be imposed by the States.

28. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Access to information

29. The Office of the Special Rapporteur observes that in 2012, the Chamber of Deputies did not vote on the Access to Information Act, and at the end of the year’s legislative session, the bill lost its status as pending legislation. 45

30. According to information received, in February of 2012, the municipal council in Rosaria de Lerma, Salta province, erected a barrier at the entrance of its chamber to prevent journalists from entering to observe its legislative debates. On May 17, journalist Sabino Alancay managed to broadcast the council debate over the radio using a cellular telephone, although the council president had called the police to remove him.46

31. The Office of the Special Rapporteur learned that on May 13 and 14, dozens of journalists asked the government to hold formal press conferences in which questions formulated by the press would be answered. According to reports received, the journalists claim that official press conferences at all levels usually do not provide a space for questions, a situation that has had a negative impact on the right to access to information.47

D. Legal reforms

32. The Office of the Special Rapporteur was informed of the December 27, 2011, passage and promulgation of Law 26.736, which declares the production, sale and distribution of newsprint to be in


the public interest.\textsuperscript{48} The purpose of the law is “to ensure for domestic industry the regular and reliable manufacturing, sale and distribution of wood pulp and paper for newsprint” and to give the Ministry of Economy and Public Finance the authority to regulate the production, use, import and export of newsprint, in order, among other reasons, to “guarantee equal opportunity and access to paper supply without discrimination.”\textsuperscript{49} The Ministry will be advised by a Federal Advisory Commission made up of newspaper representatives, consumers and workers. Among its functions is to “propose measures toward broadening the spectrum of diversity, democratization and federalization of the print media.”\textsuperscript{50} The law also creates a national registry of manufacturers, distributors and sellers of pulp and paper for newspapers and requires transparency in the administration of the companies that produce it.\textsuperscript{51} It orders the main company dedicated to the production of newsprint, Papel Prensa S.A., to “operate, at a minimum, at full operative capacity or at the level of domestic demand for paper (when that demand is less than operative capacity),” and to periodically implement “an investment plan toward fully satisfying domestic demand for newsprint.”\textsuperscript{52} Finally, it establishes a regime for sanctions, which vary from fines to the closure or confiscation of companies. The sanctions are to be applied by the Ministry of Economy and Public Finance.\textsuperscript{53}

33. As the Office of the Special Rapporteur has indicated on other occasions, issues related to newsprint are of such importance for the inter-American system that Article 13 itself of the American Convention establishes that, “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” In this sense, it is important that existing anti-monopoly rules be applied to newsprint production in such a way as to foment its free production. This regimen must be defined by the legislative branch, with special attention given to the obligation to prevent the existence of abusive government or private sector controls. In particular, it is important to take into account that the pretext of regulating monopolies cannot end up creating a form of intervention that allows the State to affect this sector in any way other than to prevent the concentration of property and control of production and distribution of this input and to facilitate free and competitive paper production. The Office of the Special Rapporteur hopes that the law previously mentioned, given its notable importance for the exercise of freedom of expression, is enforced in keeping with the international standards on the subject.\textsuperscript{54}

E. Government Advertising

34. On August 14, 2012, the Federal Contentious Administrative Chamber ordered the National State to comply with the ruling of the Supreme Court of Justice requiring the State to place advertising in the publications of Editorial Perfil S.A. in keeping with the criteria of maintaining a “reasonable balance.” Editorial Perfil had filed a complaint in April of 2011 to the effect that the State had failed to comply with the aforementioned ruling, and in March of 2012, the lower court fined the State for


\textsuperscript{49} Law 26.736. Articles 3, 11.

\textsuperscript{50} Law 26.736. Articles 12, 16(e).

\textsuperscript{51} Law 26.736. Articles 28, 18.

\textsuperscript{52} Law 26.736. Article 40.

\textsuperscript{53} Law 26.736. Article 33.

its failure to comply. The Chamber revoked the fine and gave the State 15 days to present an outline for how it would distribute official advertising in a way that would include Perfil and another two magazines and “that faithfully follows the guidelines of proportionality and equity established by this Chamber and by the Supreme Court of the Nation […] such that the judge can irrefutably determine whether an ‘equitable balance’ has been reached among them and those classified as having ‘analogous characteristics.”

As of this report’s publication deadline, the Office of the Special Rapporteur had not learned of the results of the application of the ruling in question.

35. The Office of the Special Rapporteur learned of the ruling of Court for Contentious Administrative and Tribunary Law No. 14 of the Judiciary of Buenos Aires ordering the city’s government to respond to a request for information made by the Association for Civil Rights [Asociación por los Derechos Civiles] regarding the distribution of government advertising during 2010 and 2011. The court cited the case of Claude Reyes v. Chile and concluded that the information requested was in the public interest.57

36. As the Office of the Special Rapporteur has expressed on prior occasions, it has received information indicating concern among private sector media with regard to the absence of established standards for placing government advertisement and the increase in the budget for this advertisement on both the federal and provincial levels. However, with regard to this, on March 2, 2011, the Supreme Court of Justice had already handed down a ruling reiterating the State obligation to adopt a government advertising policy that is nondiscriminatory and uses objective standards.58

F. Other situations

37. The Office of the Special Rapporteur learned that workers from a number of different unions blocked entrances and exits to buildings where the newspapers Clarín and La Nación, among others, are printed. On August 18 and 19, the workers prevented the trucks that distribute newspapers in Buenos Aires from departing. Additionally, the Office of the Special Rapporteur was informed of harassment, threats and theft of newspapers, all directed at the vendors of those newspapers in different parts of Buenos Aires. Argentine courts have granted precautionary measures to ensure the free distribution of La Nación and Clarín in response to similar incidents that have taken place since December, 2010. On this occasion, a civil judge ordered the Ministry of Security to comply with the

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60 La Nación. No date. Tras el bloqueo a las plantas impresoras de La Nación y Clarín, hubo incidentes en la distribución de los diarios. Available at: http://www.lanacion.com.ar/1196397-tras-el-bloqueo-a-las-plantas-impresoras-de-la-nacion-y-clarin-hubo-incidentes-en-la-distribucion-de-los-diarios

precautionary measures in force. However, another blockade of the two newspapers’ distribution center took place in the early morning hours of October 29, 2012. The Office of the Special Rapporteur was informed that on November 28 and 29, individuals presumed to be union members of newspapers deliverers blocked the entrance to the circulation plant of newspaper El Día in La Plata, Buenos Aires province, and prevented the newspaper from being delivered.

38. The Office of the Special Rapporteur was informed of the execution of a search warrant at the Radio Horizonte offices in San Carlos de Bariloche, Río Negro, carried out on November 23 under an order issued by Civil and Commercial Court No. 1. According to the information available, the local mayor filed a criminal complaint against Marcelo Parra, owner of the broadcaster, for damages. The order called for the confiscation of recordings of two programs hosted by Parra.

39. According to information received, on November 22, Grupo Clarín filed a criminal complaint against a number of people for the crimes of incitement to collective violence and aggravated coercion, established in articles to 12 and 149 bis of the Penal Code, to the detriment of the company. The complaint, which cites a series of alleged instances of harassment of Grupo Clarín media holdings, indicated six journalists and social communicators, as well as several public officials, as those allegedly responsible for the violations indicated. Later, Grupo Clarín announced it was dropping the suit with articles 41, 45, 48 (second paragraph) and 161 of Law 26.522 on Audiovisual Communication Services.

40. The Office of the Special Rapporteur was also informed of the decision of the First Instance National Court on Civil and Comercial Federal Law Number 1, which declared constitutional articles 41, 45, 48 (second paragraph) and 161 of Law 26.522 on Audiovisual Communication Services.


Group Clarín appealed the lower court's decision. Furthermore, article 161 had been temporarily suspended through a precautionary measure. The Office of the Special Rapporteur takes note of the high degree of polarization that surrounds the aforementioned judicial decisions and the difficulties that it may present for those who have the crucial task of administering justice. The Office of the Special Rapporteur has already highlighted important decisions that the Argentinian courts have adopted on freedom of expression and finds it of the utmost importance that there be a return to a climate in which operators of justice can evaluate the cases assigned to them in proper conditions. In this sense, the Office of the Special Rapporteur respectfully calls on the institutions involved in this matter, as well as the media, to resolve the conflicts that have emerged within the framework of the legal order in a manner respectful of the autonomy of the judicial branch.

2. Bolivia

A. Progress

41. The Office of the Special Rapporteur expresses its satisfaction at the judgment of the Plurinational Constitutional Tribunal of Bolivia dated September 20, 2012, in which it found the crime of desacato to be unconstitutional. The Constitutional Tribunal ruled that Article 162 of the Criminal Code, which establishes prison sentences of one month to two years for anyone who in any way defames [injuriare, calumniare o difamare] a public official, disproportionately affected the right to freedom of expression, created an unconstitutional situation of inequality between officials and citizens, and was not compatible with the Bolivian State’s international human rights commitments. Likewise, it emphasized that public officials should be subject to special and broad scrutiny allowing vigorous debate on matters of public relevance. The Constitutional Tribunal reiterated the binding nature of the judgments of the Inter-American Court of Human Rights and cited the case law of the Inter-American system on issues of freedom of expression, including the Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights, published by the IACHR in 1994, the Report from the Office of the Special Rapporteur for Freedom of Expression, included in the 2011 IACHR annual report, and the 2004 Judgment of the Inter-American Court in the case of Herrera Ulloa v. Costa Rica.


70 Article 161 establishes: “Compliance. The owners of licenses for the services and registries regulated by this law, and that at the date of its promulgation do not meet or fulfill the requirements set by the law, or the legal entities that, at the time of the law entering into force, own a greater amount of licenses, or have a corporate structure different than the one permitted, will have to comply with the norms set forth in this law in no more than one (1) year from the time the enforcement authority establishes transition mechanisms. After this deadline, the measures for non-compliance established – in each case – will be applied. // For the sole purpose of the adaptation measures mentioned in this article, the transfer of licenses will be allowed. In this situation, the last paragraph of article 41 of the law will be applicable”.


Special Rapporteur, this judgment constitutes an exemplary step forward on issues of freedom of expression and highlights the importance of adjusting domestic legislation to meet international standards on the subject.

B. Attacks and threats

42. The Office of the Special Rapporteur was informed of an attack that took place on October 29 against Radio Popular, in Yacuiba, in which four subjects used gasoline to set fire to the facilities. Journalist Fernando Vidal - who was hosting his program at the time of the attack - and technician Karen Arce suffered serious burns and were hospitalized. According to the information received, the Government of Bolivia condemned the attack and launched an investigation; the police have arrested three of the alleged perpetrators of the attack.73

43. The Office of the Special Rapporteur received information on an attack suffered by Radio Comunitaria de Yapacaní and Canal 8 on November 14, 2011. According to the information, a group of protesters forcibly entered the radio station and television channel, destroying furniture and stealing computers and equipment. Days prior to the attack, the radio station had been broadcasting interviews with Yapacaní residents who were critical of the mayor.74

44. According to the information received, on January 12, 2012, individuals presumed to be members of the police force beat Jorge Córdoba, a cameraman with Canal 13 Salesiano, and seized his equipment while he was covering a disturbance that had originated in a municipal dispute in Yapacaní, Santa Cruz. In that same incident, the police seized the recorder of journalist Fanor Villarroel, with Radio Omega.75 On January 30, protesters marching for indigenous and peasant organizations clashed with the police when they tried to enter Plaza Murillo in La Paz. They threw stones and sticks, injuring a number of police officers, journalist Helga Velasco, cameramen Carlos Saavedra and Alejandro Estivariz, and photographer Miguel Carrasco.76

45. On February 4, two police officers and a private security guard, who were apparently inebriated, chased and threatened Juan Carlos Ferrufino, a priest and director of Radio Esperanza in Aiquile, Cochabamba. In addition to attacking the priest, the shots they fired injured three other people. The incident was condemned by the government and at least two suspects were arrested.77 Additionally, para agravar figuras penales vigentes. Available at: http://www.eldiario.net/noticias/2012/2012_10/n121026/politica.php?n=67&-gobierno-elimino-descasco-para-agrar-figuras-penales-vigentes


according to information received, on February 16, Bolivia TV cameraman Nelson Escalante was forcibly removed from a meeting of supporters of suspended Beni governor Ernesto Suárez. Also, on April 22, a group of people took over radio broadcaster Arrairru Sache in the San Ignacio de Moxos municipality and attacked its director, Gregorio Nuni. According to information received, Nuni read a statement from a group of protesters opposing the construction of a highway. The government condemned the attack and announced an investigation into the facts.

46. The Office of the Special Rapporteur learned of attacks on journalists covering confrontations between the police, doctors and medical students in La Paz. On May 3, Red Uno technician Abraham Pareja was injured when a tear gas projectile presumed to have been launched by the police broke through the window of his vehicle. On May 16, CNN Bolivia cameraman Cristián Rosendi was wounded in the face, Fides newswire photographer Gastón Brito was wounded in the leg, and Unitel network journalist Carolina Ulloa passed out from tear gas inhalation.

47. According to information received, Página Siete newspaper editor Marcelo Tedesqui received telephone threats against his family during the month of May. The threats began after the publication of a series of articles on supposedly suspect income received by dozens of cadets of the National Police Academy.

48. As reported by a variety of organizations, a number of journalists were attacked during protests held by the police toward the end of June of 2012. For example, on June 22 and 23, police officers participating in protests prevented journalists with Bolivia TV from doing their jobs. On June 25, Radio Patria Nueva journalist Helen San Román was beaten in La Paz, while PAT network journalist Irene Tórrez was beaten in Oruro.

49. The Office of the Special Rapporteur received information on a series of attacks against community radio broadcasters in Bolivia. On June 14, explosive devices were set off at the facilities of broadcasters Radio Vanguardia and Radio Cumbre in the Colquiri area in the context of a conflict...
between miner groups. On June 26, an explosion damaged the broadcasting antenna of community radio station Radio Emisoras Bolivia in Oruro, a station that broadcasts programming that is often critical regarding the needs of the peasant population. The broadcaster was put temporarily out of service. Additionally, on August 26, broadcaster FM Comunitaria in Buenavista, Santa Cruz, was taken over by a group of people who allegedly beat radio broadcaster Hugo Rojas and stole communications equipment.

50. The Office of the Special Rapporteur was informed that Fides TV cameraman Alejandro Estivariz was arrested on August 14 while covering a protest by La Paz custodians. According to the information, Estivariz was held for two hours in the Family Reconciliation Unit for allegedly having filmed police officers. Before allowing him to leave, a police colonel warned him that since “there had been violence between the parties” the incident “would remain on [Estivariz]’s criminal record.”

51. Journalist Jimmy Arias and cameraman Johnny Callapa, with the official State channel Bolivia TV, were held on August 18 while providing news coverage in the Isiboro Sécure National Park Indigenous Territory (TIPNIS in its Spanish acronym). According to the information received, a group of individuals opposed to a popular consultation on the construction of a highway prevented the communicators from boarding an airplane that would take them back to the city. The group threatened them and held them until other people helped them escape. Additionally, on October 9, a news team from Cadena A reporting on a military operation in Challapata, in the Oruro department, was harassed by law enforcement personnel who temporarily confiscated the material they had recorded.

52. According to information received, on October 11, a bullet struck the house of journalist Humberto Vacaflor Ganam, in Tarija. Vacaflor alleged that it was the second time in two years that unknown individuals had fired on his home. On October 13, Wilson García Mérida, the editor and owner of El Sol de Pando, and Silvia Antelo, the manager of the publication, sought refuge for a number of days

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who stated their intention to arrest him in exercise of public authority. The Office of the Special Rapporteur was also informed of a violent attack on Ghilka Sanabria, editor of El Diario, which took place on November 5. In the attack, an individual slammed her head against a wall as she was leaving her office.

53. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Subsequent liability

54. On March 4, the Third Judgment Court of the Judicial District of La Paz convicted journalist Rogelio Vicente Peláez Justiniano and sentenced him to two years and six months in prison, on finding him guilty on charges of defamation [difamación, calumnia], and propagation of insults to the detriment of Waldo Molina Gutiérrez, while acquitting him of one of the defamation charges [injuria]. The journalist was given a suspended sentence. The case was based on an article published in April of 2010 in monthly magazine Larga Vista, directed by Peláez Justiniano, calling into question the size of the fees received by Mr. Molina as attorney for the National Committee for the Defense of Contributions to the Public Employee Retirement Fund. At the same time, the accused had opted for a trial in the regular court system and not under the Press Law.

55. The Office of the Special Rapporteur learned of a criminal complaint against two newspapers and a news agency for the crime of Circulation and Incitement to Racism or Discrimination, defined in Article 23 of the Act against Racism and All Forms of Discrimination. According to the information, the Ministry of the Presidency presented a complaint toward the end of August based on a report from Agencia de Noticias Fides (ANF) and newspapers Página Siete and El Diario that, according to the authorities, distorted and decontextualized a statement from the President in which he commented on poverty in the rural areas of the Altiplano and Oriente regions. According to the Ministry of Communications, during a speech given in Tiahuanacu on the morning of August 15, the president said, “we can only be this poor or not have food due to a lack of willingness, while in the Altiplano it is different, if there’s a frost, if there’s no rain, if there’s hail, there’s no food, that’s the truth. But in the Oriente, no, we can only go hungry out of laziness, but there are some programs that allow us to improve our economy, what better guarantee.” The President’s statements caused Oriente authorities to react with annoyance. In the evening on that day, the ANF distributed a complementary piece to its subscribers with the headline “Evo says that if the east is hungry, it’s because of laziness.” On the following day, Página Siete’s headline read, “Evo accuses easterners of laziness,” and El Diario declared, “Morales says the east is lazy and criticizes him because they are discriminatory.” The Government called these three

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publications “twisted, distorted and out of context” and presented a complaint of violation of the Law against Racism and All Forms of Discrimination.94

56. According to information received, Senator Roger Pinto has been in the Brazilian Embassy in La Paz since May 28, 2012, because that country has granted him political asylum. Pinto is supposedly facing, among other things, multiple complaints of desacato for statements made about public officials.95

57. Principle 11 of the IACHR’s Declaration of Principles establishes that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” Additionally, Principle 10 establishes that, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

D. Stigmatizing statements

58. The Office of the Special Rapporteur learned of statements made by the Mayor of Santa Cruz de la Sierra, Percy Fernández, against newspaper El Deber, during an official ceremony on September 1. According to public allegations from organizations that defend freedom of expression, the mayor referred to the newspaper’s alleged attempts to have him removed from office and indicated that “we will knock it down one day […] I don’t know if they’ll go straight six feet under the ground or if they’ll just go home, but something is going to happen to them, no?, and don’t cry about this, it’s not a threat, just conversation (sic).”96

59. Additionally, according to information received, during his participation in the meeting of the Latin American News Agencies Union on July 19, the Vice president of Bolivia stated that some media outlets invent “conflicts” and have the attitudes of “coup plotter.”97
E. Other situations

60. In February, Canal 21 director Mauricio Noya and journalist Edward Aima were called to testify before the Office of the Public Prosecutor on Controlled Substances on a report they did on narcotics production in the Satja Valley. Chimoré Public Prosecutor Marco Antonio Gálvez suggested that he was investigating the journalists’ allege failure to file criminal complaints over the illegal acts that they describe in their reporting. The journalists refused to reveal information regarding their sources citing the Press Law, which protects the confidentiality of journalistic sources. Later, the Office of the Public Prosecutor announced that the journalists were not the subject of an investigation or judicial proceeding.98

61. On November 20, television Canal 33: Somos Bolívar Televisión (STV) in Cochabamba was raided by officials with the Transportation and Telecommunications Authority [Autoridad de Transporte y Telecomunicaciones] (ATT in its Spanish acronym) and the National Police, pursuant to a court order issued in connection with alleged improper use of its part of the radiofrequency for purposes other than those provided for in its concession.99 Authorities confiscated broadcasting equipment under a court order issued in the context of a disciplinary proceeding launched against the channel. The channel’s journalists have accused authorities of excessive use of force and indicated that the incident could be related with their critical coverage of certain current events issues.100

3. Brazil

A. Progress

62. On July 10, a court in the state of Espírito Santo convicted former military police officer Cezar Narciso da Silva of the murder of columnist Maria Nilce dos Santos Magalhães and sentenced him to 19 years in prison. The trial of another former police officer accused of participating in the murder would take place in December, 2012. According to the information available, the motive for the murder involved reports on drug trafficking that the journalist often made in her column. Narciso da Silva appealed the judgment.101

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98 Últimas Noticias Bolivia. March 1, 2012. Fiscalía desiste de enjuiciar a dos periodistas por omisión de denuncia. Available at: http://ultimasnoticiasbolivia.com/2012/03/01/fiscalia-desiste-de-enjuiciar-a-dos-periodistas-por-omision-de-denuncia/


63. The Office of the Special Rapporteur learned of the arrest and prosecution of a number of individuals suspected of having murdered journalists in 2011.\textsuperscript{102} According to the information received, in February authorities arrested Dailton Gomes Brasil and Josimar Soares da Silva, suspects in the April 9, 2011, murder of journalist Luciano Leitão Pedrosa. Authorities are investigating whether the crime was motivated by the constant accusations made by Pedrosa of actions of criminal gangs in the region.\textsuperscript{103} On October 15, the mayor of Serra do Mel appeared before authorities, in response to a court order of preventive detention. The mayor is a suspect in the investigation into the June 15, 2011 murder of journalist Ednaldo Figueira.\textsuperscript{104} Additionally, according to information received, on June 25 an 18-year-old man was arrested on suspicion of murdering journalist Auro Ida on July 21, 2011.\textsuperscript{105}

64. According to information received, on February 11, the Sixth Special Civil Court of Brasília ruled against a claim by a legislative employee to collect damages from the digital newspaper Congresso em Foco after a series of articles dealing with the salaries paid to legislative branch employees. The sources indicate that Judge Ruitemberg Nunes Pereira concluded that “the simple fact of revealing that a certain public servant receives a certain amount of remuneration is not grounds for awarding damages” and that the public interest of such information is unmistakable. For the judge, it is evident that freedom of expression does not mean only the publication of “favorable,” “inoffensive” or “indifferent” information but also includes expression that causes “discomfort,” “concern” or “trouble.” According to the judge, “the magistrate must take into account that every conviction of a media outlet, in whatever form it may take or tool it may use, is inhibiting the future exercise of freedom of expression and thereby reducing the possibility of moving forward in our education about democracy.”\textsuperscript{106}

65. According to information received, a first instance civil judge in Porto Alegre rejected a company's request that information about the company be removed from the digital newspaper AntiCartel.com. The information indicates that based on official and court documents, AntiCartel.com revealed a number of irregular company operations. The judge concluded that the articles in question


were “protected by the exercise of the right to information and opinion” and that the request to have them removed could be understood as “censorship and violation of the fundamental right to free expression.”

66. On July 25, a regional federal court acquitted José Eduardo Rocha Santos, owner of a community radio station in the Ilha das Flores area, Sergipe state, who had been convicted by a lower court and sentenced to two years and six months in prison for operating a radio broadcaster without the authorization of the National Telecommunications Agency (Anatel). According to the information, the Regional Federal Court of the 5th Region found that operating non-profit, low-power, and limited-coverage community radio stations without a permit was not a crime but rather an administrative infraction. The court and the Office of the Public Prosecutor also recognized that the broadcaster was not operating secretly and played an important social role in its community.

67. The São Paulo Tribunal of Justice ruled on August 8 that the press has the right to reveal information of any type that is leaked by State agents. It found that legal action against the press for this is not admissible, and that respect for confidentiality refers only to the judicial or police authorities responsible for keeping the material secret. The ruling came in response to a civil suit against the TV Globo network, which had been sued for releasing the contents of a telephone call that had been recorded by the police. The case linked the allegedly injured party to individuals involved in criminal activity.

68. On August 7, the Third Chamber of Private Law of the São Paulo Tribunal of Justice ruled that the remedy requesting damages from network TV Globo for having released a 2001 report on the alleged irregularities in the sale of property under judicial receivership was inadmissible. The tribunal ruled that “the journalist’s text does not have any defamatory [injuriosa] connotation that would require indemnity for damages, as no abuse of the right/obligation to inform has been proven.”

69. According to the information received, the Working Group on the Human Rights of Media Workers in Brazil was created on October 18, 2012, following the approval of a resolution by the Human Rights Secretariat of the Office of the President of the Republic. The group is comprised by state authorities, members of the Office of the Public Prosecutor, and representatives of civil society. Its duties include examining complaints of violence against media workers in the performance of their work; proposing measures to help shape public policies and create a system for monitoring complaints of human rights violations against media workers; and proposing guidelines for the safety of media workers in situations where they are at risk because of the practice of their profession.

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70. According to the information received, the National Justice Council (CNJ) created the “Judiciary's National Forum on Freedom of the Press” on November 13, 2012. The Forum’s duties include producing statistical data relating to judicial actions concerning freedom of the press, as well as studying the relevant court decisions of democratic countries. One of the purposes of the Forum is to facilitate a better understanding of the legal problems that arise from the exercise of freedom of the press. The resolution also provides that the Forum must act in conjunction with judicial training schools and institutions that provide specialized training to judges seeking to deepen their studies in the area. The Forum is composed of members of press associations, representatives of the National Justice Council, and judges, among others.\(^{112}\)

B. Murders

71. The Office of the Special Rapporteur was informed of the murder of journalist Mario Randolfo Marques Lopes and his partner, Maria Aparecida Guimarães. The murders took place in the early morning hours of February 9 in Barra do Piraí, Rio de Janeiro state. According to the information received, on the night of February 8, at least three unidentified individuals kidnapped the journalist and his partner at their home. Their bodies were found in the street the following morning in the Barra do Piraí neighborhood, with gunshot wounds. Mario Randolfo Marques Lopes was editor-in-chief of electronic newspaper \textit{Vassouras na Net}, in the Vassouras area, where he was often strongly critical of and issued allegations against local public officials. Marques Lopes was first attacked in July 2011, when he was shot several times.\(^{113}\)

72. On February 12, journalist Paulo Roberto Cardoso Rodrigues was murdered in Ponta Porã, Mato Grosso do Sul, on the border with Paraguay. According to the information received, on the night of February 12, two men on a motorcycle fired at the vehicle driven by Cardoso Rodrigues, known as Paulo Rocaro, seriously injuring the communicator. The journalist survived and was taken to a hospital, where he died hours later. Cardoso Rodrigues had a long media career. He was the editor-in-chief of \textit{Jornal da Praça} and founder of news website \textit{Mercosul News}. The journalist was critical of local authorities. Preliminary police investigations found it very likely that the crime was directly related with investigations carried out by the journalist.\(^{114}\)

73. The Office of the Special Rapporteur was informed of the April 23 murder of Brazilian journalist and political blogger Décio Sá. The murder took place in the city of São Luís, capital of Maranhão state. According to the information provided, Sá was in a restaurant when a gunman entered and shot him several times in the back. Aluísio Mendes, Maranhão’s public security minister, stated that the crime was a contract killing whose purpose was simply to execute the journalist. The minister ordered the immediate formation of a special task force to investigate the attack and identify those responsible, and promised that all the investigations connected to the case would be carried out to prevent impunity. Sá worked as a journalist covering politics for newspaper \textit{O Estado do Maranhão} and authored his own


blog called *Blog do Décio*, through which he issued allegations of corruption. The blog had become one of the most read in the region.\(^{115}\) On June 13, police authorities in Maranhão state presented six suspects to the press who had been arrested as alleged perpetrators and masterminds of the crime. A Military Police captain was also arrested. Certain things published by the journalist on his blog were said to have been the motive behind the crime.\(^{116}\)

74. Sports journalist Valério Luiz de Oliveira was murdered on July 5 in Goiania, capital of Goiás state, in Brazil. According to the information received, a motorcyclist shot the communicator several times as he was leaving the broadcaster where he worked, Rádio Jornal 820. The information indicates that Valério Luiz was considered to be a critical voice in sports journalism in his region. Because of some of his comments, he was banned from entering the facilities of a Goiás soccer team and had recently received death threats. Luiz also worked at the channel *PUC TV*. Goiás police authorities immediately began an investigation.\(^{115}\)

75. The Office of the Special Rapporteur was also informed of the murder of Eduardo Carvalho, the owner and editor of electronic newspaper *UH News*. The murder took place on November 21 in the city of Campo Grande, the capital of Mato Grosso do Sul. According to the information received, an unidentified individual shot Carvalho outside his home in Campo Grande. According to the information, the journalist had received serious threats over articles he had published accusing police officers and local Mato Grosso do Sul officials of wrongdoing.\(^{115}\)

76. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Attacks on and threats against journalists and media outlets

77. According to information received, on December 30, 2011, individuals presumed to be private security guards intimidated reporters of the newspaper *Diário do Litoral* after it published a report on abuses committed by a guard service at luxury condominiums. According to reports, a condominium

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security team stopped the vehicle in which the reporters were traveling, asked them for explanations about the report and requested the whereabouts of the author. 119

78. The Office of the Special Rapporteur was informed of a series of attacks on media facilities. According to information received, in the early morning hours of February 4, two men on a motorcycle fired three times at the offices of TV Oeste, a broadcaster affiliated with the TV Bahia network, in Barreiras, Bahia state. The attack, which took place in the context of a Military Police strike, did not result in any injuries and damaged the facade and main door of the building. 120 The Office of the Special Rapporteur received information on a February 8 fire that destroyed the equipment of community radio station Ibicoara FM, in Ibicoara, Bahia. According to the information received, in the early morning hours, unidentified individuals broke into the station, used flammable liquid and set fire to the equipment. Emerson Silva Bispo, the radio station’s director, said that in the preceding month, the station had been broadcasting criticisms of local authorities. 121 On that same day, another fire partially destroyed the building out of which the newspaper Folha do Boqueirão, en Curitiba, Paraná state, operates. The newspaper is owned by councilman Francisco Garcez, who presides over the Municipal Chamber’s Council of Ethics. According to the information received, prior to the fire, the newspaper’s director had received a number of threats. 122 Additionally, on September 13, an explosive device destroyed the facilities of Rádio Farol, located in União dos Palmares, Alagoas state. The station belonged to federal deputy João Caldas and broadcast programming that was critical of the local mayor. 123

79. According to the Associação Brasileira de Jornalismo Investigativo (Abrají), on July 23, a senior official with the city of Redenção, Pará state, told a journalist and photographer with the newspaper O Globo that they could turn up dead; the journalists were researching accusations of corruption in the city. 124 Also during the month of July, André Caramante, a reporter with newspaper Folha de São Paulo, was threatened on a Facebook page after publishing a report criticizing the violent speech of a former Military Police chief and candidate for city council. 125 On August 18, security guards with the Bacabal municipality, in Maranhão, attacked Romário Alves, a cameraman with broadcaster TV Difusora, while he was recording the inauguration of a public plaza. According to the information, the cameraman refused to


121 Paraná Online. February 8, 2012. Incêndio causa destruição em sede de jornal. Available at: http://www.paranaline.com.br/editoria/cidades/news/591788/?noticia=IN%C3%AANDO+CAUSA+DESTRUI%C3%AAO+EM+SEDE+DE+JORNAL


123 DH investiga ameaça a jornalistas do “Globo”. Available at: http://www.knightcenter.utexas.edu/blog/00-8965-possible-arson-destructs-newspaper-offices-brazilian-councilman

124 DH investiga ameaça a jornalistas do “Globo”. Available at: http://www.knightcenter.utexas.edu/blog/00-8965-possible-arson-destructs-newspaper-offices-brazilian-councilman

leave the public place. In response to this, individuals presumed to be local authorities struck him and broke his camera. According to information received, on August 30, a TV Aratu television channel vehicle was fired upon in the neighborhood of Pirajá in Salvador, State of Bahia. On September 1, Monize Taniguti, the director of weekly publication O Jornal de Guaíra, São Paulo, was beaten while transporting hundreds of copies of her publication in her vehicle for distribution. The attackers stole the newspapers and threatened her. Also, the Office of the Special Rapporteur was informed of the death threats against André Caramante - a journalist who is an expert in security issues - and his family. The threats, received in the month of September, forced him to leave the country. They are assumed to be related with a news item that he published criticizing a former police official and deputy-elect in the city of São Paulo.

80. The Office of the Special Rapporteur was informed of a number of attacks and alleged attempts to censor communicators that took place in the context of the October 7 municipal elections. According to the information, on September 13, journalist Marcelo Rocha and photographer Emmanuel Pinheiro, with the magazine Época, were threatened by teamsters in the city of Betim, Minas Gerais, while they were reporting on allegations of payments received by the teamsters from a mayoral candidate. They were forced to erase the images they had recorded. On September 16, Wal Alencar, a reporter with television channel Sistema Monólitos, was beaten by supporters of a mayoral candidate in the Quixadá municipality while he was covering a political event. Luis Schwelm, a journalist with Record News, was attacked on September 17 while he was covering a rally of a mayoral candidate in Estreito, Maranhão state. He later received threats from the alleged attackers. Additionally, after the results of the October 7 elections were published, individuals presumed to be associated with the mayor of Aquidauana, Mato Grosso do Sul attacked the home of journalist Armando de Amorim Anache with an


explosive device. The journalist reported on issues involving corruption, and had been attacked and threatened with death on previous occasions.  

81. According to the information received, journalist Vânia Cardoso with TV Record Xinguara, filed a criminal complaint with police over an alleged plan to murder her. The plan supposedly arose after a man about whom Cardoso had reported in 2011 was arrested. The Office of the Special Rapporteur was also informed that in the night hours of November 29, the house of Antônio Fabiano Portilho Coene, the editor of news website Portal i9, was attacked with firearms and a Molotov cocktail. Portilho Coene had reported on allegations of political corruption that implicated authorities on the border between Brazil, Bolivia and Paraguay.  

82. The Office of the Special Rapporteur expresses special concern over the situation of journalist Mauri König, who had to leave the city with his family following the grave threats received against him, after the publication of a series of investigative reports on alleged acts of police corruption. According to the information received, on December 17, 2012, multiple phone calls were made to the offices of the newspaper Gazeta do Povo, of Curitiba warning the journalist that he was at risk. In at least one of the calls, the caller identified himself as a police agent, and warned König that alleged members of the police had been planning to attack him. According to the information available, the journalist had been receiving threats since May, 2012, when the mentioned series of reports on alleged acts of corruption were first published.  

83. As already stated, Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”  

D. Subsequent liability  

84. The Office of the Special Rapporteur received information on the February 2012 closure of newspaper JÁ as a result of a 2003 civil indemnity awarded for nonpecuniary damages. JÁ is a monthly newspaper published in Porto Alegre, Rio Grande do Sul, with a 26-year history and circulation of 5,000 copies. According to the information received, the case began with an article in May of 2001 alleging misuse of public funds by a state company in which the family of a governor had participated. Elmar Bones da Costa, the author of the report and founding director of JÁ, won two journalism awards in Brazil for the investigation. The family named in the report filed a criminal complaint against the journalist and a civil suit against JÁ. In 2002, the journalist was acquitted of defamation charges [calúnia e difamação] in first and second instance criminal courts. In the judgment, the judges noted the absence of...
criminal intent in the publication and the fact that what was at issue was a matter of public interest. In the civil proceedings, the newspaper was convicted on appeal. The ruling, however, did not reference the acquittal in the criminal proceedings, nor did it apply the actual malice criteria to establish the newspaper’s liability. In 2005, the courts ordered the confiscation of the company’s property. In 2009, when the payment JÁ was ordered to make amounted to US $32,000, the court ordered 20% of the newspaper’s gross revenue garnished, and in 2010 the personal accounts of Bones and his partner, journalist Kenny Braga, were frozen. In 2009, the accusers offered the newspaper a deal, which was rejected by the journalists. The deal would have meant paying the indemnity in 100 monthly payments, publishing a note about the plaintiffs, and withdrawing from circulation the edition of the newspaper recounting the story of the court case. In 2012, due to accumulated debts and financial insolvency, Elmar Bones decided to close the newspaper.  

85. In October, a judge filed a suit against blogger Leonardo Sakamoto seeking moral damages based on an article in which Sakamoto criticized one of the judge’s rulings for allegedly having violated the rights of workers at an agricultural enterprise. The court purportedly dismissed a request for an injunction asking for the aforementioned blog post to be removed and to prohibit Sakamoto’s articles from mentioning the judge.  

86. Principle 10 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”  

87. Regarding the possible imposition of civil liability, the Inter-American Court has established that civil sanctions must be strictly proportionate in cases involving freedom of expression, so that they do not have an inhibiting effect over the exercise of this freedom, since, “the fear of a civil penalty, considering the claim […] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official”.  

E. Legal reforms  

88. According to information received, on August 7, the Senate passed in second debate a proposal to amend the Constitution that would make the possession of a journalism degree issued by an
official institution of education necessary for practicing journalism. According to the information, the bill is based on a constitutional provision according to which all professions must be regulated by the Legislative Branch. The change must be passed by the Chamber of Deputies. The Office of the Special Rapporteur observes that in a ruling dated June 17, 2009, the Supreme Federal Tribunal struck down the requirement to hold a diploma to exercise journalism.

F. Internet and freedom of expression

89. In 2012, the Office of the Special Rapporteur followed with interest the debates in Brazil over Draft Bill No. 2126/2011, also known as the “Civil Rights Framework for the Internet,” under debate in the National Congress. The project is the result of an initiative led by the Ministry of Justice of Brazil and the Center for Technology and Society of the Getulio Vargas Foundation. The project has included broad and public consultation of Brazilian society. The project establishes freedom of expression as one of the principles of Internet regulation and contains provisions related to intermediary responsibility, net neutrality and promotion of Internet access, among other things. The Office of the Special Rapporteur considers this initiative to be important, as the adoption of a regulatory framework that is clear and respectful of freedom of expression allows the exercise of this right under conditions of greater transparency, legal certainty and protection guarantees. This project is also important taking into account that during 2012, there were a number of noteworthy cases in which intermediaries that provide Internet applications were subjected to court orders, as described hereinafter.

90. According to information received, an electoral court in the state of Mato Grosso do Sul ordered videos that included comments critical of a mayoral candidate in Campo Grande to be removed from YouTube (property of Google). In response to an alleged failure to comply with the court ruling, on September 26, 2012, Fabio José Silva Coelho, director of Google Brasil, was briefly detained. The ruling of the Regional Electoral Tribunal also ordered YouTube blocked in the city of Campo Grande or in all of Mato Grosso do Sul for 24 hours.

91. The information received also indicated that a judge with the electoral courts in the state of Paraíba ordered YouTube to remove a video containing content critical of a mayoral candidate in Campina Grande. In response to an alleged failure to comply with the order, Edmundo Luiz Pinto

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Balthazar, financial director for Google Brazil, was ordered arrested on September 14. The arrest warrant was revoked the following day through the granting of an injunction.

92. The Office of the Special Rapporteur was informed that an electoral judge in Amapá ordered the newspaper O Estado de São Paulo to withdraw a news item published on the blog of journalist João Bosco Rabello for an alleged electoral law violation. The measure was challenged by the Office of the Public Prosecutor and revoked by the same judge on September 25. On September 25, the Tribunal of Justice of São Paulo ordered YouTube to remove videos containing scenes of the movie “The Innocence of the Muslims” in a ruling on a suit brought by the National Union of Islamic Entities. The order, based on the violent response to the video in other countries and the video’s offensive nature, included a 10,000 reais (about US $5,000) fine for every day compliance was delayed. Additionally, the information received indicates that an electoral court in the state of São Paulo ordered certain content to be offensive to the mayor of Ribeirão Preto to be removed from the blog of journalists Marcio Francisco (hosted on Blogspot.com, property of Google). On September 28, a judge once again ordered the arrest of Edmundo Luiz Pinto Balthazar in response to an alleged failure to comply with the court order. On the following day, the arrest warrant was suspended after an injunction was granted.

93. The Office of the Special Rapporteur recalls that in the Joint Declaration on Freedom of Expression and the Internet adopted in 2011, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, established that “[n]o one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so.”

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151 The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special
4. Canada

A. Progress

94. The Office of the Special Rapporteur learned that on January 13, the Canadian government announced that the section of the Canadian election law prohibiting the revelation of election results in a particular time zone while the polls have not closed nationwide will be repealed. According to the information received, Minister of Democratic Reform Tim Uppal announced that prior to the 2015 elections, the government would introduce legislation to repeal the 1938 law prohibiting the early broadcasting of electoral results, given that the provision makes no sense in the context of extensive use of social networks and communications technology. The law punishes violations with a fine of up to 25,000 Canadian dollars. Reform efforts began in 2007, after the Supreme Court of Canada upheld a 1,000 Canadian dollars fine against an individual who had posted election results on the Internet on the Atlantic coast before polls had closed on the Pacific coast.152

95. According to information received, on March 1, the Québec Superior Court acquitted Radio Canada and journalist Alain Gravel of charges of contempt of court and rejected a petition to make Gravel reveal his sources of information. The information indicates that the case began with a series of reports on alleged financial irregularities committed by an important Canadian company. The company sued the network and the journalist for disseminating confidential documentation and requested the identity of the source who had provided information to the journalist. The judge found that the information that had been distributed was very much in the public interest and did not find justification for requiring the journalist to reveal his source.153

96. The Office of the Special Rapporteur included information in its 2010 annual report on the excessive use of force by police authorities in response to peaceful demonstrations during the G20 Summit in Toronto in June 2010.154 The following year, this Office took note of the report from the Canadian Parliament recommending a judicial investigation be carried out in order to determine the responsibility of officials at all levels of government for the alleged civil rights violations, and also noted reports prepared by the Ontario Ombudsman and nongovernmental organizations.155 The Office of the Special Rapporteur learned that in May of 2012, the Office of the Independent Police Review Director issued its report on the incidents. The report concluded that official planning for the G20 Summit was


inadequate and incomplete, and that the Public Works Protection Act had been applied incorrectly. Additionally, it determined that the Incident Commander referred to the demonstrators as “terrorists/demonstrators,” which led to the detention of approximately 1,100 people, the majority of whom were peaceful demonstrators. Likewise, an independent citizen review ordered by the Toronto police reached similar conclusions in its report, published in June, 2012. According to information received, as a result of those investigations, the authorities decided to carry out disciplinary proceedings against at least 31 Toronto police officials for their actions in the context of demonstrations during the G20 summit.

B. Attacks on and threats against media outlets and journalists

97. The Office of the Special Rapporteur was informed of attacks on a number of journalists during the month of May at the hands of individuals presumed to be demonstrators and police officers during the student protests against tuition increases in Montréal. According to the information, journalists Philippe Bonneville, with Cogeco Nouvelles, and Félix Séguin with TVA, were attacked by demonstrators; and the police refused to recognize the credentials of Radio Canada communicators Thomas Gerbet and Bruno Maltais. Between May 22 and 24, the Canadian police arrested hundreds of demonstrators and used tear gas and sound grenades to break up the protests.

98. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Subsequent liability

99. According to the information received, a criminal complaint for defamatory libel was brought against Grant Wakefield in August, 2012 in British Columbia. The information indicates that in his Twitter account, on a website, and in an e-mail, Wakefield made reference to explicit nude photographs of a Royal Canadian Mounted Police officer who had uploaded the images on the Internet himself. Wakefield alerted the police to the existence of the photographs, sparking a disciplinary investigation against the officer. Based on the criminal complaint filed against Wakefield, the Mounties searched his residence and confiscated his computers and cellular telephones.

100. Principle 11 of the IACHR’s Declaration of Principles establishes that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” Additionally, Principle 10 establishes that, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

D. Access to information

101. The Office of the Special Rapporteur takes note of an open letter sent to Canadian authorities on February 17 by Canadian Journalists for Free Expression (CJFE) and five other journalism and scientific organizations asking the government to lift the restrictions preventing federal scientists from speaking freely with the media. According to the information, the organizations claim that federal scientists may not speak to the media without prior approval from public-relations officials. These officials purportedly deny consent routinely or cause unjustified delays in responding to requests for interviews. The organizations argue that Canadians have the right to know more about the work of the scientists whose work is funded by their taxes.162

102. According to information received, on September 28, the Information Commissioner of Canada began a public consultation process to discuss possible reforms to strengthen the Access to Information Act, originally passed in 1982.163

E. Other situations

103. On May 18, the National Assembly of Québec passed Act 78, “[a]n Act to enable students to receive instruction from the postsecondary institutions they attend,” in response to the student demonstrations. The act requires authorities to be notified of demonstrations in which more than 50 people participate at least eight hours in advance. It permits authorities to change the route and location of a demonstration, to impose fines of between 1,000 and 125,000 Canadian dollars on those who break the rules, and to punish those who instigate illegal demonstrations in educational facilities.164 Student groups have brought a constitutional challenge against Act 78. The request for a preliminary injunction to suspend the effects of the law was dismissed on June 27 by the Québec Superior Court.165

5. Chile


A. Progress

104. The Office of the Special Rapporteur learned of the lower court sentence of 541 days in prison, conditionally suspended, handed down by a military court on January 6, 2012, against a national police officer found guilty of assaulting a photographer, Víctor Salas, on May 21, 2008. According to the information available, the Second Military Court of Santiago found second corporal Ivar Barriá Álvarez guilty of the charge of unnecessary violence resulting in serious injury. Barriá Álvarez struck the photographer with a riding stick while he was covering a demonstration in Valparaíso and caused serious injury to his right eye. The victim announced his intent to appeal the judgment, considering the sanction applied to be insufficient.166

105. According to information received, the Supreme Court of Chile approved the request to extradite Ray Davis, a former American soldier who was stationed in Chile. The extradition request is part of a criminal proceeding over the murders of communicators Charles Horman and Frank Teruggi in 1973. Davis is suspected of being the mastermind behind the extrajudicial execution of the Americans days after the coup d'état took place in Chile.167

106. In April of 2012, the Justice Studies Center for the Americas (CEJA) published the seventh edition of its Index on Online Accessibility of Judicial Information [Índice de Accesibilidad a la Información Judicial en Internet] (IAcc), which analyzed the websites of the judicial branch and offices of the public prosecutor of 34 States members of the Organization of American States during the period between October and December 2011. The study identified Chile as second best country at providing access to judicial information on the Internet. According to the information received, the factors taken into account for preparing the Index included accessibility to institutional information; the publication of court judgments, institutional financial and physical resources; and tenders offered.168

107. The Office of the Special Rapporteur was informed of the January 16 request from the executive branch that the legislative branch eliminate the first subparagraph of the second article of the draft Act to Strengthen the Protection of Public Order.169 According to the information received, the

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167 Judicial Branch. Republic of Chile. October 18, 2012. Corte Suprema solicita extradición a EEUU de Ray Davis por homicidios de dos ciudadanos norteamericanos tras golpe de Estado. Available at: http://www.elmostrador.cl/noticias/pais/2012/10/18/corte-suprema-solicita-extradicion-de-ray-davis-por-homicidios-de-dos-ciudadanos-norteamericanos-tras-golpe-de-estado/


169 Article 2(1) of the bill would modify Article 83 of the Code of Criminal Procedure by adding a part f) which would establish: “f) [confirm the existence and location of photographs, video and audio recordings, and generally other types of reproduction of images, voices or sounds that may have been taken, captured or recorded and that may contribute to clarifying events that constitute or could constitute a crime and voluntarily obtain the custody of the original or copies, in keeping with Article 181”. Presidency of the Republic. January 16, 2012. Oficio a la Presidencia de la Cámara de Diputados No. 444-359. Available at: http://www.camara.cl/pley/pdfpley.aspx?prmID=16893&prmTIPO=OFICIOPLEY; Presidency of the Republic. September 27, 2011.
89. The Office of the Special Rapporteur expresses its satisfaction at the June 13 decision of the Science and Technology Commission of the Chamber of Deputies eliminating Article 36, B(a) from General Telecommunications Act No. 18.168. That subparagraph punished with prison terms the operation or use of free-to-air telecommunications or radio broadcasting services or facilities without authorization of the corresponding authority. The decision was made in the context of approval of a law creating the Superintendent of Telecommunications. According to the information received, the reform “suspends prison terms for radio broadcasting without a license; changes its classification from a public order crime [...] to a private one, leaves in place fines, and calls for confiscation of equipment only in cases of recidivism.” Additionally, hereinafter only the Superintendent of Telecommunications shall act as plaintiff. The project moved forward to be examined by the Commission on Public Works and Telecommunications, after which it will be debated in the Plenary of the Chamber of Deputies.172 Journalism organizations and civil society have asked the National Congress to reject the Act in its totality, considering it a threat to freedom of expression.173

108. The Office of the Special Rapporteur recalls that laws on radio broadcasting must meet international standards and must be enforced through the use of proportional administrative penalties, not through the use of criminal law.175 The Office of the Special Rapporteur
reiterates that “a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.”

B. Attacks and arrests

110. The Office of the Special Rapporteur was informed of a number of attacks suffered by communicators covering social protests in Santiago. According to the information, on February 24, 2012, individuals assumed to be public officials struck Félix Madariaga, a journalist with the Corporation for the Promotion and Defense of the Rights of the People (CODEPU in its Spanish acronym), while he was photographing a demonstration in support of protests in the Aysén region. On March 1, police officers arrested American reporter Jason Suder of the Santiago Times while he was documenting the detention of a number of protesters in an activity supporting the Aysén protests. Also, on March 15, police officers held Ricardo Uribe, a cameraman with Colombian channel NTN 24, while he was filming police actions against a student demonstration.

111. According to information received, a number of acts of violence have been committed against radio station Radio Santa María in Coyhaique, Aysén region, which gave broad coverage to the social protests in that region. On the night of March 20, Víctor Hugo Gómez, a cameraman with Radio Santa María, was held for several hours and assaulted by public officials. According to the information received, on March 21, in the context of the protests, the broadcaster’s website was blocked on a number of occasions. That same day, the intendant [intendenta] of Aysén and other local authorities blamed Radio Santa María, and specifically radio host Claudia Torres, for inciting disorder and violence while covering the protests and allegedly having called people to protest, instead of calling for calm.

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112. On August 28, individuals assumed to be national police officers apprehended journalist Victor Arce, with digital media outlet Factor Absoluto, and drove him around without any particular destination in police vehicles for nine hours, until they finally left him in front of the Memorial de los Degollados in the early morning hours of August 29. The apprehension took place after a day of national protests on which Arce had reported.\(^{183}\) That same day, Esteban Garay, a photographer with La Nación, was held while covering protests in downtown Santiago when he refused to leave the place of the protests.\(^{184}\)

113. The Office of the Special Rapporteur learned that the National Institute of Human Rights published a report on its activities supervising the actions of the national police [Carabineros] in the context of the student demonstrations that took place between January and August of 2012. The report identified progress in the oversight of police operations - including the placement of cameras in Carabinero vehicles - and also identified problems such as excessive use of force during arrests. According to the report, “the observations made in the context of student demonstrations during 2012 indicate that the violent actions of police affected media workers, including those working for traditional or alternative media outlets, and independent photographers.” Among other recommendations, the Institute “urges the Carabineros of Chile to begin an effective process for adjusting its action protocol and criteria to meet the human rights standards on the issues of the right to assemble, freedom of expression and freedom of association that form the right to public demonstration. The Carabineros are also urged to give training for members, especially those who are responsible for maintaining public order.” Likewise, it recommends that the Ministry of the Interior “promote the passage of laws and protocols for Carabineros that allow the effective exercise of the right to assemble and freedom of expression as set forth in the provisions established in the Constitution, under law, and in the international treaties signed and ratified by Chile.”\(^{185}\)

114. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Subsequent liability

115. The Office of the Special Rapporteur has learned of a number of criminal proceedings brought against community radio stations in Chile based on Article 36 B of the General Telecommunications Act, as which previously mentioned, punishes the use of radio broadcasting services without the corresponding license with prison, fines, and the confiscation of communication equipment.\(^{186}\)

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186 “Article 36 B: The following constitutes a crime: a. Operating or exploiting telecommunications installations or services, whether free-to-air or radio broadcasting, without having authorization from the corresponding authority, and permitting that in one’s home, residence, dwelling or vehicle, such services or installations are operated. The sentence will consist of interment of a degree ranging from minimum to medium, a fine of between five and three hundred monthly salaries and confiscation of the equipment and installations”.

["Artículo 36 B: Comete delito de acción pública: a. El que opere o explote servicios o instalaciones de telecomunicaciones de libre recepción o de radiodifusión sin autorización de la autoridad correspondiente, y el que permita que en
According to the information received, on December 2, 2011, the Guarantees Court of San Bernardo ordered equipment that had been confiscated in November of 2010 to be returned to community radio station Tentación in Paine, in the Santiago metropolitan area, and authorized the station to broadcast social and community events. Additionally, the court ordered Marcelo Núñez Fuentes, the radio station’s director, to appear before the court every six months for the next two years in the framework of a criminal proceeding against him. It also banned the station from broadcasting non-social service content. According to available information, the equipment of community radio station Vecina in Collipulli was confiscated and its director was arrested on August 28 in application of Article 36 B. Víctor Díaz, the station’s director, said that he had been trying to get a radio broadcasting concession for several years.

116. The Office of the Special Rapporteur was also informed of complaints over illegal broadcasting brought against community broadcasters Radio Lógica, in Peñalolén, Región Metropolitana, and Radio Galactika, in San Antonio in the Valparaíso region. Those complaints could lead to the application of aforementioned Article 36 B. As previously mentioned, the article in question is being reviewed by the legislative branch, which could lead to the elimination of the use of criminal law in these types of cases.

D. Other situations

117. The Office of the Special Rapporteur was informed that on April 3, the Appeals Court of Coyhaique rejected a preventive amparo appeal to prevent the owner and director of Canal 40 TV Aysén, Samuel Chong Rivera, from being forced to turn over copies of images recorded during the social protests in March. According to the information received, on March 28, individuals dressed in civilian clothing visited the home of Chong Rivera, identified themselves as detectives, and asked him to turn over the images of the protests that took place starting in February, 2012 or face arrest. The court ruling concluded that the police officers acted in compliance with an order from the Office of the Public Prosecutor, for which reason their actions were not arbitrary.

118. Principle 8 of the Declaration of Principles of the IACHR establishes that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

su domicilio, residencia, morada o medio de transporte, operen tales servicios o instalaciones. La pena será la de presidio menor en sus grados mínimo a medio, multa de cinco a trescientos unidades tributarias mensuales y comiso de los equipos e instalaciones"].


6. Colombia

119. The Office of the Special Rapporteur for Freedom of Expression received information concerning the situation of the right to freedom of expression in Colombia during 2012, on the occasion of the IACHR’s on-site visit to Colombia from December 3-7, 2012. Bearing this in mind, this chapter includes the information received about events that took place in 2012, provided by civil society and by the State of Colombia.191

A. Progress

120. The Office of the Special Rapporteur takes note of the sentence of 24 years and two months in prison handed down in February of 2012 by the Criminal Court of the Specialized Circuit of Santa Marta against paramilitary member Edgar Ariel Córdoba Trujillo for the murder of journalist Álvaro Alonso Escobar. The murder took place on December 23, 2001, in Fundación, Magdalena. According to the information received, the convict recognized his responsibility for the crimes of homicide of a protected person and criminal conspiracy in his capacity as co-perpetrator. The journalist was the director of weekly newspaper Región and held a position critical of officials and politicians who had maintained their connections with armed groups.192

121. The Office of the Special Rapporteur received information on the criminal proceedings over the kidnapping, torture and sexual abuse of journalist Jineth Bedoya that took place in 2000 while she was reporting on arms trafficking in the Model Prison of Bogotá [Cárcel Modelo de Bogotá]. On February 9, 2012, the Office of the General Public Prosecutor of the Nation announced that proceedings had been opened against three paramilitary members, something that was possible due to the confession of one of the paramilitary members in September of 2011.193 On September 20, the Office of the Public Prosecutor declared that the statute of limitations would not apply to the proceeding because the facts constituted a crime against humanity, in light of the fact that they took place in a context of systematic and widespread violence against journalists.194

122. On September 16, the trial of Ferney Tapasco González and another three individuals began before the Criminal Court of the Specialized Circuit of Pereira. They are accused of the murder of the assistant director of newspaper La Patria, José Orlando Sierra, which took place in 2002 in...
Manizales. However, the trial had to be suspended on September 19 because the participation of five of the witnesses for the prosecution considered key for the case could not be confirmed. 195

123. Likewise, the Office of the Special Rapporteur has been informed of the June 19 passage of the Transparency and Access to Public Information Act. The act developed a constitutional mandate according to which all information under control or in the custody of a public entity can only be kept confidential under constitutional or legal provisions. 196 The proposed act is currently under prior constitutional analysis by the Colombian Constitutional Court, which will determine whether it is constitutional. 197

124. In judgment T-627 of 2012, the Constitutional Court of Colombia recurred to its prior case law on the issue of access to information and freedom of expression of public servants to find that “the limits to the power-duty of senior officials to communicate with the public are (i) truth and impartiality when transmitting information, (ii) minimum factual justification and reasonableness of their opinions, and, in all cases, (iii) respect for fundamental rights, especially regarding subjects that enjoy special constitutional protection. In addition, the test establishing responsibility for transgressing these barriers is in itself strict due to a senior official’s privileged position in relation to the population at large, but even more so when the mass media is used.” 198 The judgment cites the reports of the Inter-American Commission on Human Rights and the Office of the Special Rapporteur, as well as the cases of Perozo et al. v. Venezuela and Ríos et al. v. Venezuela of the Inter-American Court. In the specific case, the Constitutional Court concluded that officials with the Office of the Inspector General of the Nation [Procuraduría General de la Nación] had issued incorrect information with regard to the content of certain orders of the Constitutional Court related with the protection of sexual and reproductive rights. The court found that the situation “violated the fundamental right of the citizenry […] to receive information or be informed in a truthful manner with regard to a matter in the public interest,” understood as a component of the sexual and reproductive rights recognized by the Constitution and the Constitutional body of law. 199

125. According to available information, on September 21, the Government of Colombia began a series of consultations with journalists affected by the armed conflict to design a strategy for collective reparations. The consultations took place in the framework of the Victims and Land Restitution Act and were to be carried out in a number of areas of the country with the participation of officials with the Center for Historic Memory and of the Unity for Full Care for and Reparation of Victims [Centro de Memoria Histórica y de la Unidad para la Atención y Reparación Integral a las Víctimas]. 200

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126. The Office of the Special Rapporteur learned of the development of the Plan for Integration and Strategic Journalist-Police Alliance by the National Police in collaboration with the Colombian Federation of Journalists [Federación Colombiana de Periodistas] (FECOLPER in its Spanish acronym). According to information received, on October 19, representatives of 20 journalism organizations met with representatives of the National Police with the purpose of “establishing an environment of tolerance and respect for roles, given the series of incidents in which journalists have been prevented by police officers from doing their jobs.” The Plan seeks to establish links between journalism organizations and the Police to provide information on and follow-up to cases involving journalist security, as well as to give training to journalists and Police officials.\(^{201}\)

### B. Murders

127. The Office of the Special Rapporteur was informed of the murder of radio journalist Argemiro Cárdenas Agudelo, which took place on March 15, 2012, in Dosquebradas, Risaralda department. According to the information received, an unidentified individual shot him in plain view. Argemiro Cárdenas had been mayor of Dosquebradas and was the founder and manager of community broadcaster Metro Radio 92.1 FM. On March 18, the police arrested Jhon Alexánder Jaramillo García, who confessed to having received 1 million pesos (about US $570) to commit the murder.\(^{202}\) On March 30, Jaramillo García was convicted by the Criminal Court of the Specialized Joint Circuit of Pereira and sentenced to 21 years, two months and 15 days in prison.\(^{203}\)

128. On November 27, journalist Guillermo Quiroz was murdered in Sincelejo, Sucre department. According to the information received, Quiroz was covering a demonstration in San Pedro, Sucre, against the company Pacific Rubiales, when alleged members of the National Police stopped his motorcycle. According to statements given by Quiroz in a television interview, police officers placed him in an official vehicle, beat him, and threw him out of the vehicle while it was in motion. After seven days in intensive care in a local hospital, the journalist died. Although some local police officials initially denied the attack, more senior authorities later reported that the officers who presumably participated in the incidents were suspended and criminal and disciplinary investigations were opened. According to the information received, prior to these incidents, Quiroz had been threatened in connection with his work as a journalist. The Office of the Special Rapporteur requested the competent authorities to find out the motives behind the death of Guillermo Quiroz, identify and punish those responsible, and ensure all due reparations for his next of kin.\(^{204}\)


129. In its remarks to the Office of the Special Rapporteur, the State of Colombia reported that a disciplinary investigation is being conducted before the Internal Disciplinary Oversight Office of Sucre regarding the death of Guillermo Quiroz, in which a member of law enforcement has been implicated. In addition, it stated that a criminal investigation into the same events is currently underway, having been filed with the Ninth Office of the Public Prosecutor, Corozal Division.\textsuperscript{205}

130. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Attacks on and threats against journalists and media outlets

131. On April 28, Roméo Langlois, an independent French journalist, was captured by the FARC in Caquetá while he was filming an anti-narcotics operation being carried out by a unit of the Army. The unit was attacked by the guerrilla group during the operation. On May 30, the FARC freed Langlois, who was received by delegates from the International Committee of the Red Cross in the San Isidro area, Caquetá.\textsuperscript{206}

132. The Office of the Special Rapporteur wishes to repeat that, as indicated in a press release dated May 31, 2012, “independent journalists who cover armed conflict do not lose their status as civilians, regardless of the risks to which they are exposed as a result of the conflict. As such, they continue to be protected by the applicable guarantees of international human rights law and international humanitarian law, particularly by the guarantees derived from the principle of distinction.”\textsuperscript{207}

133. The Office of the Special Rapporteur was informed of an attack that took place in Bogotá on Fernando Londoño Hoyos, a former official with the government of Álvaro Uribe and director of a morning program on Cadena Radial Súper. Two of his companions were killed in the attack. According to the information received, on May 15, a strong explosion went off in the vehicle in which the former minister of the interior and justice was traveling. Two people were killed and at least 41 were injured, some particularly seriously. The former minister was being protected by an elaborate security apparatus provided by the government. In the incident, his driver Ricardo Rodriguez and one of his bodyguards, Rosemberg Burbano, were killed. The President of the Republic expressed his forceful rejection of the attack, offered a reward of up to 500 million pesos (about US $280,000) for anyone providing information leading to the capture of those responsible, and formed a specialized commission to identify the true causes behind the attack.\textsuperscript{208} Between August and September, Colombian authorities captured six people allegedly involved in the attack.\textsuperscript{209}


134. On January 9, 2012, journalist Claudia Julieta Duque and her daughter, who is a minor, were newly threatened and intimidated only days after the beginning of initial investigations into officials with the Administrative Security Department [Departamento Administrativo de Seguridad] (DAS in its Spanish acronym) who face charges of psychological torture committed against the journalist.\(^{210}\) As noted in previous reports from this Office, Claudia Julieta Duque has been constantly attacked, harassed, threatened and intimidated in connection with her work as an investigative journalist.\(^{211}\) In its remarks to the Office of the Special Rapporteur, the Colombian State indicated that the journalist is a beneficiary of the Protection Program of the National Protection Unit, and that she has “heavy security” for her protection.\(^{212}\)

135. According to information received, social activist and independent journalist Bladimir Sánchez Espitia received a death threat around the time he uploaded a video to YouTube titled “The video that the Colombian government does not want us to see!” on February 20. The video shows police dispersing people gathered to demonstrate against the construction of the El Quimbo hydroelectric project on the Magdalena River. According to the information, on February 19, Sánchez received a phone call in which he was accused of being a “guerrilla,” and on February 22 he received another call in which he was told, “[t]his is what you wanted, we’re going disappear you.” In response to these warnings, the journalist decided to move away from Huila temporarily.\(^{213}\)

136. According to the information available, the director of community radio station Briceño Estéreo in Antioquia, Edilberto Agudelo, had to relocate after he received death threats in December, 2011. The threats had to do with accusations Agudelo had made about alleged links between local police officials and illegal armed groups. In April 2012, Dionisia Morales, a host on the same radio station, received death threats through telephone calls and text messages. The threat warned her that she had until the following day to leave.\(^ {214}\) Additionally, on April 9, journalist Jesús Antonio Pareja, with community

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radio station Roncesvalles, in Tolima, received a phone call from someone presumed to be a member of the FARC warning him to leave the area in three days or he would be murdered for having broadcast government public service messages.\footnote{Committee to Protect Journalists (CPJ). April 23, 2012. Three Colombian journalists flee homes in recent months. Available at: \url{http://www.cpj.org/2012/04/three-colombian-journalists-flee-their-homes-in-pa.php}; Reporters Without Borders. April 25, 2012. Three journalists forced to flee. Available at: \url{http://en.rsf.org/colombia-three-journalists-forced-to-flee-25-04-2012,42369.html}; Fundación para la Libertad de Prensa (FLIP). June 7, 2012. Periodista huye de "los Urabeños". Disponible en: \url{http://www.flickr.com/companhiamencorajosa/P/periodista_huye_de_los_urabeños/periodista_huye_de_los Urabeños.asp}.} In its remarks to the Office of the Special Rapporteur, the Colombian State reported that it had contacted Dionisia Morales to offer her protection measures. It also stated that it had opened a criminal investigation based on the threats received by Jesús Antonio Pareja.\footnote{Fundación para la Libertad de Prensa (FLIP). June 8, 2012. Periodista huye de "los Urabeños". Disponible en: \url{http://www.flickr.com/companhiamencorajosa/P/periodista_huye_de_los_urabeños/periodista_huye_de_los urabeños.asp}.}

On June 5, Carlos Lozano, director of the newspaper Voz, denounced that he had been informed an armed illegal group that called itself "Los Urabeños" had a plan to murder him.\footnote{El Colombiano. 9 of mayo de 2012. Periodista huye de "los Urabeños". Disponible en: \url{http://www.elcolombiano.com/BancoConocimiento/P/periodista_huye_de_los urabeños/periodista_huye_de_los urabeños.asp}.} Since July 17, the group had been distributing pamphlets in Tulua, Buga and Cali threatening journalists William Solano and Arlex Velazco with the Canal Une program 'Aló Buga,' which broadcasts allegations live.\footnote{Committee to Protect Journalists (CPJ). April 23, 2012. Three Colombian journalists flee homes in recent months. Available at: \url{http://www.cpj.org/2012/04/three-colombian-journalists-flee-their-homes-in-pa.php}; Telesur. June 5, 2012. Periodista colombiano denuncia plan para asesinarlo. Available at: \url{http://www.telesur.net/articulos/2012/06/05/periodista-colombiano-denuncia-plan-para-asesinarlo-7720.html}; Radio Santa Fe. June 5, 2012. Carlos Lozano dice que altos mandos militares están atizando la guerra en Colombia. Available at: \url{http://www.radiosantafe.com/2012/06/05/carlos-lozano-dice-que-altos-mandos-militares-estan-atizando-la-guerra-en-colombia/}.} Likewise, on June 5, Diro César González, a journalist and the director of the newspaper La Tarde in Barrancabermeja, received a letter with a death threat signed by the illegal armed group "Los Rastrojos." González has been receiving threats since 2006 and benefits from measures of protection granted by the Ministry of the Interior.\footnote{Committee to Protect Journalists (CPJ). July 26, 2012. Colombia guerilla group claims responsibility for kidnapping of journalist. Available at: \url{http://knightcenter.utexas.edu/blog/00-10909-colombia-guerrilla-group-claims-responsibility-kidnapping-journalist}; Knight Center for Journalism in the Americas. July 27, 2012. Amenazan a Tres Periodistas y 10 Ciudadanos más en Guadalajara de Buga. Available at: \url{http://goyes.wordpress.com/2012/07/27/amenazan-a-tres-periodistas-y-10-ciudadanos-mas-en-guadalajara-de-buga/}.} According to the information provided by the Colombian State, Carlos Lozano is a beneficiary of the Protection Program of the National Protection Unit, and has "heavy security" for his protection.\footnote{Fundación para la Libertad de Prensa (FLIP). June 8, 2012. Periodista huye de "los Urabeños". Disponible en: \url{http://www.flickr.com/companhiamencorajosa/P/periodista_huye_de_los urabeños/periodista_huye_de_los urabeños.asp}.}

According to information received by the Office of the Special Rapporteur, Juan Carlos Avella, director of the newspaper Hechos, was attacked with a knife on June 6 in Yopal, Casanare. In recent issues of Hechos, Avella printed accusations of alleged corruption among public officials and published an article mentioning connections between officials with the administration and paramilitary groups. Yopal police authorities do not rule out the attack being related with his journalism work.\footnote{Reporters Without Borders. April 23, 2012. Colombia guerrilla group claims responsibility for kidnapping of journalist. Available at: \url{http://www.flip.org.co/alert_display/0/2728.html}; El Colombiano. May 9, 2012. Periodista huye de "los Urabeños". Disponible en: \url{http://www.flickr.com/companhiamencorajosa/P/periodista_huye_de_los urabeños/periodista_huye_de_los urabeños.asp}.}

The Office of the Special Rapporteur was informed of the effects that the armed conflict has had on indigenous community radio stations Voces de Nuestra Tierra in Jambaló and Nasa Estéreo in Toribío. According to the information, on July 3, the broadcasting antenna of Voces de Nuestra Tierra Bendera was attacked with a knife on June 6 in Yopal, Casanare. In recent issues of Hechos, Avella printed accusations of alleged corruption among public officials and published an article mentioning connections between officials with the administration and paramilitary groups. Yopal police authorities do not rule out the attack being related with his journalism work.\footnote{Telesur. June 5, 2012. Periodista colombiano denuncia plan para asesinarlo. Available at: \url{http://www.telesur.net/articulos/2012/06/05/periodista-colombiano-denuncia-plan-para-asesinarlo-7720.html}; Radio Santa Fe. June 5, 2012. Carlos Lozano dice que altos mandos militares están atizando la guerra en Colombia. Available at: \url{http://www.radiosantafe.com/2012/06/05/carlos-lozano-dice-que-altos-mandos-militares-estan-atizando-la-guerra-en-colombia/}.}
was destroyed, while *Nasa Estéreo* decided to temporarily suspend its broadcasts due to its proximity to battles between the Army and the guerrillas.\(^{222}\) In its remarks, the Colombian State indicated that both community radio stations were currently operating.\(^{223}\) That same day, the guerrilla group National Liberation Army [*Ejército de Liberación Nacional*] (ELN in its Spanish acronym) distributed intimidating pamphlets in Arauca criticizing broadcasters *Caracol* and *RCN*.\(^{224}\) Additionally, on July 25, Élida Parra Alfonso, a journalist with radio station *Sarare FM Estéreo*, was kidnapped by members of the National Liberation Army [*Ejército de Liberación Nacional*] (ELN in its Spanish acronym) in Arauca. Parra Alfonso was working for the Bicentennial Oil Pipeline, a project that the group has raised questions about due to its social and environmental impact in the region. She was freed on August 13.\(^{225}\)

140. According to information received by the Office of the Special Rapporteur, journalist Ronald Avellaneda denounced that on July 11, he was beaten by persons presumed to be police agents, stating that they took his camera and his cellular phone. He was trying to report on the news of a robbery. The journalist remained in detention overnight.\(^{226}\) On July 13, Paul Bacares, a journalist with public television channel *Canal Capital*, received a threatening phone call from someone presumed to belong to a military group while he was preparing a report on the paramilitary presence in the Boyacá department.\(^{227}\) The Colombian State informed the Office of the Special Rapporteur that three investigations are being conducted into the crime of threats against Paul Bacares.\(^{228}\)

141. The Office of the Special Rapporteur was informed of a text message threat received on July 30 by Luis Fernando Montoya, a journalist and director of the newspaper *El Puente*. The newspaper has circulation in Tolima, Caldas and Cundinamarca. According to the report, the threat stated: “Journalist, quit talking shit about neighboring cities we give you 20 days to get out of here or we will take measures.”\(^{229}\) In its communication to the Office of the Special Rapporteur, the State of Colombia said


that the criminal investigation into these events is active, although no one has been named as the direct perpetrator of the acts. The State added that Montoya is a beneficiary of the National Protection Unit and of measures provided by the police. 230

142. According to information received, on August 12, a businessman who felt he had been mentioned in negative reports physically assaulted journalist Guillermo de Castro, with Revista Alerta in the city of Campoalegre. 231 On August 21, Eduar Fábregas, a journalist and news host with broadcasters Mar Caribe and Radio Alegre was threatened by unknown individuals who warned him to stop reporting on alleged irregularities in the Soledad municipality. On August 25, the journalist received a card offering condolences for his death, and on the same day he received another warning via e-mail. Sources indicate that the Soledad police provided the journalist with measures of protection because of the threats. 232

143. According to the information received, on October 12, five journalists were attacked and one was arrested during National Indignation Week [Semana Nacional de la Indignación] marches in Bogotá. 233 Additionally, on October 23, Ana María García, a photographer with El Tiempo, was assaulted by the police while covering a traffic accident in Bogotá. The Bogotá Police Chief publicly apologized and indicated that a disciplinary investigation would be launched. 234 In its communication to the Office of the Special Rapporteur, the State of Colombia indicated in relation to these events that a member of the police was found responsible for “very serious violations” and suspended for 12 months without pay. 235 In addition, on October 28, journalist Daniel Martínez with RCN Televisión was beaten by individuals presumed to be members of the National Police while he was covering a street fight in Arauca. 236

144. According to information received, journalists and media workers of radio broadcaster Guasca FM Stéreo, in Tuluá, Valle del Cauca department, were subjected to phone threats and harassment in November after reporting on the alleged improper management of municipal resources. On

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November 22, a man warned a worker with the broadcaster that “we are going to cut out the tongue of [the workers] for being nosy, gossipy and tattletales.”

145. In its communication of February 22, 2013, the Colombian State indicated that, “the National Protection Unit attached to the Ministry of Interior was created in 2012, unifying the State’s protection schemes under the responsibility of a single institution. The protection schemes for judges and prosecutors, witnesses, human rights defenders, displaced persons, journalists, trade union members, and other vulnerable populations are thus integrated into a single program. With this new entity, the National Government seeks to offer more professional protection that makes it possible to provide security to those who really need it. It bears noting that the protection program is the only one in the world.” The State indicated that the National Unit currently provides protection to 94 journalists in Colombia, in a way that is “respectful of their independence, with measures that have a unique focus to enable the full exercise of their reporting work,” and that it is “the result of the recommendations made by journalists’ organizations.” According to the State, the Unit has earmarked 15.4 billion pesos for the protection of journalists. It reports that Decree 4912 of 2011 establishes the legal framework for the protection measures available to at-risk journalists. It states that, according to the decree, the material protection measures offered include: 1) Security details, consisting of vehicles, drivers, and bodyguards; 2) Physical support resources to the security details; 3) Means of travel; 4) Temporary relocation support, which includes the allocation of a monthly sum of money to the protected individual; 5) House moving support, such as moving furniture; 6) Personal means of communication; 7) Armor-plate shielding of residences and the installation of technical security systems.

146. With respect to the investigation of crimes against freedom of expression, the State “reiterate[s] the intent of the Colombian State to establish the facts in cases involving journalists, making progress toward justice and the fight against impunity.” It reports that the National Human Rights Unit of the Office of the Prosecutor General has a special sub-unit for investigations concerning journalists, which as of January 2012 had 35 open cases, 16 cases in trial, 67 defendants, and 18 convictions.

147. In its communication of February 22, 2013, the State indicated that “the National Office of Public Prosecutors, by means of Memorandum No. 036 of August 12, 2011, had implemented strategies for the investigation of cases involving threats against members of human rights organizations, trade unionists, indigenous persons, land restitution leaders, members of NGOs, and others, as a legal methodology designed to ensure the efficiency, effectiveness, and optimization of resources, and aimed at obtaining results in criminal investigations.”

148. As already stated, Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to


social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

D. Stigmatizing statements


E. Subsequent liability

150. The Office of the Special Rapporteur was informed that journalist Luis Agustín Gonzalez was sentenced to 18 months in prison. The sentence was handed down on February 29, 2012, by the Criminal Chamber of the Superior Tribunal of the Judicial District of Cundinamarca. According to the information received, Gonzalez was convicted of the crime of defamation [injuria] and acquitted on another defamation charge [calumnia]. In addition to the prison term, Gonzalez must pay 17 minimum salaries (about US $5,000).\footnote{Criminal Chamber of the Supreme Court of the Judicial District of Cundinamarca. Judgment of February 29, 2012. Available at: \url{http://www.filp.org.co/resources/documents/9126812d768f6874e2fe791772b8d2.pdf}; IACHR. Office of the Special Rapporteur for Freedom of Expression. March 1, 2012. Press Release R24/12. Office of the Special Rapporteur expresses concern over conviction of journalist in Colombia. Available at: \url{http://www.oas.org/en/iachr/expression/showarticle.asp?artID=885&ID=1}; El Espectador. February 29, 2012. Confirman sentencia contra periodista Luis Agustín González. Available at: \url{http://www.elespectador.com/impreso/judicial/articulo-329570-confirman-sentencia-contra-periodista-luis-agustin-gonzalez}} Leonor Serrano, the former governor of Camargo, brought the criminal complaint against the media worker and director of newspaper Cundinamarca Democrática. She had alleged that an editorial published in 2008 calling into question her Senate candidacy violated her honor and good name. In September of 2011, the journalist was found guilty of both crimes by the lower court judge. On October 15, 2011, President Juan Manuel Santos expressed his opposition to the conviction.
and categorically stated that criticism of public officials should not be penalized. 245 On April 26, Gonzalez
presented a cassation remedy [recurso de casación] before the Supreme Court of Justice. 246

151. According to information received, the company Alange Energy currently property of
Pacific Rubiales filed a criminal complaint for the alleged crime of “economic panic” against Héctor Mario
Rodríguez, a well-known journalist and the editor-in-chief of Primera Página. In April 2011, Rodríguez had
published an article on the company's financial situation. According to the information received, the
aforementioned complaint is at least the fourth criminal complaint that Pacific Rubiales, or a company
associated with it, has brought against Rodríguez based on the business reporting he does as part of his job. 247
The Office of the Special Rapporteur takes note of this incident and will be monitoring how it
develops.

152. Principle 10 of the IACHR’s Declaration of Principles on Freedom of Expression,
approved in 2000, establishes that “[p]rivacy laws should not inhibit or restrict investigation and
dissemination of information of public interest. The protection of a person’s reputation should only be
guaranteed through civil sanctions in those cases in which the person offended is a public official, a public
person or a private person who has voluntarily become involved in matters of public interest. In addition,
in these cases, it must be proven that in disseminating the news, the social communicator had the
specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross
negligence in efforts to determine the truth or falsity of such news.” Also, Principle 11 of the Declaration
that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions
directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the
right to information.”

F. Other situations

153. According to information received, on October 16, the fourth public prosecutor before the
Supreme Court of Justice notified newspaper El Espectador that she had filed a complaint with authorities
so that the newspaper was investigated, which could lead to disciplinary action and criminal charges to be
brought against it, due to its publication of court documents related to an ongoing criminal proceeding.
According to the information, the public prosecutor argued that the material was covered by procedural
confidentiality. The newspaper argued that the procedural confidentiality only applies to the parties in a
criminal procedure and that the information that it published was in the public interest. 248

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248 El Espectador. October 16, 2012. La libertad de expresión prima. Available at: http://www.elle espectador.com/opinion/editorial/articulo-381570-libertad-de-expresion-prima; Knight Center for Journalism in the
Americas. October 18, 2012. Colombian newspaper claims Attorney General tried to censor it. Available at:
http://knightcenter.utexas.edu/blog/00-11801-colombian-newspaper-claims-attorney-general-tried-censor-it
154. The Office of the Special Rapporteur was informed of a debate proposed by Councilman Marco Fidel Ramírez, with the Bogotá Counsel, regarding the management of Canal Capital, a public television channel in that city. According to the information provided, the debate was proposed by Councilman Ramírez in order to inquire into the sexual orientation of the individuals who work at the channel, as well as to harshly question the opening of the media outlet to segments of the population that are traditionally marginalized or discriminated against, such as the LGBTI community. Effectively, according to information provided, the councilman submitted a questionnaire to the channel manager on October 26 asking, among other things, for the identities of the LGBTI persons on the Canal Capital payroll, the type of work contracts they had, their salaries, and the CVs of the members of the production team for ‘El Sofá,’ a program about issues related with LGBTI persons. According to the information available, during the November 7 Council session in which the questionnaire was discussed, Councilman Ramírez expressed that Canal Capital “promotes explicitly vulgar, immoral and pornographic content.” The Office of the Special Rapporteur was also informed that other members of the Council and the secretary of the mayoralty fully rejected the questionnaire and the statements of Councilman Ramírez. 249

155. The Office of the Special Rapporteur for Freedom of Expression expresses its satisfaction at the existence of inclusive programming on Canal Capital that allows for the plural and effective participation of different sectors of the population that have traditionally suffered from discriminatory practices or policies. In particular, the Office of the Special Rapporteur recognizes the notable importance of persons belonging to the LGBTI community being able to participate broadly in the media without suffering any type of discrimination or retaliation for doing so. In the same sense, the Office of the Special Rapporteur expresses its concern over the fact that information was requested of the channel regarding the private lives of its employees or contractors given that not only should the broadcaster not have that information, but also given that in no instance should personal information of that nature found in its archives for any reason ever be made public. Likewise, it is especially concerning for this Office that a public servant would request information from a public media outlet with the sole purpose of reproducing discriminatory stereotypes that lack any reasonable basis and to reinforce segregationist and antidemocratic practices and policies that affect not only the individuals directly concerned but also society as a whole. The Office of the Special Rapporteur will continue monitoring this case.

7. Costa Rica

156. The Office of the Special Rapporteur learned of the ruling of the Constitutional Chamber of the Supreme Court of Justice ordering the General Directorate for Direct Taxation to reveal the amounts owed by individuals in arrears on their tax payments. According to the information received, on September 7, the Constitutional Chamber admitted an amparo remedy presented by a citizen over the alleged violation of Article 30 of the Political Constitution, which establishes the right to access to public information, because of a refusal to provide information on the amounts owed by tax evaders. 250

157. In April of 2012, the Justice Studies Center for the Americas (CEJA) published the seventh edition of its Index on Online Accessibility of Judicial Information [Índice de Accesibilidad a la
158. On December 28, 2011, a private security guard assaulted journalist Ariel Chaves in the Zapote bullring in San José while he was covering a bullfight. Later, other employees of the same company refused to identify the guard who caused the incident. The company apologized to Diario Extra, where Chaves works.252

159. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

160. The Office of the Special Rapporteur takes note of the entry into force of the Cyber Crimes Act, which amends the Penal Code.253 Journalism organizations have raised questions about provisions of the law that increase punishments for accessing secret information, as well as for the ambiguous wording of Article 288 on espionage and State secrecy, among other provisions. They also question the fact that it makes the revelation of private information without the permission of the owner a crime, without taking into consideration the public relevance of the information made public or whether it has been acquired illegally.254 On November 8, a claim was filed in the Constitutional Chamber of the


254 “Article 288. – Espionage

The person who procures or improperly obtains secret information of a political nature or from the national police force, or involving security issues related to the defense or the international relations of the nation, or that affects the fight against drug trafficking or organized crime, will be reprimanded with four to eight years of prison.

The sentence will be five to ten years of prison when the conduct is performed by manipulating technology, by malicious computer software or by the use of information or communications technology.”

[“Será reprimido con prisión de cuatro a ocho años al que procure u obtenga indebidamente informaciones secretas políticas o de los cuerpos de policía nacionales, o de seguridad concernientes a los medios de defensa o a las relaciones exteriores de la nación, o afecte la lucha contra el narcotráfico o el crimen organizado.

La pena será de cinco a diez años de prisión cuando la conducta se realice mediante manipulación informática, programas informáticos maliciosos o por el uso de tecnologías de la información y la comunicación.”]
Supreme Court which alleged the unconstitutionality of the law. On the same day, the President of the Republic reported in a press release that she would present a bill to amend the law in order to reaffirm the right to freedom of expression and access to information, thereby addressing the concerns of a number of sectors of society at the law’s entry into force.

161. The Office of the Special Rapporteur was informed that Radio Cultural Turrialba has alleged that the council members and mayor of that municipality agreed to not renew the agreement under which the broadcaster was able to operate from a municipal building. This presumably occurred as an act of retaliation by officials for critical comments broadcast by the station. According to the information received, in December, 2011, the Municipal Council decided that the agreement between the municipality and the Costa Rican Institute of Radio Teaching [Instituto Costarricense de Enseñanza Radiofónica] (ICER in its Spanish acronym) would be terminated in 2014 if the radio station did not desist from the alleged offenses. Nevertheless, on January 9, in a meeting between municipal officials and the radio broadcaster, it was decided to revoke the decision made in December and to strengthen the agreement between the municipality and the ICER, thereby allowing the radio station to continue operating in the municipal building.

8. Cuba

162. In 2012, the situation of freedom of expression in Cuba has been similar to the situation in recent years. The IACHR has repeatedly indicated that Cuba is the only country in the America in which one can say that there is no guarantee whatsoever for the right to freedom of expression. The following paragraphs describe some of the problems that arise in Cuba in the exercise of that right.

1. Detentions, acts of aggression and threats to journalists and media outlets

163. As pointed out in the previous section, the IACHR received information on the various acts of harassment and detentions of the group “Ladies in White” [“Las Damas de Blanco”]. According to available information, on February 9, 2012, at least 15 members of the Ladies in White were prevented from leaving their homes or they would have been arrested to keep them from attending a workshop.


258 The motion not to renew the contract indicated that “we are not willing, particularly, to accept personal attacks, which cause our families to suffer, the peace of our homes is negatively affected (…) Since the Honorable City Council took on its duties for the period of 2010-2016 and the mayor took office, these organs have been the object of criticism, the majority of which is not constructive, by Radio Cultural Turrialba, in the programs ‘OPINE USTED’ and a sports program. ["nos estamos dispuestos, en especial, a no aceptar ataques personales, pues nuestras familias sufren, la paz de nuestros hogares está afectada de manera negativa (…) Desde la entrada en labores del Honorable Concejo Municipal para el periodo 2010-2016 y de la toma del cargo de la Alcaldía, estos órganos han venido siendo objeto de crítica, en su mayoría no constructiva, por parte de la emisora Radio Cultural de Turrialba, en los programas OPINE USTED y un programa deportivo"]). Colegio de Periodistas de Costa Rica. January 17, 2012. Acta 04-2012 de la Sesión Ordinaria de la Junta Directiva. Pp. 7 y 8. Available at: http://www.colper.or.cr/userfiles/file/actas/2012/04_12.doc; Radio Monumental. Amelia Rueda. January 6, 2012. Alcaldesa Turrialba: si paran ofensas convenio se extiende. Available at: http://www.ameliarueda.com/contenido/articles/3925.html

259 This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2012 annual report, assigned to the Office of the Special Rapporteur for Freedom of Expression.
organized by blogger Yoani Sánchez. One of the women who attempted to attend, Aimé Cabrales, was reportedly beaten by women and several police officers who besieged her home. On February 19, the Archbishop of Santiago de Cuba, Monsignor Dionisio García Ibáñez, reportedly helped evacuate some 14 women from the Ladies in White who had taken refuge in the Basilica of the Virgin of Charity [Nuestra Señora del Cobre] after mass, and that they declared they were going on a hunger strike in response to being under siege by pro-government groups said to be threatening them. On February 23, a sizable group of pro-government demonstrators staged an act of repudiation ["mitin de repudio"] and for several hours blocked the entry and exit of the Ladies in White in Havana when some 40 women were in a building in commemoration of the second anniversary of the death of dissident Orlando Zapata. Several persons who participated in the tribute were said to have been detained by the political police. On March 17 and 18, 2012 nearly 70 Ladies in White were reported detained on commemorating the ninth anniversary of Black Spring [Primavera Negra]. On April 18, 13 of the Ladies in White were said to have been arrested to keep them from holding their monthly meeting, held the 18th of each month. Another group of women were kept from leaving their homes to attend the meeting. According to the information available, in April nearly 97 Ladies were arrested to keep them from attending Sunday mass in different cities. On May 27, 13 Ladies were reportedly arrested to keep them from attending Sunday mass in different parts of the country. That day five Ladies in White were detained in El Condado, Santa Clara. On June 15, nearly 30 Ladies in White were detained to keep them from attending a "literary tea" and celebrating Fathers Day in the different parts of Cuba. Twenty-two of these detentions were said to have occurred in Guantánamo and Granma, Palma Soriano, and Santiago de Cuba, and eight others in Villa Clara while the persons detained were traveling to Havana. On July 18, 30 Ladies in a group were detained at their homes to keep them from attending the "literary tea." According to the information available, members of government security visited them at their homes, and threatened and warned them that if they attended that meeting they would be taken to jail for 72 hours. On September 20, 50 Ladies in White were reportedly detained while on their way to Havana to participate in activities organized to commemorate the political activists who died the day of Our Lady of Ransom [la Virgen de la Merced] and released September 22 and 23. On November 11, 44 women members of the organization were detained and beaten by police and State Security agents while attempting to attend Sunday mass. As of the writing of this report, the detentions of the Ladies in White continued to be systematic, impeding the exercise of their right to assembly and to demonstrate at the events convened by the organization.

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164. The Commission was informed of the October 4 detention of Yoani Sánchez, an independent blogger and critic of the Government of Cuba, along with her husband, journalist Reinaldo Escobar, and blogger Agustín López Canino Díaz. According to the information received, the three persons detained were on their way to cover trial regarding the death of Cuban dissident Oswaldo Payá when they were detained, presumably so they would not interfere in the trial. They were released 30 hours after being detained.\(^{269}\) The information available indicates that other journalists were detained allegedly in relation to the trial.\(^{270}\) According to the information received, Sánchez was detained once again on November 8 along with bloggers and journalists Orlando Luis Pardo, Eugenio Leal, Julio Aleaga, Angel Santiesteban, Guillermo Faríñas, and Iván Hernández Carrillo, after demonstrating against the detention of other human rights defenders across from a police station in Havana.\(^{271}\)

165. In May 2012, journalist Gerardo Younel Ávila, a photo-journalist with *Hablemos Press*, was said to have been detained on leaving his house in the municipality of Cerro. Later, he was reportedly detained again on June 23, July 14, and July 28. Journalist Enyor Díaz Allen of the same agency was reportedly warned that she would be jailed if she continued her journalism and had begun the weekly publication of a Newsletter.\(^{272}\) According to the information received, she was reportedly detained again on August 17, 19, 21, and 23. In addition, on September 1 blogger Orlando Luis Pardo was reportedly detained in Havana for nine hours when he was preparing to attend and participate as moderator in a roundtable discussion to analyze current issues in Cuba.\(^{276}\)

166. According to the information received, on July 24 journalists and activists Guillermo Faríñas and Julio Aleaga Pesant were held for at least nine hours, along with several political dissidents, on concluding the mass in Havana for deceased opposition leader Oswaldo Payá.\(^{273}\) According to information received, detentions of political dissidents due to their exercise of the freedom of expression escalated in August. According to the Comisión Cubana de Derechos Humanos, that month there were 521 politically-motivated temporary detentions, which in most cases lasted a few hours or days.\(^{274}\) Among the persons detained were dissident leader José Daniel Ferrer, arrested on charges of “public disorderly conduct” ["desórdenes públicos"] on August 23 and released three days later. After July 24, Faríñas was reportedly detained on August 17, 19, 21, and 23.\(^{275}\) In addition, on September 1 blogger Orlando Luis Pardo was reportedly detained in Havana for nine hours when he was preparing to attend and participate as moderator in a roundtable discussion to analyze current issues in Cuba.\(^{276}\)


167. According to the information received, artist Yanoski Mora was detained on September 29 purportedly for having painted reproductions of photographs of Fidel Castro in a meeting with indigenous leaders in the United States in which he was wearing feathered headdress.\textsuperscript{277} In addition, journalist and lawyer Yaremis Flores was reportedly detained on November 7 for approximately 24 hours by agents who made reference to her reports. Flores had written articles critical of the Government of Cuba. Her detention was said to have inspired demonstrations by other journalists and human rights defenders, at least 36 of whom were also reported to have been detained by the security forces.\textsuperscript{278}

168. The IACHR was informed of the threats that had been received by independent journalist Odelín Alfonso Torna, made by a former officer of the political police on February 7, 2012. According to the information received, in November, 2011 he had published an article at the website CubaNet in which he reported irregular conduct by the agent. The officer was said to have been dismissed because of the publication, and his step-father had warned that he was going to “deal machete blows to” \textit{“machetear”} the journalist. On February 9, the journalist was summoned by the political police to warn him that he should “avoid aggressive journalism.”\textsuperscript{279}

169. The Inter-American Commission recalls that principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

3. Subsequent liability

170. On November 14, journalist José Antonio Torres of the official daily newspaper Granma was reportedly sentenced to 14 years in prison for espionage, and his university degree in journalism was reportedly suspended.\textsuperscript{280} According to the information available, Torres was detained in February or March 2011 for allegedly offering to share classified information with representatives of the Government of the United States. In July 2010 and January 2011 Torres had published reports critical of alleged anomalies committed in the construction of a major aqueduct in Santiago, under the direct supervision of the vice-president of the Council of State, Commander Ramiro Valdés Menéndez. The articles were originally praised by President Raúl Castro, who admitted he “had discrepancies” with some of the journalist’s ways of approaching the matter, but he sent him an “acknowledgement” for his steadfastness (“\textit{constancia}”) in keeping track of the project.\textsuperscript{281}

171. The Commission was informed of the detention of Calixto Ramón Martínez Arias, a journalist with the agency Hablemos Press, on September 16, in the context of a criminal proceeding.


against him for *desacato*. Martínez Arias had been detained at the international airport while investigating alleged irregularities in the handling of drugs provided to Cuba by the World Health Organization. According to the information received, he was beaten and sprayed with pepper spray in the custody of the National Revolutionary Police of Santiago de Las Vegas. Martínez Arias was said to have investigated and written on the cholera and dengue outbreaks in Cuba before the Government recognized the problem.282 The Commission learned that Martínez had reportedly been transferred to a punishment cell on November 20 and that he was on a hunger strike as of late November.283 Martínez had previously been detained on May 10 in Havana while covering an activity organized by opposition groups and was later said to have been transferred against his will to the province of Camaguey.284

4. Other relevant situations

172. In February 2012 Cuban authorities were said to have denied Yoani Sánchez permission to leave Cuba to travel to Brazil. She had been invited to participate in the presentation of a documentary on freedom of the press for which she had been interviewed. Sánchez obtained a visa to enter Brazil. She noted in her Twitter account that it was the nineteenth time the Cuban State had prevented her from leaving the country.285

173. The IACHR was informed of several actions by the authorities against independent journalists before and after the visit by Pope Benedict XVI, on March 27 and 28. According to the information received, the telephones of several journalists and dissidents had been disconnected, among them journalists Aini Martín Valero, José Antonio Fornaris, Luis Cino, Jorge Olivera, Juan González Febles, Dania Virgen García, Gustavo Pardo, Eugenio Leal, Calixto Ramón Martínez, and Roberto de Jesús Guerra. Journalists Alberto Méndez Castelló and Luis Felipe Rojas were said to have been detained by the Police for several hours.286 On March 23, journalist Julio Alega Pesant was reportedly detained for several hours and taken forcibly from the city of Santiago de Cuba to Havana to keep him from covering the Pope’s visit.287

174. On May 12, bloggers Eugenio Leal and Miriam Celaya were said to have been intercepted by the Police, who kept them from participating in a public activity convened by the social network Observatorio Crítico.288 The IACHR was informed that the Cuban authorities had threatened to prevent a concert from being held that was organized by the group *Por Otra Cuba*; its purpose was to promote ratification by Cuba of the human rights treaties of the United Nations. According to the information received, the concert was held on September 28.289

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175. The first principle of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “[f]reedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.” And Principle 13 of the Declaration of Principles stipulates: “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.” The fifth principle establishes: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

9. Ecuador

A. Murders

176. The Office of the Special Rapporteur condemns the murder of photographer Byron Baldeón, which took place on July 1, 2012 in El Triunfo, a town near Guayaquil. According to the information received, two armed men on a motorcycle shot the photographer several times when he arrived at his house. Last May, practicing his profession, Baldeón had taken photographs of the scene of a robbery. The judicial investigation revealed that several policemen were involved in the robbery. Later, Baldeón was called to testify as a witness to the crime. The photographer worked with the newspaper Extra, where the pictures were published. At the time, the Office of the Special Rapporteur urged state authorities to act in a timely manner to identify the perpetrators and motive of this crime, to prosecute and punish the responsible parties, and to demand that they provide adequate reparations to the victim’s next of kin. The Office of the Special Rapporteur notes with satisfaction that on July 3, the Minister of Interior, José Serrano, announced that a team from the National Police had been specially assigned to investigate the photojournalist’s murder.

B. Legal Reforms Enacted or under Discussion

177. The Office of the Special Rapporteur views with concern some of the provisions of the Organic Law Amending the Law on Elections and Political Organizations of the Republic of Ecuador, Democracy Code [Código de la Democracia], published on February 6, 2012, which could result in disproportionate limitations of freedom of expression during electoral processes. The last paragraph of Article 21 of this law established that, during the 45 days of the election campaign “the media shall...”

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292 This provision reportedly originated with the exercise of the authority of the President of the Republic to challenge draft laws, established in Articles 137 and 138 of the Constitution of the Republic of Ecuador. National Assembly. Objections, Reports, and Vetoes. Official Letter No. T.4165-SNJ-12-14. January 4, 2012. Available at: http://documentacion.asambleanacional.gob.ec/alfresco/service/api/node/workspace/SpacesStore/55d729ed-c4c0-4cbc-9805-b3696923ca14/content?alf_ticket=TICKET_35c88e39d70f15c2d17e59aeab0d3d53d19b573; Constitution of the Republic of Ecuador. Article 138: “(...) In the event that the objection is partial, the President of the Republic shall present an alternative text,
abstain from engaging in direct or indirect propaganda, whether through reports, specials, or any other type of message, that tends to have a positive or negative effect on particular candidates, positions, options, electoral preferences, or political views.  

178. According to information received, on October 17, the Constitutional Court ruled on the unconstitutionality actions challenging the Organic Law Amending the Law on Elections and Political Organizations, and examined the constitutionality of Article 21 of the law. With respect to the ban on the media engaging in direct or indirect propaganda for or against a candidate, the Court found that the measure is not contrary to the Constitution, as its aim is “for the media not to side with any candidate or political platform,” and it enables the candidates to exercise their right to make themselves known “through the fair allocation of advertising by the National Electoral Council.” However, the Court held that “the enunciation of the forms that direct or indirect propaganda might take” could “give rise to interpretations that infringe upon the right to freedom of information.” Therefore, it eliminated the phrase “whether through reports, specials, or any other type of message” from the article’s final paragraph.

The current provision of the final paragraph of Article 21 of the law thus establishes that, during the campaign, “the media shall abstain from engaging in direct or indirect propaganda that tends to have a positive or negative effect on particular candidates, positions, options, electoral preferences, or political views.”

179. In addition, this Office of the Special Rapporteur has received information concerning the Communications Bill, which seeks to create an administrative body with jurisdiction to regulate the content of all media including the press, establish the limits to this right, establish the grounds for liability
and the applicable sanctions, and to serve as the authority for the application of such regulations. These powers would include the authority to order "corrections" in any medium, in any format, without prior judicial oversight. The Office of the Special Rapporteur, consistent with its work of advising the States on the issue, has monitored the draft law as it makes its way through the National Assembly, and has communicated its opinion to the President of the National Assembly.297

180. The information received by the Office of the Special Rapporteur also indicates that the National Assembly is currently debating other legislative proposals that would supplement the abovementioned legal framework. In October 2011, the Government introduced a Telecommunications and Postal Services Bill. This bill establishes, among other things, the authority of the government to issue a declaration of public interest, for purposes of expropriation, with respect to "assets that are the subject of a concession, assets necessary for the installation and operation of public telecommunications networks and services, to guarantee access and universal service and the uniform provision of services in rural areas or deprived urban areas." Expropriations would be carried out "in accordance with the applicable regulations."298 The bill also creates the Telecommunications Oversight and Regulatory Agency299 within the executive branch, and assigns special punitive powers to it. Those powers include the possibility of ordering the revocation of licenses from media outlets for the commission of extremely serious violations.300 The penalty of revocation entails the "termination of the respective contract and the reversion of all tangible and intangible assets that are the subject of the concession."301 In addition, the


298 National Assembly of Ecuador. October 14, 2011. Telecommunications and Postal Services Bill. Draft of Article 92. "Article 92. - Power of Expropriation.- The Governing Ministry and the Telecommunications Oversight and Regulatory Agency may issue a declaration of public interest with respect to assets that are the subject of a concession, assets necessary for the installation and operation of public telecommunications networks and services, to guarantee access and universal service and the uniform provision of services in rural areas or deprived urban areas. // Expropriations shall be carried out in accordance with the applicable regulations. Duly authorized operators that provide public telecommunications services or conduct activities that make up universal service may ask the Ministry or the Agency to issue a declaration of public interest for purposes of expropriation when there are reasons of public or social interest that justify it, in order to ensure the continual provision of service." Available for consultation at: http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/1c5c26d1-463c-4a6b-baba-988cf8df046f/Ley%20Org%20Comunicaciones%20%20Servicios%20%20Postales.pdf; Republic of Ecuador. National Telecommunications Council (CONATEL). Telecommunications and Postal Services Bill. October 14, 2011. Available for consultation at: http://conatel.gob.ec/site_conatel?option=com_content&view=article&id=1461:proyecto-de-ley-organica-de-telecomunicaciones-y-de-servicios-postales&catid=449:publicaciones-2011&Itemid=450


301 National Assembly of Ecuador. October 14, 2011. Telecommunications and Postal Services Bill. Draft of Article 129. "Article 129 – Revocation and Reversion. - The revocation of concessions shall entail the termination of the respective contract and the reversion of all tangible and intangible assets that are the subject of the concession, in accordance with this Law, the regulations hereto, and the resolutions issued by the Telecommunications Oversight and Regulatory Agencies. Reversion shall constitute a deed conveying title to all of the assets that are the subject of the concession." Available at:
Agency would have the authority to choose an appraisal firm to establish the value of those assets in the event that the medium and the Agency fail to agree on a responsible firm. However, the appraisal of the assets subject to reversion would not undergo any type of administrative or judicial review.

181. In the same month of October 2011, the Government reportedly introduced the draft Comprehensive Criminal Code to the legislature. According to reports, this bill proposes to repeal the laws known as “desacato,” which is an important step forward. Nevertheless, the law keeps offenses such as defamation against public servants and extends their application to insults made in private or abroad. The bill, which unifies the Criminal Code, the Code of Criminal Procedure, and the Code of


The content of current Articles 230, 231 and 232 of the Criminal Code currently in force are not taken up again in the draft Comprehensive Criminal Code.

302 National Assembly of Ecuador. October 14, 2011. Telecommunications and Postal Services Bill. Draft of Article 130. “Article 130.- Parameters of Reversion.- Without prejudice to what the Telecommunications Oversight and Regulatory Agency may order in its resolutions, the following parameters must be met for purposes of reversion: // 1. Reversion may occur only through the respective administrative procedure. (…) // 3. The appraisal of the assets shall be performed by a reputable, independent appraisal firm with experience in the telecommunications sector, designated by mutual agreement of the Telecommunications Oversight and Regulatory Agency and the operator within a period of five business days counted from the Agency’s issuance of the Resolution of Intervention. In the absence of an agreement, the Agency shall make a unilateral designation (…)” Available at: http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/1c5c26d1-463c-4a6b-baba-988cf8cf0f46/Lev%20Org%20Telecomunicaciones%20%20Servicios%20Postales; Republic of Ecuador. National Telecommunications Council (CONATEL). Telecommunications and Postal Services Bill. October 14, 2011. Available at: http://conatel.gob.ec/site_conatel/?option=com_content&view=article&id=1461:proyecto-de-ley-organica-de-telecomunicaciones-y-de-servicios-postales&catid=449:publicaciones-2011&Itemid=450

The content of current Articles 230, 231 and 232 of the Criminal Code currently in force are not taken up again in the draft Comprehensive Criminal Code.

305 National Assembly of Ecuador. Draft Comprehensive Criminal Code. October, 2011. “Article 121.- Defamatory accusations against an authority [Imputación calumniosa a la autoridad].- Any person who makes accusations against an authority that constitute the defamatory imputation of criminal conduct [injurias no calumniosas], the term of imprisonment shall range from six months to two years, and the fine shall range from one to ten times the general minimum monthly wage.” Available at: http://documentacion.asambleanacional.gov.ec/alfresco/d/d/workspace/SpacesStore/233c7e51-a5a7-4c0e-a848-79e6ead28a9c/Lev%20Org%20Telecomunicaciones%20%20Servicios%20Postales; Republic of Ecuador. National Telecommunications Council (CONATEL). Telecommunications and Postal Services Bill. October 15, 2012. Available at: http://www.burodeanalisis.com/2011/10/15/proyecto-de-codigo-penal-integral/

The content of current Articles 230, 231 and 232 of the Criminal Code currently in force are not taken up again in the draft Comprehensive Criminal Code.

Execution of Sentences and Social Rehabilitation in a single text, prescribes prison terms of up to 3 years for persons who make accusations against authorities that amount to defamation [injurias calumniosas o no calumniosas], prohibits the defense of truth for persons accused of defamation that does not constitute the imputation of criminal conduct [injuria no calumniosa], and imposes criminal liability against foreign authors or facilitators of “defamatory” articles that are reprinted in Ecuador, as well as against those responsible for publishing or reprinting such information abroad, among other provisions.  

182. The Office of the Special Rapporteur received information that the Attorney Code of Professional Conduct drafted by the Transitional Council of the Judiciary (CJT) was presented at the end of June. In the wake of the constitutional referendum and the plebiscite of May 7, 2011, it was suggested that the professional ethics rules of legal practice in Ecuador be redefined. With respect to this proposal, the Office of the Special Rapporteur notes the content of Articles 13 and 14 of the bill. Article 13 provides that “the attorney may not disclose, through any advertising medium, matters he is handling that are still pending before the courts and tribunals, except to correct the morals and justice violated. Upon the conclusion of the case, he may publish the filings and records of the proceedings, making his remarks in a respectful and measured manner.” In addition, Article 14 considers it “professionally unethical for an attorney to use his expertise to answer questions on the radio, television, or other media, issuing opinions on specific legal cases, regardless of whether his services are provided free of charge.”

183. The information available indicates that on October 3, the Council of Citizen Participation approved the regulations for the selection of the new Council of the Judiciary. Article 15 of the regulations establishes the requirement that, to be admissible, public challenges to the candidates nominated must not adversely affect the constitutional rights of the challenged candidate. During the approval process, the councilmembers reportedly disagreed with the article, particularly with regard to the potential rejection of challenges that adversely affect the “good name” of the challenged candidates; nevertheless, the article was adopted by a four-vote majority.

C. Subsequent liability


312 Republic of Ecuador. Council of Citizen Participation. October 3, 2012. Regulations for the Appointment of Members of the Council of the Judiciary: “Art. 15.-Evaluation of challenges. - The plenary session of the CPCCCS shall evaluate challenges within a period of three days. It shall accept the challenges it considers admissible, and shall reject those that fail to comply with the specified requirements, lack public relevance, and/or adversely affect the constitutional rights of the challenged candidate. The parties shall be notified of decisions within two days, in accordance with Article 3 of these regulations.” Available at: http://www.participacionycontrolesocial.gob.ec/c/document_library/get_file?uuid=74efd7eb-46f3-4bfa-9c34-d86c7df8f9b8&group1=10136
184. The Office of the Special Rapporteur views with concern the increased use during recent years of criminal laws that define conduct such as desacato or insults against a public servant as criminal offenses, as well as civil laws that could lead to the imposition of disproportionate penalties against individuals who have publicly expressed criticism of high-ranking government officials in Ecuador. In 2011, the Office of the Special Rapporteur learned of criminal defamation convictions against seven people who allegedly criticized public servants, in addition to other criminal cases related to the exercise of freedom of expression. Additionally, the Office of the Special Rapporteur has expressed its concern over the existence of criminal defamation laws that in 2011 empowered the authorities to arrest and prosecute citizens who expressed opposition to President Rafael Correa during his public appearances.

185. In 2012, the Office of the Special Rapporteur received information that there were several court cases against citizens based on expressions or opinions that high-ranking public officials allegedly considered offensive or defamatory.

186. On February 6, the Fifth Civil Court of Pichincha Province reportedly ordered journalists Juan Carlos Calderón Vivanco and Christian Gustavo Zurita Ron to pay US $2 million (US $1 million each) for pain and suffering. According to the information received, the case stemmed from publication of the book *El Gran Hermano* [Big Brother], in which the journalists reportedly referred to President Rafael Correa’s alleged knowledge of contracts awarded by the State to companies tied to his brother Fabrício Correa. On February 28, 2011, President Correa reportedly brought suit against the journalists, alleging that the book contains “false facts” that would tarnish his good name.

187. On February 16, the Special Criminal Division of the National Court of Justice affirmed the criminal and civil judgments against the directors of the newspaper *El Universo*, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga, and journalist Emilio Palacio, were affirmed on appeal. The defendants were sentenced to three years in prison and ordered to pay US $40 million (US $30 million to be paid by the defendants, and US $10 million by the company). On November 25, indigenous leader Mónica Chuji was sentenced to one year in prison and ordered to pay a fine of a US $100,000, for having referred to the Minister of Public Administration as a “nouveau riche.”

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313 On February 1, indigenous leader and former director of the community radio station *La Voz de Arutam*, José Acacho, was arrested on a criminal charges alleging sabotage and terrorism, because of messages that were broadcast on that station. On April 27, journalist Wálter Víte Benítez was arrested in Esmeraldas when he was convicted on appeal and sentenced to a year in prison and a $500 fine. On September 20, the convictions of the directors of the newspaper *El Universo*, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga, and journalist Emilio Palacio, were affirmed on appeal. The defendants were sentenced to three years in prison and ordered to pay US $40 million, for having referred to the Minister of Public Administration as a “nouveau riche.” IACHR. Annual Report 2011. OEA/SER.L/V/II. Doc. 69. December 30, 2011. Available at: http://www.oas.org/es/cidh/expresion/docs/informes/anuales/2012%2003%2021%20Informe%20Anual%20RELE%202011%20imprimer.pdf

314 For example, in 2011, Marcos Luis Sovenis was reportedly arrested for shouting “fascist” when President Rafael Correa was traveling through the town of Babahoyo, and the president announced his intention to sue him for desacato. German Ponce was reportedly detained for 72 hours for shouting at the presidential motorcade: “Why are they welcoming this corrupt son of a b...?” In addition, the president reportedly ordered the arrest of Irma Parra, who allegedly made an obscene gesture at the leader in Riobamba. IACHR. Annual Report 2011. OEA/SER.L/V/II. Doc. 69. December 30, 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 157-159. Available at: http://www.oas.org/es/cidh/expresion/docs/informes/anuales/2012%2003%2021%20Informe%20Anual%20RELE%202011%20imprimer.pdf


Lapentti, Carlos Pérez Barriga, and César Pérez Barriga, sentencing them to three years in prison and ordering them to pay US $40 million (US $30 million to be paid by the defendants, and US $10 million by the company). 317 The directors, and journalist Emilio Palacio, were convicted of the offense of defamation of a public authority [injuria calumniosa contra autoridad pública] for the publication of an offensive column about President Rafael Correa, and on December 27, 2011, the same court rendered the decision with respect to Palacio final and unappealable. The case was based on a column Palacio published on February 6, 2011, entitled “NO to Lies” [“NO a las mentiras”], in which he harshly questioned decisions allegedly made by President Correa during the events of September 30, 2010. The President rejected Palacio’s assertions and was of the opinion that they harmed his reputation; therefore, he filed the complaint on March 21, 2011, requesting time in prison for the author of the column and the directors of the newspaper, as well as the award of damages amounting to US$ 80 million in his favor. 318

188. On February 27, President Correa announced his decision to request the suspension of the convictions and to pardon the El Universo directors and columnist, as well as to drop the claim against Calderón and Zurita. 319 In his decision, expressed in a letter, President Correa used the expression “There is forgiveness, but there is no forgetting. We must learn from the present and from history”.

189. On May 17, the Fifth Court of Criminal Guarantees of Pichincha issued precautionary measures against four of the members of an independent investigation group [veeduría] created by the Council of Citizen Participation and Social Oversight (CPCCS), in a criminal case alleging the commission of a crime involving public instruments. The defendants were prohibited from traveling outside the country and were required to appear before the Court every two weeks 320. The independent investigation group had been created at the request of President Rafael Correa, to “monitor the transparency of the termination of contracts dealings between the Ecuadorian State and Engineer Fabricio Correa Delgado,” his brother. 321 The independent investigation group, originally comprised by 5 principals and 5 alternates,


began its work on July 4, 2009, and on February 3, 2011, it reportedly submitted its final report to the Comptroller General of the Republic.322 In that report, some of the members of the group reportedly concluded that the President had knowledge of some of his brother’s contracts with the State. President Correa called the report “false,” and on March 31, 2011 he filed a complaint with the Office of the Public Prosecutor alleging that 4 of the members of the independent investigation group had made false statements: Pablo Chambers, Gerardo Portillo, José Quispe, and Víctor Hidalgo.323 On May 15, 2012, the National Secretariat of Communications issued a broadcast on Teleamazonas to refute the assertions of Chambers and call his reputation into question.324 The four monitors reportedly sought asylum at different embassies.325 On September 13, the same Fifth Court of Criminal Guarantees of Pichincha issued an order to stand trial against the four members of the independent investigation group, for their alleged commission of the offenses described in Articles 354 and 355 of the Criminal Code (false statements and perjury).326

190. The Office of the Special Rapporteur was informed of the conviction of businessman Jaime Solórzano for the offense of criminal defamation of a public servant, handed down on August 31 by the Ninth Court of Criminal Guarantees of Pichincha. The case started with a complaint filed by the then-Secretary of Communications, National Secretary of Public Administration, and Vice President of the National Assembly, based on an affidavit in which Solórzano alleged that those public officials had committed acts of corruption. Solórzano was convicted under Article 231 of the Criminal Code and sentenced to three months in prison, the payment of a fine of US $47, and the payment of US $15,000 in damages. Solórzano reportedly filed a motion to vacate and a motion to appeal the conviction.327

191. The Office of the Special Rapporteur was informed that on September 25 a complaint alleging serious non-calamnious defamation (injurias no calumniosas graves) against the executive director of the newspaper La Nación, Yaco Marlon Martínez, was admitted by the Second Court of Criminal Guarantees of Carchi. The complaint, filed by the then-governor of the Province of Carchi, was based on the alleged harm to her honor caused by the journalist’s criticism of certain matters related to her position.328

322 Republic of Ecuador. July 1, 2009. Press Release No. 41: Conformación de la Veeduría Ciudadana: Caso Fabricio Correa. Available at: http://www.participacionyocontrolsocial.gob.ec/web/guest/boletines/-asset_publisher/b2Kh/content/conformacion-de-la-veeduria-ciudadana:-caso-fabricio-correa?redirec=85eb0f4f8f%2Fgquest%2Fboletines%3Fp_id%3D101_INSTANCE_b2Kh%26p_lifecycle%3D0%26p_state%3Dnormal%26p_mode%3Dview%26p_col_id%3Dcolumn-3%26p_col_count%3D1%26INSTANCE_b2Kh_delta%3D0%26101_INSTANCE_b2Kh_keywords%3D0%26101_INSTANCE_b2Kh_advancedSearch%3Dfalse%26101_INSTANCE_b2Kh_andOperator%3Dtrue%26cur%3D9; Hoy. February 21, 2011. Polémica por informe de veeduría. Available at: http://www.hoy.com.ec/noticias-ecuador/polemica-por-informe-de-veeduria-459884.html


192. On October 2, the Family, Women, Infancy and Juvenile Judicial Unit No. 3 of the Canton of Guayaquil imposed a fine of US $500 against El Universo for having published a photograph of the (minor) grandchildren of former President Abdalá Bucaram and their parents during a visit to President Rafael Correa at Carondelet. The publication of that photograph was reportedly authorized by the children’s parents. Upon its publication, the Ministry of Social and Economic Inclusion reportedly took steps to obtain protective measures in court against the newspaper and the parents of the minors, apparently to prevent the children’s image from being used for political purposes. Based, among other dispositions, on article 52 of the Juvenile Code329 (prohibition against using children for purposes of political propaganda), the court ordered the newspaper not to publish images of children again without taking account of their rights. It also prohibited the “reproduction of the decision by any medium,” finding that it could adversely affect the judicial protection provided for therein.330

193. According to information received, former opposition assemblyman Fernando Balda Flores was reportedly detained on October 10 to serve a two-year prison sentence for the offense of serious defamation [injuria no calumniosa grave]. The conviction was reportedly based on statements made by Balda regarding a director’s alleged irregularities in the administration of a unit attached to the Office of the President of the Republic.331

194. The Office of the Special Rapporteur was informed that on November 14, the newspaper La Hora complied with the order of 21st Civil Court of Pichincha to rectify an information published by the paper related to expenses in official publicity.332 In the last October 10th, La Hora had published an article with the headline “71 million in propaganda” [“71 millones en propaganda”] based on information from the monitoring center of the Citizen Participation Corporation [Corporación Participación Ciudadana]. Conversely, according to official sources the expenses in official publicity did not exceed 13 million. The Court, after ruling in favor of the National Undersecretary of Government in the writ [acción de protección] ordered the paper to “apologize publicly to the Ecuadorian State for the publication of information that resulted inaccurate after been challenged during the proceedings”. Additionally, the Court ordered to include “the information contained in the government memo N° PR-SSADP-2012-001513-0, of October 11, 2012, related to the expenses of the government in regards to the object of the case, so that the publication would not create in its readers the impression of being “a reply” from the government to the publications under scrutiny but a “judicial rectification” of constitutional nature.”333

195. The Office of the Special Rapporteur has been informed that government officials have advised the media of their intention to open criminal investigations against them based on criticism published by readers in the “readers’ remarks” space. The information received indicates that on September 18, in reaction to reader comments published in the online edition of the newspaper El Comercio, National Secretary of Communications Fernando Alvarado warned the newspaper that he

329 Juvenile Code. Law Digest No. 2002-100. R.O. 737 of January 3, 2003. “Art. 52. - Prohibitions related to the right to personal dignity and image. The following are prohibited: // 1. The participation of children and adolescents in programs, advertising messages, productions with pornographic content, and shows with content that is not age-appropriate; // 2. The use of children or adolescents in programs or shows involving political propaganda or religious proselytism; (...) // Even in those cases permitted by law, the image of an adolescent over fifteen years of age may not be used without his or her express authorization; nor may the image of a child or adolescent under the age of fifteen be used without the authorization of his or her legal representative, who shall consent only if it does not infringe upon the rights of the minor.” Available at: http://www.oei.es/quipu/ecuador/Cod_niñez.pdf


reserved “the right to request information on the individuals whose comments may be defamatory, offensive, or prejudicial, and which may amount to a criminal offense, in which case the courts will determine the liability of the person and, if appropriate, the recovery of financial damages.” Based on this letter, El Comercio reportedly omitted the comments option on its website. Subsequently, during episode 292 of his program Enlace Ciudadano on October 6, President Correa expressed his approval of the Minister’s letter for purposes of possibly having the newspaper provide the names of those who had made the comments considered insulting.

196. Principle 10 of the IACHR’s Declaration of Principles states that: “[p]rivate laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

197. Principle 11 of the IACHR’s Declaration of Principles states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

D. Stigmatizing statements

198. The Office of the Special Rapporteur has been informed of various statements by Ecuadorian government authorities against journalists, media outlets, and human rights defense organizations. On Saturdays, during the “Enlace Ciudadano” program—which according to the official definition is a “weekly forum for presidential communication and information, the purpose of which is to report to the constituents on the work of the government and current issues of social relevance”—there is a section in which the President of the Republic discusses matters relating to freedom of expression in Ecuador. In that forum, the President has repeatedly referred to journalists and the media with epithets including: “corrupt press,” “hit men with ink,” “[sicarios de tinta]” useless, corrupt press,”

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199. According to information received, during episode 253 of Enlace Ciudadano, on January 7, 2012, President Correa alluded to the alleged animosity of the newspaper El Comercio toward the leader of the Liberal Revolution, Eloy Alfaro, on the occasion of the 100th anniversary of his January 28, 1912 assassination. The President reportedly conjured up the involvement of a “corrupt press,” in clear allusion to El Comercio in those “fateful days” of January, 1912. The information received also indicates that starting on January 23, 2012 graffiti against private media outlets began to appear on walls around the city of Quito. The graffiti reportedly included the following: “Weapons of mass destruction: El Comercio, El Universo, Teleamazonas; “We are reborn every day by killing revolutions (signed) El Comercio, El Universo, Teleamazonas;” “We are reborn every day by killing revolutions (signed) El Universo, Teleamazonas;” “we are reborn every day by killing revolutions (signed) El Comercio, El Universo, Teleamazonas.”

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Comercio; “If you buy El Comercio, you burn me again (signed) Eloy Alfaro;” “Bonfires yesterday, defamation today, ashes tomorrow (signed) El Comercio.”

200. The Office of the Special Rapporteur learned that in Enlace Ciudadano 255, of January 21, President Correa reportedly discredited the 2011 Report on Human Rights in Ecuador by the Universidad Andina Simón Bolívar, calling it “an academic fraud.” President Correa’s criticism focused on a subsection of the human rights “balance sheet,” which indicated that in 2011 there were 204 cases of prosecution for sabotage and terrorism against individuals who had reportedly taken part in social protests. The President stated: “It is shameful for the Andina University to sponsor this type of research (...) if we are lying (...) I give the floor [to the president of Universidad Andina] to tell us, here are the 204 sabotage and terrorism cases in 2011 (...) this is an academic fraud, it’s a huge embarrassment (...) Universidad Andina’s source for its big investigation, to say that there are 204 people being prosecuted for sabotage and terrorism, is a press release from CONAIE—what an embarrassment.” President Correa reiterated similar criticism in Enlace Ciudadano 272 of May 19, in the following terms: “This is shameful. This is a compilation from a bunch of rags, without any academic rigor, bald-faced lies from opponents trying to harm the government (...) this is an academic fraud that they have not been able to explain.” On this issue, the coordinator of the report clarified that – as indicated in the respective report

201. According to the information received, in Enlace Ciudadano 271, of May 12, 2012, President Correa reportedly discredited the 2011 Report on Human Rights in Ecuador by the Universidad Andina Simón Bolívar, calling it “an academic fraud.” President Correa’s criticism focused on a subsection of the human rights “balance sheet,” which indicated that in 2011 there were 204 cases of prosecution for sabotage and terrorism against individuals who had reportedly taken part in social protests. The President stated: “It is shameful for the Andina University to sponsor this type of research (...) if we are lying (...) I give the floor [to the president of Universidad Andina] to tell us, here are the 204 sabotage and terrorism cases in 2011 (...) this is an academic fraud, it’s a huge embarrassment (...) Universidad Andina’s source for its big investigation, to say that there are 204 people being prosecuted for sabotage and terrorism, is a press release from CONAIE—what an embarrassment.” President Correa reiterated similar criticism in Enlace Ciudadano 272 of May 19, in the following terms: “This is shameful. This is a compilation from a bunch of rags, without any academic rigor, bald-faced lies from opponents trying to harm the government (...) this is an academic fraud that they have not been able to explain.” On this issue, the coordinator of the report clarified that – as indicated in the respective report
– the figure mentioned by the President did not correspond to the number of cases filed, but to the number of people that were prosecuted. The Chancellor of the University noted that the lack of available public information was an obstacle to the elaboration of the report. According to data presented in the report, 21% of the State bodies that were consulted did not respond to the information requests, while 64% of the consulted institutions presented partial information in response to the requests made by the University.

202. The Office of the Special Rapporteur was informed that on May 26, in *Enlace Ciudadano* 273, President Rafael Correa publicly discredited the newspaper *La Hora*, and called it “deceitful” and “ignorant” because of a headline in the paper related to Ecuador’s international security. In his speech, the President stated the following: “To speak of a lack of proper defense is treason. They are lying. I no longer believe anything this corrupt, useless press says. And we have to organize a citizens’ boycott against these media. We cannot—we have the support of 80% of the public—how can we collaborate with the Citizens’ Revolution? Don’t buy that corrupt media. They’re useless, worthless (…) You know that when you buy that you’re giving money to Mr. Vivanco.” President Correa then tore up a copy of the newspaper *La Hora* and urged the public not to buy from the “corrupt press” anymore.

203. According to information received, in *Enlace Ciudadano* 274 of June 2, President Correa called Miguel Rivadeneira, director of *Radio Quito*, “a liar” and “unethical.” President Correa’s epithets were apparently motivated by a remark the journalist had made concerning the outcome of the independent investigation group’s [*veeduría*] inquiry of the contracts entered into by the President’s brother, Fabricio Correa, and the State.

204. The Office of the Special Rapporteur also received information indicating that on June 16, 2012, during *Enlace Ciudadano* 276, President Rafael Correa used the epithets “sinister,” “hater,” and “bad faith” in reference to Gustavo Cortez, editor of the newspaper *El Universo*, who the President had accused of playing politics while “hiding in an inkwell,” and of being behind accusations against the honor of various public servants. While making these statements, President Correa ordered that a photograph of Cortez be shown on the screen. The President reportedly referred again to Gustavo Cortez in *Enlace Ciudadano* 278 of June 30, 2012, and stated that he would continue to publish his photo. During that same program, President Correa responded to Iván Flores, editor of the magazine *Vanguardia*, who had reportedly criticized President Correa’s behavior of displaying the photo of Cortez during *Enlace Ciudadano*. In response, President Correa displayed a cover of the magazine *Vanguardia*, on which the photograph of a public servant appeared with lettering drawn on his face, for which he called Flores

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Correa: *Informe sobre DDHH de Universidad Andina es una “compilación de pasquines”*. See video Available at: http://www.ecuadorenvivo.com/2012051991822/politica/correa-_informe_sobre_ddhh_de_universidad_andina_es_una_compilacion_de_pasquines_.html


“incoherent,” “amoral,” and “shameless.” President Correa also ordered the display of a photograph of Iván Flores.359

205. According to information received, during Enlace Ciudadano 295 of October 27, 2012, President Correa reportedly used the words “sick,” “very slow-witted,” and “semi-ignorant” in reference to journalist Gonzalo Rosero.360 The President reportedly used these expressions because of remarks contained in a report presented by the International Press Institute (IPI) about the unsafe conditions faced by journalists in Ecuador. The President reportedly stated that he did not consider it a lack of respect to call journalists liars when they lie, and he cited the statements that Gonzalo Rosero had made on his program Radio Democracia on October 24 as an example.

206. The Office of the Special Rapporteur was informed that in Enlace Ciudadano 298 of November 24, President Rafael Correa publicly disparaged the newspaper El Universo for opinions published in the paper about Pedro Delgado, head of the Central Bank. In his speech, the President stated that the newspaper’s recent publications had omitted Delgado’s statements, and therefore the newspaper “prints whatever it finds convenient.” After recounting some events related to the supposed “persecution” of Delgado, the President stated in reference to El Universo, “They don’t know what to do anymore, I mean, the evil, you see when, the lack of ethics in the media—but that is not by accident—there’s money there, there’s someone paying there.” Next, President Correa ripped up a copy of El Universo and stated: “the corrupt press is useless, comrades.”361

207. According to information received, on June 28, the National Secretariat of Communications [Secretaría Nacional de Comunicación] (SECOM, in its Spanish acronym) disparaged the National Journalists’ Union [Unión Nacional de Periodistas] (UNP, in its Spanish acronym), calling it an “opposition political actor,” following a press release from the organization expressing its concern over the growing deterioration of relations between the government and the private media.362 According to a statement released by the National Secretariat of Communications, the National Journalists’ Union “has ceased to represent authentic journalists. Its leadership does not seek to defend the interests of true journalism and freedom of expression; it has abandoned the writers. Today the UNP is an opposition


360 Office of the President of the Republic of Ecuador, Enlace Ciudadano 295. October 27, 2012. Available at Ecuador TV: http://www.ecuadortv.ec/programasecuadortv.php?c=1314 [157:35]. “Get these people some psychiatrists. Starting with the other, Gonzalito, who we all know is sick, oh please, in addition to being extremely slow-witted. This guy used to call me “my brother” on Radio Democracia—that’s what he used to call me before the 2006 elections. But since I don’t know if he’s his compadre, but he called León Roldós—who came in fourth place in 2006—his compadre, and he started calling me a spoiler candidate who could never win (...) And the worst thing is that we beat him, we thrashed him, and from then on he’s hated me to death, and he uses his microphone to vent this sick hatred, and in addition to being mediocre, he’s semi-ignorant, he’s terribly incompetent.”


political actor that works under the guidance of the owners of mercantilist media with clear corporate aims."\textsuperscript{363}

208. In its 2011 annual report, the Inter-American Commission stated that the Ecuadorean Government had reportedly put out at least two radio and television broadcasts calling into question the individuals—particularly César Ricaurte, the director of Fundamedios—who had attended the public hearing on the Situation of Freedom of Expression in Ecuador, held at IACHR headquarters on October 25, 2011. \textsuperscript{364} On November 3, 2011, the Inter-American Commission requested information from the State with regard to this matter. In its November 18 reply, the State indicated that the purpose of the presidential broadcast had been “to properly inform the Ecuadorean public of events that are not published in the privately-owned media.”\textsuperscript{365}

209. The Office of the Special Rapporteur received information relating to government challenges to the organization Fundamedios during the month of April, 2012. According to reports, in Enlace Ciudadano 268, on April 21, the President claimed that the organization had contacts with the United States Embassy in Quito.\textsuperscript{366} These allegations were reiterated in Enlace Ciudadano 269, on April 28.\textsuperscript{367} In Enlace Ciudadano 276 of June 16, a video was presented that alluded to Fundamedios as a “foundation considered to be an informant to the American Embassy, according to the Wikileaks cables.”\textsuperscript{368} Later, in the June 23 episode of the program, the President reportedly referred to Fundamedios and other NGOs as “informants of the embassies,” and reportedly claimed that they received millions of dollars from USAID to strengthen the political opposition.\textsuperscript{369} On that same episode of
210. Además, el Oficina del Especial Rapporteur learned that César Ricaurte, in his capacity as Executive Director of Fundamedios, reportedly published an “open letter” to President Correa regarding his statements about the Wikileaks cables. In that letter, Ricaurte reportedly said, among other things, that the Wikileaks cable to which President Correa was apparently referring had to be read “in an unbiased manner,” that it reflected the American Embassy’s perception of the status of freedom of the press in Ecuador based on public information from press organizations such as Fundamedios, and that the cable did not state that Fundamedios was operating as an agent of the embassy.

211. The Office of the Special Rapporteur was informed that on May 4, Ecuador’s Ministry of Foreign Affairs issued Press Release No. 23, “regarding statements of the President of the United States of America on the occasion of World Press Freedom Day.” In that press release, the Ministry “rejects the unfounded accusation of President Obama in reference to [the threats and harassment of César Ricaurte], about which he was evidently misinformed.” In addition, the Ministry refers to Fundamedios as a “known informant of the United States Embassy” and as an organization that is “part of a campaign of disparagement against the State and its institutions.”

212. According to information received, on November 29, during a radio interview, the Communications National Secretary reportedly called Colombian documentary filmmaker Santiago Villa a “paid liar” and an “assassin of the truth,” and reportedly suggested that the documentary could result in legal actions against him. Those statements apparently stemmed from the Minister’s objection to the content of a documentary made by Villa entitled Rafael Correa: Portrait of a Father of the Nation [Rafael Correa: retrato de un padre de la patria], which was to be broadcast on television in the United States.

Ecuador. Available at:
http://www.bbc.co.uk/mundo/noticias/2012/06/120620_ecuador_wikileaks_assange_correa_cables_pea.shtml


371 The original text states: “According to the Ecuadorian media advocacy and watch group, Fundamedios, instances of harassment, threats and physical attacks against journalists and other media professionals are on the rise […] Cesar Recaurte, Fundamedios director, also noted that in many cases, the attackers repeat Correa’s language of a “corrupt and mediocre media”. Wikileaks/ Cable Gate. September 2, 2009. Correa’s Steady Verbal Assault on Media Creates Hostile Climate. Available at: http://www.cablegatesearch.net/cable.php?id=09QUITO801&q=fundamedios

372 Fundamedios. April 26, 2012. Carta abierta de Fundamedios al Presidente Correa. Available at: http://www.fundamedios.org/portada/libertades/boletines/libertad-de-expresion/ultimos/item/carta-abierta-de-fundamedios-al-presidente-correa-2.html. The letter reads: “ […] Currently, his attacks [referring to President Correa] are saying that we have supposedly been a “contact” or are “informants” of the Embassy of the United States in Ecuador. He cites a Wikileaks cable in support of his assertions. Nevertheless, if the cable is reviewed in an unbiased manner, what it says is that the concerns about the state of freedom of the press, and the restrictions thereto, expressed in that cable, are based on information from press organizations such as Fundamedios or AEDEP. In our case, those concerns are not a secret and have no conspiratorial connotation. Furthermore, we have expressed such information, as well as the respective assessments, publicly and openly.” El Comercio. April 28, 2012. Fundamedios aclara cable de Wikileaks. Available at: http://www.elcomercio.com/politica/Fundamedios-aclara-cable-de-Wikileaks

373 República de Ecuador. Ministry of Foreign Affairs, Trade and Integration. No date. Press Release No. 023. Comunicado sobre las declaraciones del Presidente de los Estados Unidos, Barack Obama, con motivo del Día Mundial de la Libertad de Prensa. Available at: http://www.mnrree.gob.ec/2012/com023.asp; The letter reads: “ […] Currently, his attacks [referring to President Correa] are saying that we have supposedly been a “contact” or are “informants” of the Embassy of the United States in Ecuador. He cites a Wikileaks cable in support of his assertions. Nevertheless, if the cable is reviewed in an unbiased manner, what it says is that the concerns about the state of freedom of the press, and the restrictions thereto, expressed in that cable, are based on information from press organizations such as Fundamedios or AEDEP. In our case, those concerns are not a secret and have no conspiratorial connotation. Furthermore, we have expressed such information, as well as the respective assessments, publicly and openly.” El Comercio. April 28, 2012. Fundamedios aclara cable de Wikileaks. Available at: http://www.elcomercio.com/politica/Fundamedios-aclara-cable-de-Wikileaks

213. According to information received, on December 6, the National Journalists’ Union [Unión Nacional de Periodistas] (UNP, in its Spanish acronym) expressed its concern over the fragile state of freedom of expression in Ecuador. In a press release, the UNP’s Board of Directors spoke out about the continuation of “an aggressive policy and an orchestrated campaign to remove journalists from their jobs who refuse to remain silent in light of denunciations against the powers that be.” In that press release, the UNP also recalled the “repeated verbal violence” aimed at “denigrating the profession of journalism,” and it rejected “the pressures exerted upon journalists who cause discomfort in different spheres of power”—pressures that, in its opinion, have led several journalists to withdraw from news reporting.

214. As in its prior annual reports, the Office of the Special Rapporteur reiterates the importance of “creating a climate of respect and tolerance for all ideas and opinions.” The Office of the Special Rapporteur recalls that “diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so. In addition, the State’s duty to create the conditions for all ideas and opinions to be freely disseminated includes the obligation to properly investigate and punish those who use violence to silence journalists or the media.”

215. The Office of the Special Rapporteur additionally recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations. They must bear in mind the context in which they express themselves, in order to ensure that their expressions are not, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.”

E. Assaults and attacks on the media and journalists

216. The Office of the Special Rapporteur views with concern the increased harassment of journalists and media workers in a highly polarized social environment.
217. According to information received by the Office of the Special Rapporteur, on January 17, journalists Hubel and Alcibiades Onofre, television news correspondents for Gama and TC Televisión, were reportedly verbally attacked and threatened by unknown persons in the city of Babahoyo. According to the journalists, this event was related to the publication of a news item that romantically linked a congressman to a woman accused of being the mastermind of a triple murder.\footnote{Fundamedios. January 23, 2012. Dos corresponsales de medios incautados por el Estado son amenazados por desconocidos. Available at: \url{http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/dos-corresponsales-de-medios-incautados-por-el-estado-son-amenazados-por-desconocidos.html}; La Hora. January 24, 2012. Dos periodistas riosenses son amenazados por desconocidos. Available at: \url{http://www.lahora.com.ec/index.php/noticias/show/1101272531/1/Dos_periodistas_riosenses_son_amenazados_por_desconocidos.html}.}


Governor of Carchi, reported having received death threats directed at her and her family after taking photographs of an altercation between two journalists who were interviewing the provincial prefect. She also reportedly received protection from the authorities.386

220. According to information received, on August 16, Orlando Gómez, editor of La Hora and correspondent for the Colombian magazine Semana, was reportedly harassed and threatened. According to reports, unknown persons broke the window of Gómez’s car with a bar when he left his office. In the early morning hours, Gómez reportedly received a telephone call in which he was told, “stop making the country look bad.”387 Days earlier, Semana had published an article about freedom of expression in Ecuador.388

221. According to information received, on September 4, Antonio Medrano, a journalist for El Universo in Babahoyo, reportedly received death threats by phone.389 On September 23, journalist Alejandro Escudero of the weekly Independiente in the city of Nueva Loja was reported to have been threatened by two unknown individuals who entered his office, one of whom showed him a handgun.390 In addition, on September 25, Gonzalo Rosero, journalist and director of the program ‘Democracia’ on the EXA FM radio station, stated publicly that he had been the victim of “systematic” attacks and threats throughout the entire year, and that they had intensified during the month of September.391

222. The Office of the Special Rapporteur was informed of the decision of journalist Janet Hinostroza to leave the program ‘La Mañana de 24 Horas’ on the Telesamazonas channel as a result of serious threats. The news program had reportedly been subject to government interruptions in the past, in the form of the airing of presidential broadcasts.392 In mid-September, 2012, Hinostroza reported on alleged irregularities in a loan granted by the State-run COFIEC Bank to an Argentine businessman. After receiving telephone threats, Hinostroza decided not to present the final chapter of the report, and announced that she was leaving the program temporarily.393 According to the information available, the

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Communications National Secrety expressed his rejection of the threats against Hinostroza, and the Ministry of Interior offered protection measures to the journalist.\(^{394}\) On September 22, President Correa publicly condemned the threats and stated that the proper investigations were being conducted. He expressed his solidarity, and lamented what had happened, but without changing his opinion of the reporter, who he considered to be “a terrible journalist,” “political,” and a “political intriguer.”\(^{395}\)

223. The Office of the Special Rapporteur received information that journalist Nathaly Toledo of Teleamazonas received death threats on October 23. The threats were apparently connected to a story Toledo had worked on concerning the issue of drugs in high schools.\(^{396}\)

224. The Office of the Special Rapporteur also learned that on May 30 the email account of Edgar Llerena, director of the weekly newspaper Radimpa, in the city of Macas, had allegedly been hacked and used to send mass emails to his contacts. According to information received, the director stated at a press conference that the paper had been subject to a campaign to undermine it since October 2011.\(^{397}\) In addition, the group Anonymous reportedly claimed responsibility for hacking into more than 40 Internet websites of the Ecuadorean government and opposition organizations on August 10, apparently as a form of protest against the Telecommunications Act.\(^{398}\)

225. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression states: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

F. Presidential broadcasts, government interruption of news programs, and obstacles to journalistic work

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\(^{395}\) Office of the President of the Republic of Ecuador. Enlace Ciudadano 290. September 22, 2012. [2:03:40]. Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=35852:enlace-ciudadano-nro-290-desde-napo&catid=43:enlaces-ciudadanos-todos&Itemid=67. “This is being investigated seriously by the National Police. We will not allow these things to happen. All our solidarity in this respect is with Ms. Hinostroza. As I stated on Twitter, a woman, a mother, a journalist—in this respect no one can be threatened in this country and we will be vigilant so that these things do not go unpunished. Hopefully we will be able to find out who sent this threat. This does not change whatsoever my opinion of Janet Hinostroza. I think she does a very bad job as a journalist; she is not a journalist, she is a political intriguer disguised as a journalist.” [2:07:45]


According to information received, during 2012, the government reportedly continued to use its authority to decree presidential broadcasts so as to order the publication of government opinion in privately-owned media. As mentioned below, the government has made use of this authority to order specific media outlets to publish the official government opinion regarding their editorials or news articles. Indeed, according to information received, during 2012 the government repeatedly interrupted critical journalism programs with the presidential radio and television broadcasts, issuing the official message only on the station that aired the information or opinion to which it objected.

The Office of the Special Rapporteur learned that on March 27, a presidential radio broadcast ordered by the National Secretariat of Communications [Secretaría Nacional de Comunicación] (SECOM, in its Spanish acronym) reportedly interrupted a news program on the radio station Democracia - Exa FM in order to refute the information disseminated and to criticize the journalistic work of Gonzalo Rosero, the program’s host. The presidential broadcast, which interrupted only the program in question, was meant to refute “blatant lies” and to clarify “information that is far from the truth” relating to issues discussed on the program.

On May 24, a presidential radio broadcast ordered by the SECOM reportedly interrupted the news on the television station Ecuavisa in order to criticize its editorial line and to disparage a former Army intelligence chief who had been interviewed on the news program regarding air defense and drug trafficking matters. The presidential broadcast was reportedly aired during this program’s time slot, and it asserted that the former official “was separated from the Army for innumerable problems with his performance,” and that he was “the last former official who should talk about security matters.”

The Office of the Special Rapporteur was informed that on September 9, a nation-wide presidential broadcast was issued, calling into question the accuracy of several articles and reports published by El Universo. On September 11, another broadcast reportedly interrupted the Teleamazonas program ‘Los Desayunos de 24 Horas’ to refute the supposedly erroneous remarks that a guest on the program had made about President Correa’s breakfast during a visit to Loja. On September 13, another national presidential broadcast was reportedly dedicated to explaining the reasons for the seizure of assets from the magazine Vanguardia. Additionally, on October 8, a presidential broadcast reportedly cut into the broadcasts of five radio stations in order to explain the
The Office of the Special Rapporteur learned that on November 6 and 9, various radio broadcasts ordered by the National Secretariat of Communications reportedly interrupted the programming of some radio stations to take issue with the opinions and news disseminated by Gonzalo Rosero on the Democracia station. In the first case, the broadcast intended to challenge the opinion of jurist Ramiro Aguilar in relation to the funding of the “Development Bonus,” one of the Ecuadorian Government’s public social programs. The purpose of the second one was to contest what Álvaro Vargas Llosa had said about economic growth data for Ecuador in comparison to Peru.\[406\]

230. The Office of the Special Rapporteur was informed that on May 3, World Press Freedom Day, the SECOM reportedly issued various official messages, advertising spots, or broadcasts on the radio and on television. The advertising spots, aired after different programs, including news and opinion forums, sought to convey that freedom of expression is “in full effect in Ecuador,” and to criticize the journalistic performance of the private media.\[407\]

231. The Office of the Special Rapporteur was informed that on May 3, World Press Freedom Day, the SECOM reportedly issued various official messages, advertising spots, or broadcasts on the radio and on television. The advertising spots, aired after different programs, including news and opinion forums, sought to convey that freedom of expression is “in full effect in Ecuador,” and to criticize the journalistic performance of the private media.\[407\]

232. The Office of the Special Rapporteur has recognized the authority of the President of the Republic and high-ranking government officials to use the media for purposes of informing the public of prevailing matters of public interest; nevertheless, the exercise of this power is not absolute. The information that governments convey to the public through the presidential broadcasts must be strictly necessary to meet the urgent need for information on issues that are clearly and genuinely in the public interest, and for the length of time strictly necessary for the conveyance of that information. In this respect, both the IACHR and its Office of the Special Rapporteur,\[408\] as well as some national bodies of States party to the American Convention, applying international standards, have indicated that not just any information justifies the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could be of interest to the masses by informing them of facts that could be of public significance and that are truly necessary for real citizen participation in public

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\[405\] You Tube. Cadena Nacional: los derechos laborales de los comunicadores. Posted by sioelciudadanoadmin on October 10, 2012. Available at: http://www.youtube.com/watch?v=SMA7YRu8XCo&feature=plcp


100 life. 409 Además, el quinto principio de la Declaración de Principios de la CIDH establece que: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

233. Public servants must also bear in mind that they have a position as guarantors of the fundamental rights of individuals; as such, their statements cannot deny those rights. 410 This special duty of care is heightened particularly in situations involving social conflict, breaches of the peace, or social or political polarization, precisely because of the risks such situations might pose for specific individuals or groups at a given time. 411 The Inter-American Court has also held that situations of risk can be exacerbated if they are “[the subject of government speeches] that may [provoke], suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise […] freedom of expression.” 412

G. Access to public officials and government buildings

234. The Office of the Special Rapporteur expresses its concern over the obstacles faced by journalists seeking interviews with government officials. Principle 4 of the IACHR’s Declaration of Principles states that: “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” In addition, Principle 5 states that: “[…] restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

235. The Office of the Special Rapporteur received information that on June 16, President Rafael Correa affirmed his decision to prohibit his ministers and State officials from giving interviews to certain privately-held media outlets. According to information received, the President justified his decision on news reports that were made “in bad faith” with the intention of “destroying the honor” of high-ranking public officials and their families. He also asserted that the government could not contribute to the business of the privately owned press. 413 This Office of the Special Rapporteur was also informed that the Minister of Policy Coordination and the National Secretary of Communications reportedly made sure that the members of the president’s cabinet would not give interviews to privately-held media. According to information received, on September 5, the Human Rights Center of the Pontifica Universidad Católica del

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Ecuador and the NGO Fundamedios reportedly filed a writ [acción de protección] seeking to invalidate that policy; the action was dismissed by the trial court judge on September 20.\footnote{Twelfth Juvenile Court of Pichincha. September 20, 2012. Case No. 2012-1168. Available at: http://www.funcionjudicial-pichincha.gob.ec/index.php/consulta-de-procesos; El Comercio. October 8, 2012. Corte de Pichincha tratará mañana la prohibición de que ministros den entrevistas a medios privados. Available at: http://www.elcomercio.com/politica/ministros-Fundamedios-libertad_de_expresion-Corte_de_Pichincha-ministros-entrevistas_a_mEDIOS_privados_0_788321295.html}

236. This Office of the Special Rapporteur has received information that various journalists under different circumstances have reportedly been excluded from public places or official government ceremonies, and their journalistic work has been impeded.\footnote{On February 8, Sugey Hajjar, a journalist from the newspaper El Universo, was reportedly removed from the presidential palace during a speech given by President Correa to members of the military. El Universo. February 12, 2012. Testimonio de periodista. ‘Dicen que usted tiene problema con el presidente’. Available at: http://www.eluniverso.com/2012/02/12/1/1355/dicen-tiene-problema-presidente.html; Fundamedios. February 14, 2012. Alert No. 422: Periodista de El Universo es desalojado de palacio de gobierno porque supuestamente tiene un ‘problema con el presidente’. Available at: http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/periodista-de-el-universo-es-desalojada-de-palacio-de-gobierno-porque-supuestamente-tiene-un-problema-con-el-presidente.html} They have also reportedly been subject to such obstacles during government ceremonies and in public places at the regional and local levels.\footnote{On October 25, several journalists were reportedly removed from the premises where the Evaluating Committee would decide on the reassessment of the candidates nominated to the Constitutional Court. Cadenaradiovisión. October 26, 2012. Press Release – Comisión Calificadora no debe sesionar a puerta cerrada. Available at: http://www.cadenaradiovation.com/index.php?option=com_content&view=article&id=25201:fotografo-es-desalojado-de-hospital-publico&catid=3:sucesos&Itemid=77; Fundamedios. June 8, 2012. Fotógrafo es desalojado de hospital público durante visita de ministra de salud. Available at: http://www.fundamedios.org/portada/libertades/alertas/historico/2012/item/fotografo-es-desalojado-de-hospital-publico-durante-visita-de-ministra-de-salud.html} For example, on September 25, journalist Franklin Morán of Teleradio was apparently blocked from participating in one of the briefings that President Franklin Correa regularly holds with the press. Days
earlier, Morán had asked questions that apparently made some high-ranking government officials uncomfortable.417

237. Finally, the Office of the Special Rapporteur was informed of several incidents that allegedly took place in the third week of March in connection with the coverage of indigenous peoples' marches. In at least three cases, journalists were reportedly removed from public places and blocked from performing their journalistic work.418

H. Appropriation of media and seizure of equipment

238. The Office of the Special Rapporteur has received information on the shutdown of several local media outlets (radio stations and television channels) in 2012. In its resolutions, the National Telecommunications Council (CONATEL) has alleged the media owners’ and representatives’ noncompliance with the requirements of the Broadcasting and Television Act. Indeed, in all of the cases, CONATEL has verified the existence of some of the grounds for termination as established in article 67 of the Act.419 In this respect, it has found, alternatively, that the media failed to comply with the technical

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418 On March 16, individuals taking part in the “Plurinational March for Life” in Riobamba reportedly blocked a cameraman from the pro-government newspaper El Ciudadano from filming the march, and had forced him to leave. On March 19, correspondent Máximo Barba from Ecuador TV in Ambato was reportedly prevented from covering the indigenous peoples’ march as it passed through the city. Apparently, a member of the march’s security team demanded that he leave, and told him that the government media “[were] not welcome here.” El Comercio. March 16, 2012. Indígenas analizan en Riobamba estrategia para los siguientes tramos de la marcha. Available at: http://www.elcomercio.com/politica/marcha-vida-parte-Riobamba_0_664733559.html.

419 On January 7, the radio broadcaster Perla Orensse was reportedly shut down and its equipment was seized. In previous months, CONATEL had reportedly decided to terminate the concession early, because of late payments on the frequency license of over six months. Republic of Ecuador. National Telecommunications Council (CONATEL). September 24, 2010. Resolution RTV-575-18-Conatel-2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_docman&task=doc_download&gid=5065&Itemid=102. On March 16, CONATEL decided not to renew the frequency license of radio station Sucre of Portoviejo because the term of the concession had expired. National Telecommunications Council (CONATEL). Resolution RTV-159-06-CONATEL-2012. March 16, 2012. Available at: http://conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2012/RTV-159-06-SUCRE%20STEREO.pdf. On May 23, the radio station El Dorado in the city of Nueva Loja was shut down, and its broadcasting equipment was seized. In previous months, CONATEL had reportedly decided to terminate the concession early, because of late payments on the frequency license of over six months. National Telecommunications Council (CONATEL). Resolution RTV-574-18-CONATEL-2010. September 24, 2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_docman&task=doc_download&gid=5064&Itemid=1.
requirements necessary for operation of the concession, or that there was “late payment of six or more consecutive payments for the leasing of the frequency allocated,” or that the term had expired. The Office of the Special Rapporteur has been informed that in some of the cases the frequency holders reportedly claimed that CONATEL’s decision was based on political criteria and was in retaliation for the editorial stance taken by the medium.

239. Information received indicates that on May 23, the public television station Telesangay, Canal 30, which is owned by the Provincial Government of Morona Santiago, was closed. According to reports, in a resolution passed on October 13, 2010, the National Telecommunications Council (CONATEL) reportedly decided to initiate the process of terminating the station’s concession contract for

Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_docman&task=doc_download&gid=4987&Itemid=

420 Republic of Ecuador. Broadcasting and Television Act. Supreme Decree No. 256-A. Official Gazette No. 785. April 18, 1975. Article 67 of the Broadcasting and Television Act establishes: “Art. 67. - The concession of a channel or frequency for the establishment and operation of a radio or television broadcasting station shall end: // a) Upon the expiration of the term of the concession, unless the licensee has a right of renewal pursuant to this Act. // b) At the will of the licensee. // c) Upon the death of the licensee. // d) For failure to establish the station within the time period granted by the Ecuadorean Institute of Telecommunications in accordance with the Regulations. // e) For the recurrence of technical infractions that have been sanctioned with two fines and one suspension. // f) Upon the loss of the licensee’s legal personality or the period of time, not to exceed six months, for the permanent correction of the technical problem, without prejudice to the issuance of an order suspending the station’s operation during the extension period. // g) Upon the loss of the licensee’s legal personality or the dissolution of the licensee corporation. // h) On the expiration of the lease with the public telecommunication network. // i) On the event of the violation of clause (c) of Article 58; and, // j) In the event of the late payment of six or more consecutive payments for the leasing of the frequency. // // j) In the event of noncompliance with clause (c) of Article 58 of the Broadcasting and Television Act.” Republic of Ecuador. Broadcasting and Television Act. Supreme Decree No. 256-A. Official Gazette No. 785. April 18, 1975. Available at: http://www.oas.org/juridico/PDFs/mesicic4_ecu_radio.pdf


the frequency due to an alleged failure to comply with the technical parameters established therein. 423

Felipe Marcelino Chumpi Jimpikit and Juan Francisco Cevallos Silva, Provincial Prefect and Attorney for the Provincial Government, respectively, reportedly presented a petition to the president of the National Telecommunications Council (CONATEL) to request the revocation of the resolution which—in their judgment—was based on an ambiguous technical report. 424 CONATEL subsequently disallowed the legal grounds of defense asserted by the licensees and ruled to continue with the process. It declared the early and unilateral termination of the concession contract, signed on May 13, 2009, on the grounds established in clause (d) of Article 67 of the Broadcasting and Television Act. 425 Once the administrative proceedings had been exhausted, on January 23, 2012, the petitioners reportedly brought suit to challenge the ruling in the District Court of Administrative Appeals on the theory that CONATEL’s resolutions constituted irregular administrative acts. 426 The Office of the Special Rapporteur was additionally informed that members of the Pachakutik opposition party reportedly issued statements to the effect that the actions of the authorities could be politically motivated. 427

240. The Office of the Special Rapporteur was also informed that Radio Morena of Guayaquil was reportedly shut down on July 6, in a government raid that turned violent. 428 The National Telecommunications Council [Consejo Nacional de Telecomunicaciones] (CONATEL) specified that the grounds for its closure were: failure to renew the concession, noncompliance with the technical requirements established by law and in the concession contract, and the late payment of fees. 429 Luis Almeida Morán, the station owner’s son and a member of the National Assembly representing the opposition party Sociedad Patriótica, claimed that he had evidence that the station was up to date in its payments, and that when the authority stopped accepting payment of the fees (from September, 2011 to May, 2012), the payments had been deposited with the court of competent jurisdiction.


424 Communication from Attorney Carlos Calero Romero to the President of the National Telecommunications Council (CONATEL). December 3, 2010. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.


241. According to information received, on July 31 employees of the Ministry of Labor Relations reportedly seized work equipment from the magazine Vanguardia, on the argument of noncompliance with the labor laws. During the raid, law enforcement authorities reportedly seized two computers, memory drives, and notes belonging to the journalists. According to reports, this was the second time that the magazine was subjected to administrative action resulting in the seizure of its assets, including the journalists’ work material. Vanguardia is directed* by Juan Carlos Calderón, one of the journalists ordered to pay damages of US $1,000,000 to President Correa as the co-author of the book El Gran Hermano [Big Brother].433 Vanguardia is known for its investigative journalism into matters of general interest related to alleged acts of corruption. The government issued a nation-wide broadcast to justify the reasons for the confiscation of all of the magazine’s assets.432

I. Other relevant situations

242. It was reported that on March 3, while they were inside a private building in the Luluncoto sector of Quito, ten youths433 were arrested and subsequently prosecuted and held in detention, accused members of the group called “Combatientes Populares” [“The People’s Combatants”], which has allegedly been responsible for various explosions during 2011 in the cities of Quito, Guayaquil, and Cuenca.435 The authorities did not find weapons or explosives in the place of arrest, or with the youths that were detained. Human rights organizations like Amnesty International,436 Ecumenical Human Rights Commission (CEDHU),437 The Project for Social-Environmental Reparation Environmental Clinic,438 and

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(*)The expression "owned" was replaced by the expression "directed" for the publication of the report.


the Regional Institute of Human Rights (INREDH), and high profile figures such as Baltazar Garzón agreed that in this case the application of sabotage and terrorism laws could be disproportionate and in violation of human rights. In November 9, 2012, the Third Tribunal of Criminal Guarantees of Pichincha, scheduled the trial hearing for the following December 10. At the time this report went to press, the youths were still deprived of their liberty, nine of them in detention centers, the tenth with a substitute preventive detention measure for reasons related to maternity.

243. The Office of the Special Rapporteur received information indicating that in Enlace Ciudadano 282 on July 28, President Rafael Correa reportedly reiterated his willingness to suspend government advertising in privately owned media. In relation to the decision that public servants should not give interviews to the private media, President Correa said: “why don’t they take away government advertising then? [the private media asks and the President replies] Marvelous. Send me the letter, and then I’ll take it away. I’m still waiting for the letter (…) but [Diego Cornejo, Executive Director of AEDEP, referring to the President] insists: if you want to use your option as the government to withdraw advertising, say it to me twice (…) very well, Diego, we’re going to use that option, and my dear Fernando Alvarado, director of the SECOM. From this point forward, do not send government advertising to the mercantilist media—because there is no reason for us, with Ecuadoreans’ money, to benefit the business of six families in this country…” In these terms, President Correa apparently ordered the National Secretary of Communications to withdraw government advertising from some privately held media outlets.

244. The Office of the Special Rapporteur received information indicating that the Ecuadorian Government had reportedly taken steps to trademark of the terms “30S,” “30-S,” and “never forget” (“prohibido olvidar”), commonly used in relation to the violent events that took place in Ecuador on September 30, 2010. According to reports, the Ecuadorian Institute of Intellectual Property (IEPI) began the process of trademarking the phrases as government property. The expression “30S” reportedly emerged from the social networks, and to date has been used widely and freely by the public. At this time, the extent to which the public may freely continue to use those terms is not clear.


245. According to information received, on October 29, the National Assembly's Special Political Control and Oversight Committee reportedly presented a report to the National Assembly in relation to the investigations into possible acts of corruption in the granting of loans by the COFIEC Bank. Among other relevant matters, the Committee proposed asking the Ombudsman of the People “to investigate and safeguard the rights of citizens to receive accurate, verified, contextualized, timely, and diverse information, without prior censorship.” In its view, the press had not verified the information regarding the alleged irregularities surrounding a loan granted to Argentine citizen Gastón Duzac. The Committee also suggested urging the Office of the Prosecutor General to investigate who provided the media with “information that was confidential and subject to banking secrecy.”

10. El Salvador

246. The Office of the Special Rapporteur expressed its satisfaction at the conviction in El Salvador of one of the murderers of cameraman Alfredo Antonio Hurtado Núñez. The murder took place in San Salvador on April 25, 2011. According to information received, on May 31, 2012, Specialized Sentencing Court A in San Salvador sentenced Jonathan Alexander Martínez Castro to 30 years in prison for the murder of Alfredo Hurtado. The same court upheld the arrest warrant for Marlon Stanley Abrego Rivas, the alleged accomplice in the murder. He has not been arrested. Alfredo Hurtado was on his way to work on the night of April 25, 2011, when two armed men boarded the bus on which he was traveling and shot him several times. The murders did not steal anything. Hurtado was working as the night shift cameraman for news show ‘Telepresna’, on Canal 33, and he had more than 20 years of experience. He regularly covered crime and information related to gang violence. According to the information received, Martínez and Abrego shot Hurtado because they thought it was because of his work that a gang member had been identified in connection with another murder. The Office of the Special Rapporteur condemned the murder of Hurtado on May 2, 2011, and asked Salvadoran authorities to conduct an exhaustive investigation that took into account the possibility that the victim’s journalism work may have been a motive for the crime. The Office of the Special Rapporteur praises this decision of the Salvadorian justice system, which is crucial for combating impunity, defending freedom of expression, preventing repetition of the facts and providing redress to the family of the victim. It trusts that the competent authorities will do everything necessary to capture and try the other person accused in the crime.

247. According to information received, on December 15, 2011, an amendment to the Penal Code took effect that replaces the prison terms established for crimes against honor with pecuniary sanctions. The change in the law establishes standards for situations in which the right to information and freedom of expression must be weighed against the rights to honor, privacy and image, and understands as legitimate the distribution of messages that are supposedly defamatory [difamatorios, calumniosos o injuriosos], when they are in the public interest and when “it satisfies the function of the free flow of information in a Democratic society,” among other reasons.

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248. On December 5, the Constitutional Chamber of the Supreme Court of Justice of El Salvador found four articles of the regulations of the Access to Public Information Act unconstitutional. In its 2011 annual report, the Office of the Special Rapporteur expressed its satisfaction at the passage of the Access to Public Information Act, which entered into force in January of 2012. The judgment of the Constitutional Chamber recognized the fundamental right to access information and observed that according to the principle of maximum transparency, exceptions to this right “must be provided for in a previously established formal, written and precise law,” citing the Case of Claude Reyes of the Inter-American Court. The Chamber concluded that the establishment of grounds for confidentiality based on national security, political security, and national interest in articles 2 and 29 of the regulations were not compatible with the aforementioned principles given that they created exceptions to a right that were not established by law. Likewise, the Chamber determined that Article 73, which gives the President of the Republic authority to veto candidates for the Institute on Access to Public Information, was contrary to the goal of citizen oversight of the selection of commissioners as established in the law. Finally, it declared Article 75 unconstitutional. According to the article, “Each government entity calling for bids will prepare a set of internal guidelines establishing the mechanisms by which it will comply with what has been established in the act and in these regulations.” The Chamber determined that this provision provided “an excessive scope or flexibility” with regard to the regulation of aspects of the law that must be included in the general regulations.

249. The Office of the Special Rapporteur received information on threats and harassment toward digital newspaper El Faro after it published a number of articles on the operation of organized crime in El Salvador. On March 14, El Faro published information on possible negotiations between authorities and gang leaders. Three days later, the Minister of Justice and Security told the director of El Faro, Carlos Dada, that the newspaper staff ran the risk of being attacked by gang members. On March 19, the national spokespeople for the country's main criminal groups issued a press release dismissing the publication in El Faro and indicating that “we find it beyond belief that people like journalist Carlos Dada exist, [...] people who want to toy with our lives and the lives of so many other innocents.”


Later, *El Faro* alleged that the newspaper’s personnel were being followed. The Salvadoran government announced its willingness to provide protection for the newspaper.

250. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

11. United States

A. Progress

251. The Office of the Special Rapporteur takes note of a ruling of the Supreme Court of the United States finding that a law establishing the sanction of up to one year in prison for false claims of receiving military decorations or medals was unconstitutional. In the case of *United States v. Alvarez*, the justices found that the broad terms of the law were not consistent with the constitutional protection of freedom of expression.

252. On June 21, 2012, the Supreme Court of the United States handed down a ruling in the case of *Federal Communications Commission, et al. v. Fox Television Stations, Inc., et al*. In this judgment, the Supreme Court upheld the 2010 ruling of the Second Circuit Court of Appeals of the United States, agreeing that the rules applied by the Federal Communications Commission to broadcasting networks and affiliates were unacceptably vague. In its analysis of the cases, the Court found that the history of FCC regulation makes it clear that the policy in force at the time of the broadcasts in question did not provide reasonable warning to Fox or ABC that “fleeting expletives” or a brief image of nudity could be considered a violation of its rules. The Supreme Court ruled based on the requirement of proper notification in accordance with the due process clause, and did not refer to the implications of the First Amendment for the FCC’s indecency policies. However, the Court indicated that strict compliance with due process requirements is especially important when expression is involved, given the need to ensure that regulatory ambiguity does not inhibit protected speech.

253. The Office of the Special Rapporteur expresses its satisfaction at the elimination of criminal libel from the laws of the state of Colorado on April 13, 2012. The law eliminating libel as a criminal offense was passed by the legislature, signed by the governor, and entered into force on September 1.

B. Attacks on and threats against journalists and media outlets

254. Miguel Fernández, a Cuban journalist and Miami resident, received death threats on several occasions from individuals presumed to be members of the Cuban community in Florida after he...
255. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

### C. Detentions

256. On January 28, the police arrested at least six journalists in Oakland during the mass arrest of demonstrators with the Occupy Oakland movement in California. According to the information, the journalists arrested were: Gavin Aronsen, with the magazine Mother Jones; Kristin Hanes with KGO Radio; Susie Cagle, an independent journalist; Yael Chanoff, with the San Francisco Bay Guardian; Vivian Ho, with the San Francisco Chronicle and John Osborn, with the East Bay Express. The arrests of the journalists took place even though they showed their credentials identifying them as journalists.

257. On February 1, a coalition of media and journalists sent a letter to the New York Police Department reiterating the need to resolve the problem of journalists’ limited access to demonstrations. The department responded that it had taken actions to train its officers on media access to information and to investigate and punish officers involved in any incidents.

258. According to information received, on January 29, police officers briefly detained Casey Monroe, a photographer with the ABC network, in Memphis, Tennessee, and erased images from his cellular phone that documented an arrest. Likewise, on February 1, Carlos Miller, an independent photographer, was arrested while filming the dispersion of demonstrators with the Occupy movement in Miami. According to reports, Miller was arrested for refusing to leave a public area and was accused of resisting arrest without violence. The images of the arrest were erased, but the journalist was able to recover them later. The Office of the Special Rapporteur was also informed of an attack on Robert Stolarik, of the New York Times, on August 4 while he was photographing the arrest of an adolescent.

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New York police officers assaulted, handcuffed and arrested Stolarik when he asked for their names and badge numbers. Stolarik is facing charges of obstructing public administration and resisting arrest. 464

259. The Office of the Special Rapporteur received information on the arrest of documentary filmmaker and environmentalist Josh Fox on February 1 in Washington, D.C., while he was trying to film a Subcommittee on Energy and the Environment hearing in the House of Representatives. He purportedly did not have press credentials. The filmmaker was handcuffed and removed from the chamber. He was freed without bail and charged with unlawful entry. Fox was working on a sequel for his documentary Gasland, which was nominated for an Oscar. 465 According to information received, journalists Dan Frosch and photographer Brandon Thibodeaux, with The New York Times, were briefly detained while covering demonstrations against the Keystone XL oil pipeline in Winnssboro, Texas, on October 11. 466

D. Subsequent liability

260. The Office of the Special Rapporteur was informed that on April 5, the government formally charged former CIA agent John Kiriakou, who had leaked information to the media on the torture of terrorism suspects during the George W. Bush administration. On October 23, Kiriakou pled guilty to the charge of revealing the identity of an intelligence agent, and in exchange, the prosecutor dropped the charges originally brought against him under the Espionage Act. The parties agreed on a sentence of 30 months in prison. A court ruling on the plea agreement is expected in January of 2013. 467 Additionally, in a July 19 appearance before Congress, Secretary of Defense Leon Panetta announced that he had ordered the monitoring of the major national media outlets to detect unauthorized leaks of classified information. 468

261. The Office of the Special Rapporteur references its Joint Statement issued in 2010 with the United Nations Special Rapporteur on Freedom of Opinion and Expression, according to which “government ‘whistleblowers’ releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified


information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.\textsuperscript{469}

E.

**Legal reforms**

262. The Office of the Special Rapporteur takes note of the debate in Congress over the Stop Online Piracy Act, SOPA (the House of Representatives version), and the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011, PIPA (the Senate version of the bill). According to the information received, these bills sought to block access to websites that violate copyright and would have authorized content owners to request court orders to shut down websites that contained pirated material. They would have also required Internet service providers in the United States to end their relationships with and block links to foreign websites suspected of violating copyright. The bills were harshly criticized online for being drafted in language that was too broad or ambiguous and that could result in the total closure of websites due to specific content suspected of violating intellectual property laws, consequently limiting freedom of expression.\textsuperscript{470} In a communication issued with its counterpart in the United Nations, the Office of the Special Rapporteur stated that although these bills had the legitimate aim of protecting intellectual property rights, there were serious concerns with regard to their impact on the right to freedom of expression.\textsuperscript{471} Specifically, they stated that some versions of the bills could silence expression that is absolutely legitimate - for example, by establishing an extrajudicial “notice-and-termination” procedure on requiring websites that control content generated by their users to identify copyright violations and by allowing entire websites to be affected even when just a small part of their content is considered unlawful. In response to the protests against the bills, on January 20, 2012, debate over SOPA and PIPA was suspended indefinitely.\textsuperscript{472}

263. As established in the Joint Declaration on Freedom of Expression and the Internet, issued on June 1, 2011 by the Special Rapporteurs of the UN and the IACHR, in conjunction with their colleagues in the Organization for Security and Cooperation in Europe (OSCE) and the African Commission on Human and Peoples’ Rights, although the right to freedom of expression - including expression over the Internet - is not absolute, responses to illicit content must be specifically focused in a way that also recognizes the unique nature of the Internet and its capacity to promote the enjoyment of freedom of expression. The Declaration indicates that intermediaries should not be required to control content generated by users and emphasizes the need to protect them from any liability unless they are directly involved with the content or refuse to comply with a court order that requires its elimination. The


Declaration also expresses that jurisdiction with regard to cases connected to Internet content belongs exclusively to States in which cases have direct and genuine impact.473

F. Other situations

264. According to information received, on July 6, a federal appeals court ruled that Boston College had to turn over material related with interviews done with former members of the Irish Republican Army (IRA) regarding their criminal activities so that material could be turned over to court authorities in the United Kingdom, where a criminal investigation was ongoing. The court rejected the argument of the college and the director of the historical project regarding the confidentiality of the material and the chilling effect of the ruling. Based on settled case law, the court ruled that turning over the material did not implicate questions of freedom of expression.474

265. The Office of the Special Rapporteur takes note of an agreement reached between the University of California, Davis and a group of students who were sprayed with pepper spray during a demonstration in November of 2011. The students were sitting motionless in a plaza to protest a tuition increase in the context of the Occupy movement when the University police sprayed them with pepper spray. According to the agreement, the university will pay a settlement to the students affected and design new policing policies in collaboration with student representatives.475

12. Grenada

266. According to information received, in July, the Parliament of Grenada passed the Criminal Code (Amendment) Act of 2012, which repealed the offenses of intentional and negligent libel contained in sections 252 and 253 of the Code.476 These crimes carried a penalty of between six months and two years of imprisonment. The Office of the Special Rapporteur considers this to be a positive legislative achievement, which contributes decisively to the protection of freedom of expression and promotes the strengthening of debate on matters of public interest. The Office of the Special Rapporteur observes that the offenses of seditious libel and defamation of Her Majesty, established in sections 327 and 328 of the Code, remain part of the criminal law of Grenada.477 On this last subject, the Office of the Special Rapporteur notes that, on December 2, 2012, Prime Minister Tillman Thomas announce in a speech, delivered at the 7th Annual Media Awards of the Media Workers Association of Grenada, the intention of the Government of Grenada to abolish the aforementioned offense of seditious libel.478


13. Guatemala

A. Progress

267. According to information received, on August 28 the Criminal Trial Court of Nebaj, El Quiché, convicted the Vice President of the Panajachel Security Commission, Juan Manuel Ralón, to three years and eight months in prison for the crimes of threats and discrimination against journalist Lucía Escobar. In October 2011, the journalist reported that she was threatened on a television program and was the victim of disparaging and stigmatizing remarks, after she published a column in the newspaper El Periódico denouncing alleged human rights violations perpetrated by the Panajachel Security Commission.

268. In the context of its participation in the Universal Periodic Review (UPR) before the UN Human Rights Council in October, the Government of Guatemala announced that it was drafting a national plan for the protection of journalists from threats to their physical integrity.

B. Attacks and threats against journalists and the media

269. Environmentalist and independent journalist Elder Exvedi Morales reportedly received death threats on November 1, 2011, allegedly in retaliation for publications concerning the pollution of the Huista River in Santa Ana Huista, department of Huehuetenango. The journalist reported having received several threatening phone calls over a period of several months, until November 1, when a man approached him and threatened him in person. Elder Exvedi Morales, who worked with two community radio stations in the region, also published a monthly magazine, El Huisteco, which he reportedly stopped producing two months prior to the November 1 incident for a number of reasons, including the threats he was receiving.

270. On November 6, 2011, journalist Héctor Cordero and cameraman Diego Morales, of Guatevisión, were reportedly attacked by alleged bodyguards of a congressman after covering the national runoff elections in the town of Santa Cruz del Quiché. According to the information received, the journalists were attacked and beaten by several individuals, and their video equipment was destroyed.


The journalists maintain that they recognized a brother of the governor of Quiché among their assailants.\footnote{483}  

271. The Office of the Special Rapporteur was informed of the injuries sustained by at least three photographers: Luis Soto of \textit{El Periódico}, Estuardo Paredes of \textit{Prensa Libre}, and Jorge Cente of \textit{Nuestro Diario}, who were reportedly beaten while photographing a confrontation between students and the police on June 26 in Guatemala City. According to reports, Soto suffered serious injuries that required skull surgery.\footnote{484} At the beginning of October, \textit{Prensa Libre} columnist Carolina Vásquez Araya and journalist Ilka Oliva reportedly received death threats after publishing a column on the alleged sexual abuse of girls by the manager of a cotton farm in the department of Escuintla.\footnote{485} The Office of the Special Rapporteur also learned of several death threats reportedly received on October 5 by journalist Jorge Jacobs, host of the \textit{Libertopolis} radio programs “A Todo Pulmón” and “Más Negocios,” after he had published a column in \textit{Prensa Libre} concerning the operations of a multinational corporation.\footnote{486}  

272. According to the information received, on October 4, at least seven people taking part in a protest died in Totonicapán following police intervention.\footnote{487} The unarmed demonstrators had blocked a highway to protest against the amendment of the Constitution and an increase in the price of electricity. On October 11, the Prosecutor General of the Nation reportedly announced the arrest and criminal prosecution of nine members of the Army for their alleged participation in the events.\footnote{488}  

273. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”  

C. Subsequent liability  

274. According to information received, three journalists, who over the course of their careers have exposed human rights violations committed during the armed conflict in Guatemala, were reportedly

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\footnote{488} IFEX/ Human Rights Watch. October 12, 2012. \textit{Army personnel charged in deaths of Guatemalan protestors}. Available at: \url{http://www.ifex.org/guatemala/2012/10/12/guatemala_swift_charges/}; BBC. October 11, 2012. \textit{Guatemalan soldiers arrested over Totonicapán protest killings}. Available at: \url{http://www.bbc.co.uk/news/world-latin-america-19918713}
accused (along with 49 other individuals) of alleged involvement, by action or omission, in crimes committed by guerrilla groups. According to the information received, a coffee entrepreneur filed the complaint. The accused journalists are Marielos Monzón, a columnist for *Prensa Libre*, Miguel Ángel Albízures, a columnist for *El Periódico* and president-elect of the Guatemalan Association of Journalists (APG), and Iduvina Hernández, director of the non-governmental organization Security in Democracy (Seguridad en Democracia - SEDEM) and a columnist for the digital media outlet *Plaza Pública*. Press organizations consider the complaint to be without merit and allege that it can only be interpreted as intimidation against the journalists.489

D. Legal reforms

275. On March 14, the Constitutional Court of Guatemala dismissed an unconstitutionality action filed by an indigenous people’s organization against several articles of the Telecommunications Act.490 According to the plaintiff, the provisions of the act that establish the allocation of radio frequencies through public auctions are discriminatory, as they exclude indigenous communities from participating in radio broadcasting due to their poverty. In this case, the Public Ministry expressed its support for the constitutional challenge to Articles 61 and 62 of the Telecommunications Act. The Constitutional Court found that the challenged articles did not violate the rights of the indigenous communities because they referred to the general procedure of calling for proposals to allocate beneficial ownership rights. Nevertheless, the Court urged the Congress of the Republic to “issue the pertinent regulations governing the opportunity and access of indigenous peoples to obtain and use radio spectrum frequency bands, in order to promote the defense, development, and dissemination of their languages, traditions, spirituality, and any other cultural expressions.”

276. On prior occasions, the Office of the Special Rapporteur has stated that “the allocation of radio and television licenses must be guided by democratic criteria and procedures that are pre-established, public, and transparent, […] providing conditions of equal opportunity for all interested persons and sectors”. The Office of the Special Rapporteur has indicated that “the criteria for assigning licenses must have the fostering of plurality and diversity of voices as one of its goals,” with particular emphasis on the creation of forums for indigenous peoples and other groups that might be in a situation of exclusion or invisibility.491

277. Nonetheless, according to the information received, Congress has not enacted a law that recognizes the existence of community radio broadcasting or that takes affirmative measures to allow for the entry into the communications process of groups that have traditionally experienced discrimination or exclusion. However, according to reports, Decree 34-2012, which amends the Telecommunications Act through a 20-year extension of the current titles for the use of the radio spectrum, took effect on December 6 after having been enacted by Congress and promulgated by the President. Under the new norm, current concession holders will obtain an extension by submitting a request within 90 days of the publication of the decree. At the end of the 20-year period, the concession holders may obtain a 20-year extension of their license by filing another extension request.492 Legislators and the United Nations

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expressed concern over the passage of the law without its content having been properly debated, and opposition members of congress have purportedly asked the President to exercise his veto power.493

278. The Office of the Special Rapporteur recalls that the regulation of broadcasting should aim “to create a framework under which the broadest, freest, and most independent exercise of freedom of expression for the widest variety of groups and individuals is possible. The framework should function in such a way that it guarantees diversity and plurality while simultaneously ensuring that the State’s authority will not be used for censorship.”494 In addition, Principle 12 of the IACHR Principles establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”495

279. On July 10, members of Congress from the LIDER party introduced a bill to amend the Criminal Code in order to punish, with six to ten years in prison and the confiscation of broadcast equipment, “any person or entity that uses the radio spectrum belonging to the State of Guatemala without the license or the pertinent authority issued by the Superintendence of Telecommunications, for sound or audiovisual broadcasting, or any other use of communications.”496 On August 16, the congressional Committee on Legislation and Constitutional Issues rendered a favorable opinion of the draft bill 4.479. Taking account of the March 14, 2012 judgment of the Constitutional Court, it stated that, “prior to the punishment of persons or entities that use the radio spectrum without the proper official authorization, the final non-appealable judgment of the Constitutional Court must be observed.”497

280. As indicated on prior occasions, the use of criminal law to punish violations of broadcasting regulations may be problematic in light of the American Convention on Human Rights.498 In

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In this respect, the Office of the Special Rapporteur reiterates that the establishment of criminal penalties applicable to commercial or community broadcasters—which may face an infraction for the lack or misuse of a license—is a disproportionate reaction. In addition, “the State has the obligation to establish a regulatory framework that encourages free, open, plural, and uninhibited speech. Private media must be able to rely on guarantees that allow them to operate sufficiently and not to be treated in a discriminatory manner. In this sense, the State must protect community media, as they are outlets for the excluded social groups and communities that are often absent from public debate and whose inclusion is imperative in every democratic state.”

E. Other relevant situations

281. According to information received, on the morning of May 8, members of the National Police and the Public Ministry reportedly seized the equipment of the Uqul Tinamit community radio station and arrested journalist Brian Espinoza, who was taken to the Criminal Trial Court in the municipal district of Salamá, and later transferred to a preventive detention center. Subsequently, the officers also reportedly searched the premises of the Jun Tój radio station and seized its equipment. The stations had allegedly been operating without a license. The Office of the Special Rapporteur insists that the broadcasting laws must be consistent with international standards and must be enforced through the use of proportionate administrative sanctions and not through the application of criminal law.

282. According to information received, Guatemalan press organizations denounced the April 25 suspension of six local channels that were being broadcast on a cable network from Mazatenango, Suchitepéquez. They attributed the shutdown to pressure from the local mayor’s office. According to reports, the service provider company explained that the suspension was due to an “administrative readjustment.” Apparently, the company had already ordered the temporary shutdown of one of the channels in January, after it had broadcast unfavorable remarks regarding the mayor’s office, and according to the public complaint, it had authorized the channel’s reopening on the condition that it not criticize local authorities or air opinion programs.

283. According to information received, the program ‘Libre Expresión’ on Canal 14, in Nueva Concepción, Escuintla, was shut down on August 17. According to reports, after the program’s host Evaristo García Escobar interviewed a person who criticized the mayor, municipal officials allegedly threatened the owner of Canal 14, saying that government advertising would be cut and the channel could be shut down if the program in question was not taken off the air.

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14. Guyana

284. In September of 2012, the president of Guyana designated a Commission of Inquiry to examine the use of force by police during a public demonstration in Linden on July 18 in which three people died. According to the complaint, the deaths occurred as a result of the impact of pellets fired by Guyanese police to disperse the crowd. The police officers allegedly fired in response to the violent actions of individuals protesting against an increase in the cost of electricity due to cuts in the government subsidy. Approximately 20 people were injured in the incident.

285. On August 15, an unidentified individual attacked Freddie Kissoon, a columnist with newspaper Kaieteur News, minutes after he gave a speech during a demonstration in front of Parliament in Georgetown. According to the information, when Kissoon tried to get into his vehicle, the attacker struck him several times. In addition to being a columnist, Kissoon is a social activist.

286. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

287. According to information received, deliberation in the National Assembly on a draft Telecommunications Bill was postponed by the Guyanese government in order to consult two of the telecommunications companies that would be affected by the law. The purpose of the law is to establish a Telecommunications Agency and a “regular, coordinated, open and competitive” telecommunications sector.

15. Haiti

288. The Office of the Special Rapporteur was informed of the murder of journalist Jean Liphète Nelson, which took place on March 5, 2012, in Cité Soleil. According to the information received, the journalist was traveling in a vehicle when he was intercepted by two unknown individuals who shot at him several times. Jean Liphète Nelson survived and was taken to hospital, where he died. Two other people accompanying the communicator were also gravely wounded. Nelson was the director of}

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community radio station Boukman (95.9 FM), which was created in 2006 with emphasis on social issues, civic education and the promotion of human and citizen values. Following his murder, the station suspended broadcasting temporarily. It began broadcasting again on March 20.

289. On January 13, 2012, news portal Defend Haiti received a letter from a law firm based in Miami accusing the online news outlet of publishing information in a January 6 article that was malicious and defamatory of the Haitian government. The article partially reproduced a New York Times article on the questioning of the owner of a large telecoms company regarding an educational project in Haiti. On January 10, the site published a clarification note from the company declaring its satisfaction with the government’s commitment to audit the educational fund and rejecting any suggestion that there had been any misuse of its resources. Despite this clarification, in its letter the law firm asked the site to issue a retraction in five days and warned that if the site did not do so, legal action would be taken. According to the information received, the newspaper responded to the accusations in a letter to the law firm and since then has received no response.

290. According to information received, on February 7, 2012, hundreds of individuals belonging to a variety of civil society organizations participated in a demonstration to demand - among other things - respect for Haitian journalists after a number of incidents that took place during 2011 and 2012 in which senior officials had refused to answer the questions of communicators, had responded to questions inappropriately, or in which communicators had been attacked.

291. On March 17, Wendy Phèle, a journalist with Radio Télé Zénith, was allegedly wounded with a firearm at the hands of one of the mayor of Thomonde’s bodyguards during a public activity at the mayorality. According to the information received, the judicial proceeding against the alleged attacker was being blocked by local authorities until the dismissal of the mayor by order of the Ministry of the Interior. As of the publication deadline of this report, the trial over the attack on Phèle was in progress.

292. In addition, on September 20, journalists Natasha Bazelaïs, Jean Marc Abelard and Jeany Augustin, with the newspaper Le Nouvelliste, were retained by alleged police officers for, apparently; fail to agree to turn over their photography and video equipment.

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Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

16. Honduras

The Inter-American Commission on Human Rights has received information on the situation of freedom of expression in Honduras from both civil society and the State of Honduras. On February 22, 2013, the State of Honduras forwarded Official Letter No. SP-A-34-2013 from the Office of the Attorney General of Honduras, in which the State refers to the status of freedom of expression in Honduras and provides information concerning the specific cases that have been reported to the IACHR and which are presented in this report.

1. Progress

The IACHR takes note of the criminal ruling to convict handed down on September 11, 2012, over the murder of journalist Jorge Alberto Orellana. Orellana was murdered on April 20, 2010, after leaving the offices of the Televisión de Honduras TV channel, where he hosted an opinion program on current affairs. The investigations carried out determined that the journalist’s murder was not related to his professional activity.

Likewise, on March 20, 2012, an ex-member of the National Police was arrested in Tegucigalpa for being suspected of having participated in the murder of journalist Israel Zelaya Díaz, which took place on August 24, 2010, in Villanueva, Cortés department.

In addition, the IACHR observes with satisfaction the decision of the National Human Rights Commissioner to provide protection for journalist Ariel D’Vicente after the allegations of corruption that he made on August 2, 2012, regarding alleged acts of corruption by public officials.

Likewise, the IACHR views positively the public apology made by a police officer via the media to Sandra Sarybel Sánchez, a journalist and director of Radio Gualcho and correspondent with German news agency Deutsche Welle, as the result of a reconciliation agreement reached in the national criminal courts. The officer apologized for “the outrage she suffered during a police operation” and voluntarily agreed to take a training course on the subject of freedom of expression.

*This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2012 annual report, assigned to the Office of the Special Rapporteur for Freedom of Expression. This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2012 annual report, assigned to the Office of the Special Rapporteur for Freedom of Expression.*


299. The IACHR receives with satisfaction the information provided by the representatives of the State during the public hearing held at the IACHR on November 4, 2012, regarding Honduras's creation of a special investigation unit focused on crimes against journalists and other vulnerable groups. The IACHR will continue to monitor closely the implementation of this program.\footnote{IACHR. 146 Period of Sessions. \textit{Hearing on the Right to Freedom of Expression in Honduras}, November 4, 2012; IACHR. November 16, 2012. Press Release 134/12. \textit{IACHR Concludes its 146th Session and Expresses Appreciation for the Confidence Shown by All Stakeholders in the Human Rights System}. Annex to Press Release 134/12 on the 146th Regular Session of the IACHR.} In its observations to this draft report, the State provided information on the approval of the National Protection Plan for human rights defenders, journalists, media workers, and legal practitioners. The Honduran State indicated that the plan is “in the consultation phase,” and that “in order for the National Protection Plan to be properly implemented, an awareness Plan has also been approved for the respective national authorities, and a National Board of Human Rights Organizations, journalists, media workers, and legal practitioners has been established, with the involvement of 50 non-governmental organizations.”\footnote{Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 10.}

300. In its observations to the draft report, the Honduran State remarked that “the Bill of the 'Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners' has been introduced.” The State reported that the bill was the result of “a broad process of consultation and validation at the national level,” and was supported by civil society organizations, bar associations, professional journalists’ organizations, and government human rights bodies.\footnote{Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 10.}

2. Murders

301. In its report to the IACHR, the State indicated that it is aware of its commitment to guarantee the diligent and exhaustive investigation of acts that violate freedom of expression, and that it “has requested the cooperation of friendly nations in order to strengthen its investigative teams with more personnel and the necessary logistical resources.” In this same vein, the State maintained that “to date, the Office of the Public Prosecutor has documented the deaths of 22 media workers, and 8 of those cases have been prosecuted.” Nevertheless, the State said that “the preliminary investigations confirm that the homicides are the result of common crime or organized crime, and it has not been determined that they were motivated by the opinions expressed by the media workers about the government.”\footnote{Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 11.} In particular, the IACHR urges the State not to dismiss the theory that the victims may have been murdered in retaliation for exercising their right to freedom of expression, and to exhaust any line of investigation in that direction.

302. According to information received by the IACHR, on December 5, 2011, journalists Luz Marina Paz was murdered in a neighborhood on the outskirts of Tegucigalpa when two men on a motorcycle shot at her while she was traveling to the radio station where she worked. According to the information received, Paz hosted the program “Three in the news” on the Cadena Hondureña de Noticias (CHN) network. Prior to that, she had worked for eight years at Radio Globo. The communicator was known for alleging wrongdoing in her journalism and for being critical of the \textit{coup d’état} that took place on June 28, 2009. The IACHR learned that the Honduran authorities were weighing a number of different
theories as to the motive behind the murder.\textsuperscript{524} The State indicated with regard to this matter that "as the IACHR notes, the Public Ministry is assessing different theories, and the investigation is ongoing."\textsuperscript{525}

303. The IACHR was informed of the murder of communicator and LGBTI rights defender Eric Alex Martínez Ávila, who disappeared on May 5 and was found dead two days later. According to the information received, on May 7, residents of the Guascúllile community found the body of a young man who was later identified as Martínez Ávila on the side of a highway between the cities of Olancho and Tegucigalpa. The communicator was working as a monitoring, evaluation and public-relations official with the Kukulcán Association, an organization dedicated to the defense of the human rights of lesbians, gays and trans and bisexual persons. He had recently been designated as a pre-candidate for a deputy position in the Liberty and Refounding party and was an active member of the Sexual Diversity Board of the National Resistance Front.\textsuperscript{526} The IACHR was informed that on September 12, one of the possible perpetrators of the crime was arrested.\textsuperscript{527} The State reports that the case "is being prosecuted."\textsuperscript{528}

304. The IACHR learned of the kidnapping and murder of radio journalist Alfredo Villatoro, which took place in Tegucigalpa on May 15. According to information received, several armed men abducted Villatoro in the early morning hours of May 9 after intercepting the vehicle he was driving to work. Despite a significant police response, the authorities were not able to find the communicator. On May 15, the journalist’s body turned up on a piece of land south of Tegucigalpa, with two bullet wounds to the head. The police informed that the communicator appeared murdered to have been murdered only moments before in the place where the body was found. Villatoro was a well-known and influential journalist who was working as the news coordinator of the HRN radio network, one of the most important in the country, and hosted a morning news show with that station.\textsuperscript{529} According to the information, eight people have been arrested on suspicion of being connected to the kidnapping and murder of journalist.\textsuperscript{530} On July 11, the State sent information via a letter to the Inter-American Commission indicating that as regards these incidents, the authorities have identified and brought to trial five people as possibly responsible for the crimes of kidnapping and murder.\textsuperscript{531}

305. The IACHR was informed that on August 28, 2012, spokesperson and deputy police inspector Julio César Guifarro Casaleno was murdered. According to the information received, one day prior to his death, the police spokesperson had publicized national statistics on arrests and confiscation of


vehicles and motorcycles. The police indicated that the killing was a contract killing; however there is still no word on the motive behind crime.532 The Honduran State indicated with respect to this case that “the Office of the Public Prosecutor has requested several expert reports in order to obtain evidence, and therefore the investigation is ongoing.”533

306. During the hearing held at the IACHR on November 4, 2012, the petitioners provided information on other individuals who may have been murdered for having exercised freedom of expression. This was the case with José Ricardo Rosales, who was murdered on January 18 in Tela after having accused the local police of human rights violations.534 Also, it was reported that on January 20, Matías Valle, the leader and spokesperson of the Unified Movement of Aguán (MUCA in its Spanish acronym) was murdered. According to the information provided, Valle had been receiving death threats for many years.535 The information received also indicates that on April 23, television host Noel “Tecolote” Valladares was murdered. According to the information, the communicator was threatened prior to his murder.536 The IACHR was also informed during the hearing that on July 8, Adonis Felipe Bueso, a reporter with Christian broadcaster Radio Stereo Naranja, was murdered. According to the information provided during the hearing, the crime’s motives have not been determined.537 Finally, information was provided on the murder of journalist José Noel Canales Lagos, who worked for digital newspaper Hondudiario.com. He was killed while on his way to work. According to information provided, the journalist had been receiving death threats since 2009.538

307. The State subsequently provided information on the matters addressed at the November 4, 2012 hearing. With regard to the case of Matías Valle, the State indicated that “the Office of the Public Prosecutor requested that the Court exhume the body, which […] had been buried at Finca La Confianza,” and that, “the Court scheduled the exhumation for February 23 of this year.” Nevertheless, the State reported that it was not possible to conduct the exhumation due to the alleged lack of cooperation on the part of the victim’s relatives and other residents of the farm, and that the judge reportedly ordered the authorities to leave the property.539 In addition, the State provided information on the situation of Noel Valladares, stating that “he was not a journalist, nor was he an employee of any


534 IACHR. Information brought by the petitioners Centro de Investigación y Promoción de Derechos Humanos (CIPRODEH), and Comité por la Libre Expresión (C-Libre). Hearing on the Right to Freedom of Expression in Honduras. November 4, 2012. Available at Archives of the Office of the Special Rapporteur for Freedom of Expression; La Tribuna. 18 January 2012. Abogado que denunció torturas fue acuchillado frente a su casa en Tela.


media outlet. He had been paying for airtime on television since January 30, 2012 [...], and on his program he would predict winning numbers for the national lottery. Therefore, the investigation into his murder and the murder of his companions is being conducted by the Homicide Unit of the Office of the Prosecutor for Common Crimes, and not by the investigative team specializing in the death of journalists.540 Finally, regarding the case of reporter Adonis Felipe Bueso, the State indicated that “statements have been taken from several individuals to investigate possible motives for the crime.”541

308. The IACHR recalls that Principle 9 of its Declaration of Principles states that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

309. The IACHR takes note of the State’s proposal to create a special investigative unit for investigating crimes against journalists and other groups. At the same time, it reminds the State of the need for taking into account that the functioning of that unit must be accompanied by conditions allowing for adequate results to be obtained. Thus for example, it is crucial for the unit to have the financial and personnel resources necessary for its proper implementation, as well as for it to effectively coordinate with the agencies responsible and adequately define procedures for its operation. Likewise, the IACHR highlights the convenience of seeking support from the international community to help the unit function better.

3. Attacks on and Threats against Media Outlets and Journalists

310. The IACHR received numerous communications concerning attacks on and threats against journalists and media outlets in Honduras. According to the information, in the early morning hours of December 5, 2011, armed men fired from a moving vehicle at the offices of the newspaper La Tribuna, wounding security guard José Manuel Izaguirre. He was hospitalized and required abdominal surgery. Newspaper officials indicated that the attack took place because of investigations published in the newspaper on the murder of the son of the Rector of the Universidad Nacional Autónoma de Honduras, Rafael Vargas, and his friend, Carlos Pineda. Those articles had mentioned allegations that police officers were among the possible perpetrators of the crime.542

311. The IACHR was informed that on December 23, 2011, Leonel Espinoza, a journalist and correspondent with Colombia’s NTN 24 was arrested, assaulted and intimidated by supposed members of the National Police. The incident took place at night while the communicator was driving his car. He was intercepted by a police vehicle. The journalist had reported on issues including the cleaning up of the police department, attacks on media outlets and journalists, impunity in journalist murders, and the case of the murder of the son of the rector of the Universidad Nacional Autónoma of Honduras.543 The State of Honduras provided information regarding this case, stating that “the Office of the Public Prosecutor has taken several steps that included obtaining witness statements; the victim was evaluated by the Forensic Medicine Office, [and] a report was requested from the Chief of the Metropolitan Police Office and the Chief of the Motorized Squad. We have the names and composite sketches of the officers who took part in this operation but they have still not been individually identified, given that the Victim only fully

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recognizes one of the suspects.” 544 The State also indicated that Espinoza Flores is the beneficiary of protection measures. 545

312. The IACHR received information indicating that Uriel Gudiel Rodríguez, a cameraman with news program “Direct Contact” on Canal 45 had received death threats on December 24, 2011, presumably from an officer with the homicide division of the Department of Criminal Investigations. 546

313. The IACHR learned of death threats received by independent journalist Itsmania Pineda Platero. According to the information, on January 6, 2012, the journalist received a telephone call in which a man insulted her and warned her that she would be murdered. Hours later, she received another call in which men's voices were heard along with the sound a firearm makes when it is cocked and readied to fire. On January 8 and 9, the threats were received through text messages. The text message sent on January 8 said, “don’t play with fire, not even your bodyguards will save you, […] be careful.” On January 9, the journalist received another threat: “at any moment we’re going to put you in the crematorium, were going to be your nightmare.” In November of 2012, the journalist alleged that her accounts for communicating online were blocked through hacking attacks that were intended to silence her. 547

314. Likewise, on January 23, 2012, Gilda Silvestrucci, a journalist with Radio Globo, received several calls on her cellular telephone. During one of them, the voice of an unidentified man mentioned personal information regarding her three children and explicitly told her, “we’re going to kill you.” Almost simultaneously, an unidentified person called one of her daughters and asked her what time her mother normally gets home. The journalist also noticed she was being followed by suspicious vehicles. Silvestrucci is an active member of the “Journalists for Life and Freedom of Expression” collective and participated in a demonstration organized by that group on December 13, 2011. 548 In addition, the journalist took part in filing a criminal complaint against senior civilian and military officials on December 21, wherein a group of human rights defenders alleged to the Office of the Special Public Prosecutor for Human Rights that the President, the head of the Joint Chiefs of Staff of the Armed Forces, and the head of the Presidential Honor Guard were responsible for a series of human rights violations committed by the Presidential Honor Guard. 549

315. In that sense, on February 7, 2012, the IACHR sent a communication to the State of Honduras in keeping with the faculties established in Article 41 of the American Convention on Human Rights in which it requested information on the death threats received by Uriel Rodríguez, Itsmania Pineda and Gilda Silvestrucci. The request was repeated on March 12, 2012. 550 On March 20, 2012, the

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State responded with information regarding the threats to Gilda Silvestrucci. According to the information provided by the State, following the filing of the complaint, on January 24, 2012, a series of steps were taken to investigate the origin of the threatening phone calls received by the journalist. The final action was taken on March 13, 2012, in which a Special Prosecutor on Organized Crime was asked to carry out “an investigation into the calls using a specialist in that area.”

In addition, in its communication of February 22, 2013, the State reported that it was taking “the pertinent steps to identify the calls that were received.” With respect to the case of journalist Itsmanía Pineda Platero, the State also indicated that “the Office of the Public Prosecutor has conducted several investigative proceedings aimed at identifying the individual participants, for which witness statements have been taken.” It further stated that “the progress of the complaint in the National Criminal Investigations Bureau (DNIC) has been verified.” Finally, the State reported that Itsmanía Pineda Platero has been the beneficiary of protection measures since March 5, 2010.

316. Likewise, on January 23, 2012, Ivis Alvarado, a journalist and news coordinator with Globo TV, alleged the theft of two computers from his home and the later search of his vehicle, incidents which took place in the capital city.

317. According to the information received, on February 14, three journalists with the television channel Catedral TV, in Comayagua, who had been reporting on and investigating a fire in the Comayagua prison, received a number of threats and were harassed. According to the information, journalist Luis Rodríguez, cameraman Javier Villalobos and channel owner Juan Ramón Flores received a number of phone calls and messages on their cellular telephones warning them to stop reporting on the issue or they would be murdered. The videos and information revealed in the program entitled “Save Yourselves” showed images of and featured testimony on a number of irregularities in the penitentiary facility. According to the information received, Ramón Cabrera, the general manager of Digicable, was also threatened in order to force him to take Catedral TV out of its lineup. Regarding this matter, the State reported that “there is no record of any complaint filed with the Office of the Public Prosecutor […] and therefore they are asked to file the respective complaint before the national authorities.”

318. According to information received by the IACHR, on February 19, 2012 presumed members of the Honduran military intimidated a group of 20 international journalists who were traveling to Bajo Aguán, in Tocoa, Colón, to cover the International Human Rights Meeting in Solidarity with Honduras. According to the information, at a military checkpoint, individuals presumed to be soldiers stopped the caravan of vehicles in which the journalists were traveling. When the communicators tried to...
capture images of what was happening, the soldiers warned them that their equipment would be confiscated. Almost half an hour later, the soldiers allowed the caravan to pass.\(^{559}\) The Honduran State asserted that “it is unaware of the incident,” and therefore asked the journalists “to file the respective complaint before the national authorities.”\(^{560}\)

319. The IACHR received information indicating that on February 22, 2012 journalist Danilo Osmaro Castellanos, vice president of the Committee for Free Expression (C-Libre) and director of television news show ‘ATN: Honduras Todo Noticias,’ broadcast by Canal 32, was the victim of death threats toward him and his family. Prior to the threats, the journalist had broadcast reports critical of the local Copán government’s administration.\(^{561}\) The State provided information on the case indicating that “the Office of the Public Prosecutor has conducted several proceedings, such as taking statements from the victim and from witnesses. The victim was asked to appear at the offices of the National Criminal Investigations Bureau to add to his statement for the purposes of clarifying some circumstances.” The State indicated that the journalist reportedly stated that it was not necessary to continue with the proceedings in the case “because they have stopped calling him from the number from which the messages had been sent.” Nevertheless, the State reported that “a court order was requested so that the mobile carrier informs the details of the incoming and outgoing calls for the cell phone number from which Mr. Castellanos reports to have received the messages, in order to establish who it belongs to.”\(^{562}\)

320. On February 29, 2012 Mavis Cruz, a journalist with Radio Libertad, in San Pedro Sula, received death threats. According to the information, a person called to tell her that she was “causing lots of trouble” on her radio program and that for that reason they were going to “destroy her.”\(^{563}\) Regarding this matter, the Honduran State indicated that “the Office of the Public Prosecutor has conducted several proceedings, such as taking statements from the victim and from witnesses. A wiretap warrant for Ms. Cruz’s telephone was requested from the respective Court.” The State further reported that “detailed information on the incoming and outgoing telephone traffic for Ms. Cruz Zaldívar’s landline was obtained from the National Telecommunications Company (HONDUTEL), and a review of the report sent by the Telecommunications Company does not show any incoming call on the date and time specified by the complainant.” The State added that “investigations are ongoing.”\(^{564}\)

321. Additionally, the IACHR learned of death threats and threats of sexual violence received on a number of occasions between February and April by Dina Meza Elvir, spokesperson for the Committee of Relatives of the Detained and Disappeared (COFADEH in its Spanish acronym). According to the information, on February 22, 2012 she received two text messages that said, “We are going to burn your pussy with lime until you scream and the whole squad is going to enjoy it.” CAM”. And second: “you’ll to end up like the people in Aguán dead nothing better than fucking some bitches.” CAM is an acronym for Comando Álvarez Martínez with which other human right defenders were threatened after the 2009 coup d’état. Likewise, on April 6, Dina Meza saw two men photographing her while she walked down the street with her children, and on April 14 she received a phone call during which a man warned her, “Watch your pipa” (vagina).\(^{565}\) Later, in August 2012, she reported having received new telephone


threats in the context of the violent breaking up of a peasant demonstration in El Aguán. Dina Meza Elvir has been the beneficiary of a IACHR precautionary measures since 2006.

322. According to information received, Alex Roberto Sabillón, a reporter with Multicanal, was threatened and intimidated between the months of March and August. The information indicates that on March 13, the reporter received a threatening phone call while broadcasting a news program on Multicanal, a TV channel located in the Choloma municipality. The program had called into question an increase in public fees and alleged abuses against street vendors. The threats received during the month of August arrived via phone call and text messages. Likewise, on August 27, Sabillón appeared before the General Directorate of Criminal Investigation (DGIC in its Spanish acronym) to give a statement after having been accused of the crime of sedition by the water company. On leaving that office, an unidentified individual warned him that he would be murdered. The journalist requested protection at a Choloma police station, where he spent the night. On the following day, Sabillón returned home with a police escort and later filed a complaint against one of that company’s officials for threats.

323. In March, Elvis Guzmán, a spokesperson for the Public Ministry, filed a complaint for intimidation involving individuals in a vehicle loitering near his house. The incidents took place after a Public Ministry attorney informed the media that Guzmán had made information regarding sensitive criminal cases public. This would be the third complaint Guzmán has filed over threats against him.

324. The IACHR received information indicating that on March 28, 2012, a mobile unit of Canal 36 Cholusat Sur was destroyed by armed men who attempted to enter station facilities. According to the information, the attack took place one day after the broadcaster reported on questions raised regarding a politician and a soldier.

325. In addition, journalist Antonio Cabrera was threatened through text messages sent to his cellular telephone in February, March and April 2012. The threats against Cabrera, who is responsible for the Radio Frescura 90.9 news programs in the city of Tela, Atlántida department, have generally been received while he broadcasts the morning news. According to the information received, some of the messages received by the communicator include the following: “you have a few days left to keep talking; you’re going to be the third to last journalist to get his tongue cut out.” Cabrera reports that the subjects covered in his program that may have provoked the threats include alleged illegal cutting down of trees in Lancetilla National Park and alleged arbitrary actions taken by local authorities.

326. The IACHR was informed that on April 12, at least two unidentified individuals entered the facilities of community radio stations La Voz Lenca and Radio Guarajambala and cut their power. According to information received, the attack took place after the broadcaster publicly backed the Lenca indigenous community in Santo Domingo, in Colomoncagua, in opposition to the construction of a private hydroelectric project. When the attackers entered the station, they said, “There has been too much

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criticism from these radio stations.” The stations belong to the City Council of Popular and Indigenous Organizations of Honduras (COPINH in its Spanish acronym) and they have suffered sabotage and attacks in the past.573

327. According to information received, on April 18, Rony Espinoza, a journalist with Radio Globo, was attacked and threatened by two presumed leaders of the Liberal Party when he tried to get statements from Bishop Luis Alfonso Santos during a public event in Tegucigalpa.574 Likewise, on April 26, Santiago Cerna, a journalist with Canal 6 and director of informational programming, received threatening phone calls and the following day was intimidated by a vehicle without license plates and with tinted windows that intercepted him in San Pedro Sula.575 According to the information, on May 1, 2012, Edgardo Castro, a journalist and director of the program “The Whip against Corruption,” which is broadcast on Cadena Globo Televisión, received numerous threats by text message while broadcasting activities in celebration of Labor Day.576

328. The IACHR received information indicating that on April 27, in Copán, at least one unidentified individual chased a vehicle identified with the Canal 6 logo in which Edgar Joel Aguilar and other journalists were traveling, firing on it with a rifle.577 Likewise, on April 26, in the municipality of Omoa, unidentified individuals fired on the home of Selvíñ Martínez, a journalist with broadcaster JBN Televisión. 578 On May 18, Martínez alleged that there had been an attempt to kidnap his wife, Dilcia Moreno, the previous day, while she was traveling through the city of Omoa. 579 On July 11, an individual fired several times at the motorcycle Martínez was riding. The authorities arrested a person as a suspect in the attack.580 In October, Martínez allege that a man suspected of being involved in the attacks against him and who was in preventative detention continued to threaten him from prison.581

329. On May 28, David Romero Elner, the news director for Radio Globo, alleged that a retired Colonel had stated that Romero and Esdras Amado López, the owner of Canal 36, could be murdered for being “bigmouths,” the same as Alfredo Villatoro. The former Armed Forces head of military intelligence and current Director of Strategic Information of the Empresa Hondureña de Telecomunicaciones (HONDUTEL) stated that someone had distorted his comments.582

330. On June 13, Juan Vásquez and Sotero Chavarría, social communicators with the radio stations of the Council of Popular and Indigenous Organizations of Honduras (COPINH), were attacked by two individuals riding a motorcycle who fired at them twice and caused a car accident. According to the

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information received, the communicators were returning from a meeting with an indigenous community in Santa Bárbara over a land conflict.583 The IACHR was also informed of the July 27 attack on and arrest of Edwin Murillo, a cameraman with the channel Hable como Hable. According to the information, individuals presumed to be police officers handcuffed, beat and arrested the cameraman while he was covering information related to a crime committed in the Lempira de Comayagüela neighborhood, in the city of Tegucigalpa.584

331. According to the information received, on July 22, Francis Estrada, a candidate for mayor of the municipality of Talanga, alleged that the current mayor of the municipality, who is seeking reelection, had prevented the local media from interviewing other candidates and ordered to the media outlets who did so to be closed. The mayor rejected the accusations and denied having shut down media outlets for that reason.585

332. According to information received, Ariel D’Vicente, the owner of Canal 21 in Choluteca, received a number of threats based on his work that has alleged corruption among public officials.586 The journalist, who was receiving State protection after allegations he made on August 2, 2012, filed a complaint with the Office of the Public Prosecutor on August 10 over new threats.587

333. The IACHR received information on an August 3 attack on the house of José Encarnación Chichilla López, a journalist and correspondent with Radio Cadena Voces in the city of El Progreso, Yoro state. According to the information, two people riding a motorcycle fired at the house. The journalist’s son was injured. Prior to the attack, the journalist had reported locally on gangs and covered a land dispute.588

334. On August 3, 2012, two presumed police officers entered Radio Progreso during the broadcast of a discussion with peasant leaders of the Aguán Unified Peasant Movement (MUCA in its Spanish acronym). According to information, the officers entered asking “where are the peasants?” and only left when the station’s legal counsel informed them that the station was protected by IACHR precautionary measures.589 The information received also indicates that on August 17, 2012, Roberto García, a journalist and contributor to Radio Progreso, was threatened. The journalist also works as a defender of environmental rights and is particularly involved in the struggle against the installation of mining companies in the Atlántida department.590


335. Likewise, on August 20, 2012, communicator Vitalino Álvarez, spokesperson for the Aguán Unified Peasant Movement (MUCA), was struck in the hands by police officers who attempted to take his camera. According to the communicator, he was the victim of persecution because of his position as the MUCA spokesperson. He also indicated that he was arrested on August 26 on accusations of being a “foreigner” because he did not have the identification requested. Days prior, the communicator had been arrested with other members of the movement during a protest in Tegucigalpa. Also, on January 31, 2012, Álvarez alleged that he had received multiple threats.

336. The IACHR received information indicating that Miguel Dubón, a journalist and director of the Canal 12 program ‘Noticiero Independiente’ and a correspondent with Radio Globo, alleged in August of 2012 that he had been attacked, harassed, and hounded, presumably by the Municipal Mayor of Trujillo, after making public statements regarding issues of transparency in the management of public municipal funds. According to the journalist, four months previously he had to withdraw his program from Estero Casillas due to pressure that the mayor had exerted on the station owner.

337. According to information received by the IACHR, on September 6, Eduardo Coto Barnica, a journalist with Radio Uno, was intimidated by an unidentified individual who approached him and threatened him with an object hidden underneath his shirt that appeared to be a firearm. Months prior, he had reported having received threatening phone calls. According to Coto Barnica, the attack is related with his criticism toward the coup d'état and the work that he does in the radio station's news department, where he takes a critical stance in addressing political, social and economic topics.

338. Likewise, since September 20 and in the context of a court proceeding against peasants accused of participating in illegal demonstrations, journalist Karla Zelaya has received a number of text messages threatening her with death. Zelaya, who is a journalist with the Aguán Unified Present Movement (MUCA), indicated that she fears for her life, particularly after the September 22, 2012, murder of her defense attorney, Antonio Trejo Cabrera, who was also an attorney for the Aguán Authentic Restoration Movement (MARCA). Later, Zelaya alleged that on October 23, he was detained and assaulted by unknown individuals for several hours. They interrogated him about his activities with the MUCA.

339. According to information received, online newspaper Hondudiario suffered an attack from hackers on October 12 that took its website down for two days. The incident took place after the website received a series of threats over its regular publication of information on alleged irregularities in the use of helicopters.

340. The IACHR was informed that on October 24, journalists Nery Arteaga y Ninfa Gallo, hosts of the program “News and debate” on Canal 51, were intercepted close to the country's capital.

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According to information provided, unidentified individuals wearing official uniforms beat them and took their vehicle and their journalism material.\(^ {598} \)

341. The information received also indicates that journalist Juana Dolores Valenzuela Calix alleged that on November 29, she received e-mailed death threats. According to the journalist, who is also a defender of environmental rights, the threats were the result of her work against open pit mining in the country.\(^ {599} \)

342. In addition, during the hearing on the right to freedom of expression in Honduras held on November 4, 2012, at the IACHR, the petitioners provided information on murders, death threats and attacks on journalists and communicators in the country, highlighting that many of the incidents remain in impunity. According to the petitioners, even though the State has carried out investigations into some of the acts of violence, the investigations generally do not duly take into account the crimes’ possible connection with the victims’ professions. For its part, the State indicated that the large majority of reported attacks are perpetrated by private individuals and not State officials or agents, and that they were the result of common criminality and organized crime.\(^ {600} \)

343. Following the hearing, the IACHR expressed its deep concern over the information provided by the petitioners on the alleged lack of effectiveness of the precautionary measures granted by the Inter-American Commission for the protection of communicators in Honduras. It called on the State to immediately seek to implement those measures.\(^ {601} \)

344. Principle 9 of the Declaration of Principles of the IACHR states that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

4. Other relevant situations

345. According to the information received by the IACHR, Esdras Amado López, a journalist and news director for “That's how you report,” broadcast on Canal 36, was called on February 3, 2012, to appear before the First Civil Court for a February 9 hearing over a complaint filed by the Cooperativa de Ahorro y Crédito ELGA. According to the journalist’s allegations, the court system admitted the complaint at a time when Amado López was preparing to travel to Brazil to present a documentary and speak on her experience during the coup d'état, a trip that she could not make because of the court summons.\(^ {602} \)


346. On April 12, three student leaders of the Universidad Pedagógica Nacional Francisco Morazán alleged that they had been subjected to political persecution and violations of their freedom of expression. According to Kelly Núñez, Erlín Gutiérrez and Miguel Ángel Aguilar, university authorities accused them of incitement for organizing protests, suspension of academic work, denigration the university's public image and calling for a revolt against the authorities, for which they could be expelled from the university. On March 7, a group of students staged a protest in defense of public education.603

347. According to information received, the mayor of the city of Talanga induced the suspension of cable broadcaster Telecentro and the mass purchase of copies of the newspaper El Heraldo on October 16 and 17 after it published a news item on the suspension of the broadcaster. According to the information, two cable television companies suspended the broadcast at the request of the mayor, who was bothered by criticism from his opposition.604 According to available information, the Office of the Public Prosecutor on Human Rights is investigating the incidents and has called the mayor to testify regarding them605.

348. On November 13, 2012, the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH in its Spanish acronym) accused individuals assumed to be officials with the National Telecommunications Council (CONATEL in its Spanish acronym) of appearing at the offices of community radio station La Voz Lenca and threatening to confiscate its equipment if their frequency was not regularized within 10 days. According to the COPINH, the CONATEL action came after a complaint was filed by the owners of a local radio station in 2007 alleging that the community radio station was interfering with its frequency. However, they reported that the complaint was dismissed that same year. COPINH also indicated that in 2011, CONATEL sent them a communication indicating that it would be sending a technician to verify that there had been no interference with frequency. However, no visit was made, despite the fact that CONATEL had been asked for one on several occasions. According to this, they suggested that the threat was more of a warning designed to intimidate the community radio station606.

349. The IACHR notes that article 13.3 of the American Convention on Human Rights states that “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

17. Jamaica

350. The Office of the Special Rapporteur was informed of the decision of television channels CVMTV and Television Jamaica to not authorize the broadcast of a commercial entitled “love & respect,” which reportedly sought to promote tolerance of diversity in sexual orientation. An activist from the LGBTI community, who was one of the actors in the commercial, requested the intervention of the Broadcasting Commission. The institution reportedly found no legal reason for the commercial not to be aired, and urged the parties to engage in dialogue. No agreement was reached, and in October 2012 the activist


18. Mexico

A. Progress

352. The Office of the Special Rapporteur was pleased to receive the news that on June 6, the Permanent Commission of the Congress of the Union approved an amendment to Article 73 of the Political Constitution granting power to federal authorities to take over investigation of crimes committed in local jurisdictions when they are related with crimes against journalists, individuals or facilities that affect, limit or put at risk the right to information or freedom of expression or the press.\footnote{Senate of Mexico. June 6, 2012. \textit{Valida la permanente reforma constitucional a favor de periodistas}. Available at: \url{http://www.articulo19.org/portal/index.php?option=com_content&view=article&id=3740:boletin-1111-valida-la-permanente-reforma-constitucional-a-favor-de-periodistas&catid=51:boletin-de-prensa&Itemid=180}}

353. The Office of the Special Rapporteur was satisfied to learn of the promulgation of the Act for the Protection of Persons who Defend Human Rights and Journalists, passed by the Congress of the Union on April 30, 2012, signed by the president on June 22, and published in the Official Gazette of the
The purpose of the Act is to guarantee and protect the lives, integrity and safety of human rights defenders and journalists through the creation of a mechanism that has the authority to apply protective measures for people at risk, as well as to prevent those risks from arising in the future. The Act is made up of 67 articles, and it establishes measures of protection such as evacuation, temporary relocation, assignment of bodyguards and armored cars for victims of violence, and provision of electronics and bulletproof vests. The law also allows for the application of sanctions against public officials who deliberately put human rights activists and journalists at risk or cause harm to them.  

354. According to information received, on January 18, the Supreme Court of Justice of the Nation ruled to take over the hearing of an amparo brought by petroleum businessmen suing for reparation of nonpecuniary damage over reports published in the magazines Contralínea and Fortuna. Between 2004 and 2008, the magazines published a series of articles on alleged irregularities in the tenders of parastatal petroleum company Petróleos Mexicanos (PEMEX). Based on the articles, private contractors sued Miguel Badillo - director of Contralínea and Fortuna - reporters Ana Lila Pérez and Nancy Flores, and cartoonist David Manrique. On January 3, 2011, the 54th Civil Court of the Federal District had found the magazines and the communicators guilty in first instance of having committed moral damage to the detriment of three oil businessman. The ruling was overturned by the First Civil Chamber of the Superior Tribunal of Justice of the Federal District, which acquitted the communicators on April 7, 2011; however, the plaintiffs presented an amparo. On June 4, the SCJN denied the amparo for businessmen involved in the case on finding that “the information distributed in the columns in question and the expressions used therein are of public relevance.” For a number of years, journalists with Contralínea and Fortuna have faced a series of civil and criminal suits brought by the companies Zeta Gas, Oceanografía and Blue Marine, facts that have caused the Office of the Special Rapporteur and the National Human Right Commission (CNDH in its Spanish acronym) to express concern.  

355. On August 15, the Federal Institute on Access to and Protection of Information (IFAI in its Spanish acronym) ruled on a remedy for review, whereby it ordered the President of the Republic to turn over the names of officials who had been assigned certain telephone numbers, in application of the


Federal Access to and Protection of Information Act. The government had argued that the information was confidential, as its distribution could put the lives, health or safety of the officials at risk.\textsuperscript{616}

\section*{B. Murders}

356. On April 28, journalist Regina Martínez was found dead, with signs of violence, in her house in Veracruz. According to the information received, Regina Martínez was a Veracruz correspondent with the magazine \textit{Proceso}, a publication of analysis and research with national circulation. She also wrote articles that were critical of state politics and organized crime. The magazine \textit{Proceso} has been subjected to the mass purchase of copies by those who feel affected by its reporting, and on a number of occasions the magazine has found it necessary to keep the names of the journalists covering security issues in different regions anonymous. Days before her death, the journalist published an article on allegations of corruption among local authorities. The Veracruz authorities have asked for the assistance of the Office of the General Public Prosecutor of the Republic. At the time, the Office of the Special Rapporteur expressed the importance of diligently and exhaustively investigating the possibility that the murder was related to the journalist’s work.\textsuperscript{617} On October 30, the Office of the General Public Prosecutor of Justice announced that the case had been solved and stated that the crime was the result of a robbery and not related to journalism work. Likewise, it revealed the identities of two suspects, bringing one before the press and indicating that the second was a fugitive. The magazine \textit{Proceso} called the police authorities’ statements “hasty” and reiterated its skepticism at the official announcement.\textsuperscript{618}

357. The Office of the Special Rapporteur was informed of the murder of three photographers and an administrative employee of a newspaper. Their bodies turned up in Veracruz, Mexico, on May 3. According to the information received, the photographers were Gabriel Huge and Guillermo Luna. They were covering the police beat for a number of Veracruz media outlets and had disappeared on the afternoon of May 2. One day later, their bodies turned up wrapped in plastic bags in an area known as Canal de la Zamorana 1, in the port of Veracruz. Until 2011, the journalists worked for the newspaper \textit{Notiver}. Also found with them where the bodies of Esteban Rodríguez, former photographer with the newspaper \textit{AZ} and with \textit{TV Azteca}, and Irasema Becerra, administrative employee of the newspaper \textit{El Dictamen}, in Veracruz. In 2011, Huge, Luna and Rodríguez had left the state of Veracruz due to threats they had received.\textsuperscript{619}

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358. Regarding this situation, on August 10, the authorities arrested an alleged drug trafficker known by the alias of La Bertha. Among his belongings they found the ID card of Irasema Becerra. Apparently the authorities also captured another alleged drug trafficker, known by the aliases El Cronos and/or El Rayito, who, together with six other alleged drug traffickers, confessed to several dozen crimes, among them the murders of Huge, Luna, Rodríguez and Becerra. With this confession, the Office of the Public Prosecutor of Veracruz considers the murders of the four media workers to be solved. Organizations for the defense of freedom of expression expressed skepticism at the announcement of the resolution of the cases based on the confession of a suspected drug trafficker. The Office of the General Public Prosecutor of the Republic announced that it would take over the case to continue the investigation.

359. According to information received, on May 18 the body of journalist Marcos Ávila García turned up in Sonora one day after he was kidnapped. According to the information, at least three armed masked men kidnapped the journalist on the afternoon of Thursday, May 17, while he was at a carwash in Ciudad Obregón, Sonora state. The authorities launched a significant police operation in an attempt to find him. The reporter turned up murdered at the side of a highway, with indications of torture and a message presumed to be from a criminal organization. Marcos Ávila covered the police beat for the newspaper El Regional de Sonora in Ciudad Obregón, and he was recognized for his seriousness and professionalism.

360. On June 14, police beat journalist Víctor Manuel Báez Chino was found murdered in Xalapa, Veracruz. According to the information received, three armed men in an SUV kidnapped the journalist on the night of June 13 when he was leaving his office in Xalapa. Police authorities immediately launched a search that concluded when his body was found the following morning on a downtown street, close to the Xalapa town hall and the headquarters of two local newspapers. Báez Chino was the editor responsible for the police report section of the Grupo Milenio newspaper Milenio - El Portal in Veracruz, as well as editor of news site Reporteros Policíacos. In August, the authorities captured an alleged drug trafficker, alias El Cronos and/or El Rayito, who, together with six other alleged drug traffickers, provided information on several dozen crimes. That information included the names of the alleged drug traffickers, alias La Bertha, El Rayito, and El Cronos. Among his belongings they found the ID card of Irasema Becerra.

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622 Article 19. August 15, 2012. In August, the authorities captured an alleged drug trafficker, alias El Cronos and/or El Rayito, who, together with six other alleged drug traffickers, provided information on several dozen crimes. That information included the names of the alleged drug traffickers, alias La Bertha, El Rayito, and El Cronos. Among his belongings they found the ID card of Irasema Becerra.

perpetrators of the murder of journalist Báez Chino. As with the aforementioned cases of media workers Huge, Luna, Rodríguez and Becerra, organizations for the defense of freedom of expression expressed skepticism at the announcement of the resolution of the cases based on the confession of a suspected drug trafficker, and the Office of the General Public Prosecutor of the Republic announced that it would take over the case to continue the investigation.

361. According to information received, on October 15, Abel López Águilas was murdered in Tijuana. He was the director of news website Tijuana Informativo. It was later reported that the journalist’s son-in-law had confessed to the crime. However, a number of civil society organizations expressed concern at the way the investigation was handled, specifically citing alleged inconsistencies in the official information provided and the allegedly rushed dismissal of a line of investigation connected with the victim’s journalism work.

362. On October 22, 2012, environmental rights defenders Ismael Solorio Urrutia and Manuella Solís Contreras were murdered in Chihuahua. Both were leaders with the El Barzón agricultural producers group. According to information provided, the married couple had been attacked and threatened for allegations the organization had made regarding possible irregularities in the use of water resources in the region, as well as incidents of pollution and destruction of crops, issues they alleged were not taken care of by local officials.

363. The Office of the Special Rapporteur was informed of the murder of journalist Adrián Silva Moreno, which took place on November 14, 2012, in Tehuacán, state of Puebla. The reporter died after being shot, and his companion, identified as Misael López González, also died in the incident. According to the information received, the crime could be connected to information the reporter had on gasoline theft in the region. Adrián Silva Moreno contributed to a number of local media outlets, including Diario Puntuual, Radio 11.70 of Tehuacán and Global México.

364. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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C. Attacks on and threats against media outlets and journalists

365. In November and December of 2011, journalist Olga Wornat and her assistant Édgar Monroy repeatedly received threats via e-mail. According to the information received, there is evidence that the purpose of the threats was to find out the content and identity of the sources of the research Wornat and Monroy were doing for a book on the Federal Government’s administration. Later, after the publication of excerpts from the book in the magazine *Playboy México*, Wornat received a number of threatening e-mails on August 2, 8 and 11, 2012. In the same context, on August 2 the magazine’s editor, Gabriel Bauducco, received a threatening e-mail warning him about his journalism work. According to the information, in the months prior to the threat, the magazine also published a number of controversial articles on corruption issues.

366. The Office of the Special Rapporteur was informed of a death threat received on December 5, 2011, by Luis Peraza Ibarra, a journalist with the newspaper *Noroeste*. He received the threat via an anonymous text message to his cellular telephone. According to the information, the journalist reports on politics and administrative issues in the Concordia area and had recently reported on possible conflicts of interest among local officials. Peraza filed a criminal complaint over the threat with the Unified Agency of the Local Public Prosecutor’s Office.

367. The Office of the Special Rapporteur learned of the December 9, 2011, publication of an anonymous spread in the newspaper *El Debate*, in Sinaloa, whose content was hostile and stigmatizing against an *El Noroeste* columnist, professor and researcher with the Universidad Autónoma de Sinaloa (UAS) Arturo Santamaría Gómez. The publication accused the journalist of “endangering the lives of the members of the University community” and being “a journalism hitman.” The spread was connected with Santamaría columns in which he raised questions over certain irregularities in the administration of a former UAS rector who was later elected mayor of the municipality of Culiacán. Days after the publication, Santamaría reported the presence of suspicious vehicles near his house whose occupants had been asking the neighbors about the journalist. University authorities denied any participation in the spread, and the mayor of Culiacán denied being the author of the text. Santamaría file a criminal complaint against the mayor for threats.

368. The Office of the Special Rapporteur learned of a series of allegations regarding attacks suffered by journalists and media workers in Ciudad Juárez. On January 29, individuals presumed to be Municipal Police officers held José González and Salvador Castro, reporters with the newspaper *Norte*. They were threatened with rifles and forced to erase photographs of patrol cars that had their...
identification numbers concealed. On February 3, individuals presumed to be municipal police officers apprehended Joel Gonzalez, a journalist with El Diario, in front of the newspaper’s offices while he was watching the arrest of a woman and approached to ask what was going on.

369. On January 30, individuals presumed to be members of the Ministerial Police of Sinaloa assaulted Ararak Salomón, a reporter with the newspaper Noroeste, while he was photographing the arrest of officers of the Municipal Public Security Directorate of Guasave who had not responded to a call for help from soldiers who were being attacked by an armed group. The alleged attackers beat the communicator and erased the images. On January 19, Alberto Cruz Moreno, a journalist and editor of the newspaper Hablemos Claro, was apprehended, beaten and threatened by individuals presumed to be ministerial police officers with the Office of the General Public Prosecutor of the State of Mexico for having taken pictures of a public official under arrest. The images were erased.

370. In February and March, a number of journalists were assaulted in the context of public protests in the state of Oaxaca. José Luis López, with Diario del Istmo, and Connie Balgorria and Esteban Ramón Hernández, with channel Meganañicas, were beaten while covering protests in the municipality of Salina Cruz on February 26 and March 5, respectively. On March 5, Hugo Alberto Velasco, a photographer with the news agency Notimex, was assaulted and his equipment was damaged after he was attacked by alleged members of a political group who were blocking a road in the capital of Oaxaca and assaulting journalists and drivers. On March 6, individuals presumed to be officers with the Municipal Police of Santa Cruz Xoxocotlán, Oaxaca, assaulted journalists from a number of local media outlets who were covering the dispersal of demonstrators blocking an intersection. The journalists who were assaulted included Esteban Marcial, with Noticias; Jesús Cruz Porras, with weekly newspaper Proceso; Othón García, with Rotativo; José Cortés, with Telemundo; Jorge Arturo Pérez Alfonso, a photographer with La Jornada, and Alejandro Villafañe, with the newspaper El Imparcial, who was taken to a hospital for medical attention due to his injuries.

371. On March 19, a car bomb exploded in front of the offices of the newspaper Expreso, in Tamaulipas, injuring five people who were passing by and damaging a number of vehicles. The newspaper published an article on the attack on its website, but shortly afterward it had to remove the information and take the site down for a day. On March 26, an explosive device detonated next to the Televisa network building in the city of Matamoros.
372. On May 11, a group of unidentified individuals used firearms and explosives to attack the offices of newspaper *El Mañana*, in Nuevo Laredo, Tamaulipas state. According to the information received, the attack damaged the newspaper building’s façade and vehicles in the parking lot; however, no one was injured.\(^{641}\) In response, the directors of *El Mañana* said in an editorial that the newspaper would refrain from publishing “any information related to the violent conflicts from which our city and other regions in the country are suffering.” According to the editorial, the decision was taken due to “the absence of the proper conditions for the free exercise of journalism.”\(^{642}\)

373. In April and June of 2012, the Office of the Special Rapporteur learned of repeat DoS (Denial of Service) attacks on digital newspaper *Noticaribe* in Quintana Roo. The attacks caused serious technical problems for its server, taking the site’s content off-line for whole weeks. The site was critical of certain state authorities.\(^{643}\)

374. In the early morning hours of June 8, journalist Hypatia Stephania Rodríguez Cardoso and her two-year-old son disappeared in Saltillo, Coahuila. The Federal Government announced on June 22 that the reporter and her son were safe and under police protection. The authorities stated that the reporter had been threatened by criminals. The communicator works at Saltillo newspaper *Zócalo* and often covers the police beat.\(^{644}\)

375. According to information received, in the early morning hours of July 10, 2012, someone detonated an explosive outside the offices of supplement *La Silla*, of newspaper *El Norte*, in the city of Monterrey.\(^{645}\) That afternoon, a branch of the same newspaper, headquarters of the supplement *Linda Vista* in the municipality of Guadalupe, north of Monterrey, was attacked with gunfire and a grenade. Por la tarde, una sucursal del mismo diario, sede del suplemento *Linda Vista* en el municipio de Guadalupe, al norte de Monterrey, habría sido atacada con una granada y disparos.\(^{646}\) At dawn on July 10, an explosive device detonated in front of the newspaper *El Mañana* in Nuevo Laredo. *El Mañana* reiterated

[Full-text references cited here]
its decision of self-censorship and stopped publishing information on the actions of organized crime. 

On the afternoon of Sunday, July 29, a number of attackers broke into the offices of supplement Sierra Madre, of newspaper El Norte, municipality of San Pedro, neutralized the security guard and set fire to the printing press in the first floor of the building. None of these attacks caused injuries. Likewise, on July 30, a group of armed subjects entered the printing and distribution center of Dipsa magazines and newspapers in Monterrey, setting fire to the facilities.

376. According to information received, on July 16, unidentified individuals searched the home of Hiram González Machi, a journalist with newspaper Nuevo Día and Canal 7, in Nogales, and left a note saying, “You're going to die, reporter.” Cecilia Cota Carrasco, a journalist with Sinaloa’s El Diario, alleged having been threatened on July 27 by a former federal deputy candidate who warned her that he was capable of committing violence against her and her family.

377. On July 29, journalist Lydia Cacho, who is protected by IACHR precautionary measures, received new serious death threats directly related with her work. On August 3, Cacho left Mexico temporarily as a necessary measure to protect her life and integrity while journalism organizations implemented a security strategy for her.

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378. The Office of the Special Rapporteur was informed of the August 13 disappearance of journalist Mario Segura, director of the newspaper El Sol del Sur in the city of Tampico, State of Tamaulipas. A complaint over his disappearance was filed on August 17.654

379. Information received indicates that on August 20, Eric Chavelas, a photographer with the Guerrero state newspaper El Sur, was assaulted. He was attacked by a member of the governor's security team, who struck him and threatened him while the reporter was trying to film the governor leaving an event where a student protest was taking place. In addition, on August 24, AFP and La Jornada Guerrero photographer Pedro Pardo was threatened by an individual presumed to be an Acapulco traffic police officer who stuck the barrel of a rifle in his ribs while Pardo was covering the scene of a homicide.655

380. According to information received, in September of 2012, Andrés Timoteo Morales, a former correspondent with La Jornada and columnist with Notiver in Veracruz requested asylum in France after having received multiple threats and being harassed, and after the murder of a number of his peers. The journalist, who is strongly critical of the Veracruz government, was forced to move outside the country in order to protect his life.656

381. The Office of the Special Rapporteur was informed of a number of incidents during the month of September. First, on September 13, a number of individuals entered the headquarters of the magazine Sin Límite Avante in Sonora and took computer equipment containing information that was important for the magazine.657 On September 15, during the independence celebration in the municipality of Ensenada, a number of people were assaulted. Among them were Julio Ruelas and Jose Orozco, cameramen with Canal 6 TV in Baja California. The communicators were assaulted and apprehended by individuals presumed to be members of the municipal police.658 Likewise, as of September 20, journalist Samuel Valenzuela Ortega, a resident of Hermosillo, Sonora state, decided to stop writing his column ‘Entretelones’ due to threats that he had received. Likewise, on September 20, journalist Alberto Irigoyen received death threats from unidentified individuals who entered his home.659


382. According to information received, Hiram Moreno, a correspondent in the Tehuantepec Istmo with newspaper La Jornada, alleged having received death threats in September and October after publicizing information regarding alleged irregularities on transactions related to the free fuel provided to the state of Oaxaca by State oil company PEMEX, to distribute among fishing cooperatives.

383. The Office of the Special Rapporteur was informed of the apprehension of journalist Juan de Dios García Davish, with Agencia de Noticias Quadratín and a correspondent with Milenio. He was arrested on October 1, 2012, in Chiapas. According to the information, the journalist was beaten, held and had his photography material taken by individuals presumed to be members of the police force while he was covering a student protest in the Motozintla municipality. The journalist, who regained his freedom several hours later, has filed a complaint before the Human Rights Commission.

384. On October 12, the Office of the Special Rapporteur received information alleging a smear campaign against the Center for the Human Rights of Women (CEDEHM) and its general coordinator in Chihuahua, Luz Estela Castro Rodriguez. According to the CEDEHM, after issuing a press release on October 8 raising questions about an investigation in a case of femicide that took place in 2010, the State Public Prosecutor issued a public statement criticizing the defender and her organization. Later, the Secretary of the Government committed to issuing a public apology for the State’s declarations. Luz Estela Castro Rodriguez and all the members of the CEDEHM, along with their immediate families, have been covered by the precautionary measures of the IACHR since 2008.

385. According to information received, on October 15, individuals assumed to be police officers attacked a vehicle driven by Alan Ortega, a photographer in Michoacán with news agencies Cuartoscuro and Reuters, and tried to set it on fire. The photographer was covering student protests in the Cherán municipality.

386. On October 21, journalists Jesse Brenna - with Milenio Puebla - and Gerardo Rojas - with website E-Consulta - were assaulted, robbed and detained for several hours in a patrol car by individuals.

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presumed to be police officers. The incident took place in Puebla. According to the information, the reporters went to the Public Ministry to file complaints over the incidents and have received the cooperation of the Municipal Police. The Office of the Office of the General Public Prosecutor of the state of Puebla has opened an investigation to clarify the incident.666

387. The Office of the Special Rapporteur was informed of the disappearance of Adela Jazmín Alcaraz López, a news anchor with Canal 12 in Rioverde, in San Luis, Potosí. She has not been seen since October 26. According to the information received, on the day of her disappearance, an unidentified individual called one of the journalist’s relatives and told that person that the victim’s two children, who were presumably with her at the time, were safe and had been taken to their nanny’s house, where they were later found. As of the publication date of this report, there has been no word of her whereabouts.667

388. According to information received, on November 20, journalist Fernando Palacios Cházares, the director of the magazine Ruta 135, was attacked, and his equipment was taken. According to the information provided, the journalist was covering an assault against a passenger bus in a small town in the state of Oaxaca, when he was attacked by individuals assumed to be municipal police officers. According to the journalist, the attackers kept his camera and other electronic equipment he used to do his job. On November 23, the journalist brought a complaint before the Office of the Defender of the Human Rights of the People of Oaxaca (DDHPO), as well as before the Associate Office for Attention to Journalists. Palacios Cházares says he recognized several municipal police officers among his attackers.668

389. As already stated, Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

D. Other relevant situations

390. According to information received, on December 1, 2011, Juan José Hernández, the director of community broadcaster Radio Diversidad in the Paso del Macho municipality, Veracruz state, was arrested. Mr. Hernández and three other journalists with Radio Diversidad are defendants in a criminal proceeding originating in the operation of the aforementioned community radio station. For this reason, they are accused of the crime of “using, taking advantage of or exploiting property owned by the Nation without a permit or concession of the state,” as set forth in Article 150 of the General Law on

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National Property. The journalist was released six days later after paying a bail of 5000 pesos (about US $500). 669

391. Regarding this, the Office of the Special Rapporteur reiterates that “a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.”670

392. Likewise, the Office of the Special Rapporteur has during recent years monitored the regulation of the broadcast spectrum and application of provisions on radio broadcasting in Mexico, and has identified certain difficulties with the existing legal framework due to the ambiguity of the provisions and the absence of adequate regulations. 671 In this sense, the Office of the Special Rapporteur recalls that States must put in place a clear and precise legal framework that respects the standards on freedom of expression, nondiscrimination and due process, and that recognizes the special characteristics of each form of radio broadcasting, in keeping with international standards. 672

393. In this same sense, the Office of the Special Rapporteur observes that community broadcasters must operate legally; however, currently there are serious practical obstacles to the legalization of community broadcasters in Mexico. Thus, for example even though the Supreme Court of Justice declared the pertinent sections of the radio broadcasting law unconstitutional 673 and identified some criteria to be taken into account to establish a proper procedure for granting permits or licenses to noncommercial radio and television stations, 674 still no clear, precise and equitable procedures have been

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established whereby the community radio stations could request and obtain frequencies on which to operate.\textsuperscript{675}

19. Nicaragua

394. According to the information received by the Office of the Special Rapporteur, a group of young people protesting outside the headquarters of the Supreme Electoral Council (CSE) were allegedly harassed by third parties who did not agree with the protest against the electoral body. According to the reports, at the beginning of the month of July, unknown persons reportedly took photographs of the protesters and made threats to them. The youths subsequently requested that the National Police provide protection measures. The information received indicates that in the early morning hours of July 19, approximately 20 protestors were forced to leave the area by another group of individuals allegedly affiliated with the government, and some of them were reportedly injured. According to the information available, the municipal authorities took some action to prevent subsequent protests from being held. Nevertheless, the protestors allegedly stated that they would continue with the protests in spite of the ongoing threats against them.\textsuperscript{676}

395. In October 2012 the program ‘Hablemos sin pelos en la lengua’ on the radio station \textit{Estéreo Juventud} was reportedly taken off the air. The program was a call-in show on which citizens would report complaints against public authorities. According to the program’s host, Walter Rodas Galo, the owner of the radio station told him the program would be ending due to pressure allegedly received from local public servants who threatened to shut down the station if the program was not taken off the air. Local public officials denied having an interest in the program’s shutting down.\textsuperscript{677}

20. Panama

A. Progress

396. The Office of the Special Rapporteur observes with satisfaction the July 17, 2012 acquittal of TVN 2 journalists Siria Miranda, Eduardo Lim Yueng and Kelyneth Pérez. The ruling was handed down by the 17th Criminal Court. According to information received, the journalists were accused of distributing video of a police officer receiving a bribe from a driver. In applying inter-American standards, the court concluded that the defendants had no intention to violate the honor of the plaintiff and recognized that “the journalists were doing their job of revealing a fact that was of significance for society.” In this sense, the judgment indicated that “the incident was of considerable significance and merited the attention of the defendants in the work they were carrying out.” Likewise, the judgment found


that the defendants did not act with actual malice, as there is no indication of a ‘reckless disregard for the truth.’”

397. The Office of the Special Rapporteur values the information provided by the State according to which, *inter alia*, between March 2011 and July 2012, the information available on State agency web sites increased by 124%, in compliance with the publicity principle contained in the Transparency Act.

### B. Attacks

398. The Office of the Special Rapporteur received information on several attacks against journalists covering protests against Law 72, which would have allowed the sale of State land in the Colón Free Zone. On October 22, Delfia Cortez and Sugey Fernández, journalists with *Telemetro Reporta*, were affected by tear gas fired at them by individuals assumed to be police officers while they were interviewing protest organizers. On October 19, Bienvenido Velasco, a photographer with *La Prensa*, was attacked by at least one individual assumed to be a police officer who fired his gun at a group of people that included the media worker. Likewise, on the night of October 19, a mobile unit of the television network *TVN* was shot by unidentified persons. The shooting happened while the unit was covering police operations in the city of Colón.

399. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

### C. Subsequent liability

400. According to information received, on March 19, 2012, former President Ernesto Pérez Balladares brought civil suit against the newspaper *La Prensa*, seeking US $5.5 million. According to the information, the former president considered two articles dated March 21 and March 22, 2011, that mention him in the context of investigations into money laundering being carried out by the Specialized Office of the Public prosecutor against Organized Crime as damaging to his honor. For their part, the newspaper’s attorneys indicated that the lawsuit lacks basis in law and explained that in a brief dated

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401. Principle 10 of the IACHR’s Declaration of Principles establishes that, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Also, Principle 11 of the Declaration establishes that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

D. Other situations

403. According to information received, in early February, cellular telephone and Internet service was suspended in areas where indigenous protests were taking place against hydroelectric and mining products. The suspension affected the ability of journalists and protesters to stay in contact with the media and report on road blockades and police intervention.687

404. According to information received, in the early morning hours of August 3, trucks with the company Transcaribe Trading blocked the exit to the printing plant used by newspapers La Prensa and Mi Diario, delaying distribution of the newspapers for several hours. According to the information, the companies were staging a protest to express their displeasure at La Prensa reports alleging irregularities in contracts between the construction company and the Ministry of Public Works. The blockade was lifted after the intervention of President Ricardo Martinelli.688

21. Paraguay

A. Progress

405. The Office of the Special Rapporteur received information on the arrest of - and later granting of conditional release to - an individual suspected of being connected with the murder of journalist Merardo Romero Chávez, which took place on March 3, 2011. According to the information received, on December 10, 2011, a person suspected of being the intermediary between the masterminds and perpetrators of the murder was arrested. On December 31, a local court granted house arrest to the suspect. Other alleged perpetrators have been imprisoned since March, 2011, and the whereabouts of two of the alleged masterminds are unknown.689

B. Attacks on and threats against media outlets and journalists

406. According to information received, Brazilian police alerted Cándido Figueredo, a correspondent with ABC Color in Pedro Juan Caballero, to a plan by certain alleged narcotraffickers to murder him. According to the information, agents with the Intelligence Service of the Civilian Police of Brazil met with Figueredo and allowed him to listen to an intercepted telephone call in which an individual assumed to be a drug trafficker speaks with an inmate in a Brazilian prison of his intention to murder Figueredo. The plan to kill the journalist took shape after several articles were published in ABC Color in September, 2011 alleging the existence of a number of secret clandestine landing strips for drug trafficking that were later located and destroyed by the authorities.690


407. The Office of the Special Rapporteur was informed that on October 4, 2012, members of illegal armed group Army of the Paraguayan People [Ejército del Pueblo Paraguayo] (EPP in its Spanish acronym) attacked the offices of radio station Guyra Campana, in the city of Horqueta, with explosives. According to the information, the detonated explosives caused serious damage to the facilities and took the broadcaster off the air for five days.691

408. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Other relevant situations

409. The Office of the Special Rapporteur was informed of a number of incidents that affected the public media after president Fernando Lugo was removed from office on June 22, 2012. According to available information, Cristian Vázquez, who had identified himself as communications director for the new government, entered the facilities of TV Pública. According to the public complaint that was filed, the official asked the channel to stop broadcasting images of the demonstrations against the Congress's decision.692 Vázquez stated that he went to the channel’s headquarters with the only purpose of collaborating, and that even if he asked for a list of all the station’s programming, he did not order any cuts.693 The new Minister of the Secretariat of Information and Communication for Development (SICOM in its Spanish acronym) called Vázquez’ actions a “grotesque error,” and stated that the channel’s employees would not be fired.694

410. According to the information received, on June 23, the Radio Nacional program ‘Ápe ha pepe’ (‘Here and there’ in guarani) was suspended. It returned to the airwaves one week later.695 Likewise, on September 17, the program ‘RedPública’ - produced by public broadcaster Radio Nacional – did not have its contract renewed, and program director Carlos Goncalves was notified that he would no


longer be working on it. The journalist had been informed that the SICOM was carrying out a special evaluation of the program. 696

411. Elsewhere, on July 12, three public media journalists were fired 697 and on September 4, 27 workers with TV Pública had their contract terminated. The journalists alleged ideological persecution after their coverage of the incidents of June 22 and indicated that they were not notified of their dismissal. For its part, the Secretariat of Information and Communication for Development [Secretaría de Información y Comunicación para el Desarrollo] (SICOM) indicated that the employees were not fired. Rather, the contracts were terminated due to lack of funding after the conclusion of a project with the Organization of Ibero-American States for Education, Science and Culture [Educación, la Ciencia y la Cultura] (OEI) that was funding them. 698

412. According to available information, on June 24, the electricity to TV Pública was cut off during a broadcast of the program “Open Mic.” In a press release, the Secretariat of Information and Communication for Development (SICOM) reported that it will investigate the incident and will ask the National Electricity Administration (ANDE) for a corresponding technical report. 699 Regarding this, the ANDE reported that the power outages in the area were pre-planned. 700 Marcelo Martinessi, former director of TV Pública, stated that he was never notified of the power outages and that “they [the ANDE] hide behind this idea that the power outage was pre-planned.” 701 Some media outlets and demonstrators who were in front of TV Pública stated that the purpose of the power outage was to interrupt the broadcast of the program ‘Micrófono Abierto’. 702

413. During the administration of President Fernando Lugo, an inclusive and participatory public television policy was established. The Office of the Special Rapporteur has indicated that public


radio and television policy must be autonomous and independent from governments. Likewise, it must promote, without discrimination, the right to access to culture and history in order to develop and educate different communities, as well as to foster broad, open and pluralist debate that includes, particularly, the participation of groups that are traditionally marginalized or discriminated against. The Office of the Special Rapporteur expects that in the future, this policy will continue and be broadened without discrimination based on ideology or anything else.

414. The Office of the Special Rapporteur received information on expressions of concern by community radio stations regarding the possible implications of the Telecommunications Act.703 In response, General Public Prosecutor Javier Díaz Verón gave statements on August 13, 2012, in which he supported the proposal to take action against radio stations with a social purpose that were being “misused” to call for “uprisings, road blockades, invasions, and all that.” He also said that the National Telecommunications Council [Consejo Nacional de Telecomunicaciones] (CONATEL) would be asked to provide a list of legally authorized radio broadcasters in order to launch the corresponding investigations.704

22. Peru

A. Progress

415. The Office of the Special Rapporteur takes note of the ruling of the Sixth Specialized Criminal Chamber for Proceedings with Free Convicts of the Superior Court of Justice of Lima which found the ruling convicting blogger José Alejandro Godoy null and without effect. On October 29, 2010, Godoy was given a suspended sentence of three years in prison, and was condemned to pay 300,000 nuevos soles (about US $117,000) for the crime of aggravated defamation. The case originated with a criminal complaint presented by Jorge Mufarech, a former congressman and former labor minister with the Alberto Fujimori government, after Godoy published an article on his blog Desde el Tercer Piso with several links to articles in other media making reference to accusations of alleged crimes that Mufarech had faced in the past. According to the information received, the Superior Court concluded, among other things, that the judgment that was appealed did not take into consideration an agreement of the Supreme Court, binding for judges, that defines the criteria for resolving conflicts between freedom of expression and the right to honor, an application of the doctrine of actual malice being among those criteria. The Superior Court ordered a new trial.705

416. The information received indicates that later, on June 18, 2012, the 33rd Criminal Court of the Superior Court of Justice of Lima ruled to acquit journalist José Alejandro Godoy Mejía. In its ruling, the court found, inter alia, that given that the plaintiff was an individual holding a public position, he was subject to greater scrutiny. Likewise, it highlighted that the information indicated was already public, and


that “what defendant Godoy Mejía did [was] distribute something that had already previously been distributed,” making use of his right to inform, pursuant to the “neutral reporting” doctrine.\textsuperscript{706}

\textbf{417.} The Office of the Special Rapporteur takes note of the March 19, 2012, ruling of the Criminal Chamber of Appeals of the Superior Court of San Martín, Tarapoto, declaring null and without effect a judgment condemning journalist Teobaldo Meléndez Fachín to prison for three years for the crime of aggravated defamation against the provincial mayor of Alto Amazonas, Juan Daniel Mesía Camus. The appeals court found that the judgment included “substantial errors” and ordered a new trial. The case originated with information broadcast in February, 2011 on the radio and television program ‘Ribereña News’ in which the journalist raised questions about the mayor for alleged irregularities in the use of public funds. The Second Mixed Court and Single Judge Criminal Court of Alto Amazonas had sentenced Meléndez Fachín to a 3-years suspended prison term \textit{[prisión condicional]}, the payment of 30,000 nuevos soles (about US $11,100) as a civil award, and 60 days worth of fines. Should he fail to pay the indemnity, the suspended prison term could be ordered served.\textsuperscript{707}

\textbf{418.} According to available information, in May, 2012, the police presented the Casma Office of the Public Prosecutor with a report finding that the mayor of the Comandante Noel district was a suspect in the murder of journalist Pedro Flores Silva, which took place on September 7, 2011. According to the information received, police report No. 038-2011 indicated that the crime had been planned in a business owned by the mayor's father-in-law and that the motive of the crime was a series of critical comments made by the journalist during his program ‘visión Agraria,’ on Canal 6 in Casma, regarding the execution of public works in the municipality.\textsuperscript{708}

\section*{B. Attacks on and threats against media outlets and journalists}

\textbf{419.} Information received by the Office of the Special Rapporteur indicates that on November 30, 2011, a group of people attacked the offices of newspaper \textit{El Sol de los Andes} in Huancayo, after the newspaper published information on alleged links between some members of the local police and criminal groups.\textsuperscript{709} On December 2, 2011, individuals presumed to be police officers beat Pedro Reyes, a journalist with Canal 39, along with Romario Reyes, a cameraman with that station, and Américo Huamán, a cameraman with TV Perú Canal 7, while they were covering protests against the expansion of a prison in the province of Cañete, in the Lima region.\textsuperscript{710} Likewise, on December 6, 2011, presumed


members of the team of the mayor of the El Carmen district beat Armando Huamán Tasayco, a journalist with Canal 33 and Radio Nova in Chinchca, confiscating his camera. He was reporting on alleged acts of unlawful enrichment by local authorities.\footnote{156}

420. According to information received, on December 9, 2011, several persons beat Iván Julca Mendoza, director of biweekly newspaper El Especial de Ancash and Radio Melodía program ‘Ancash Opina’. According to the journalist, the attack took place following the publication of a news item on supposed irregularities committed by two councilmen.\footnote{157} Likewise, on January 10, 2012, Carlos Monja Timaná, a journalist, host of Radio Limón program ‘El Investigador’ and a critic of the mayor’s administration, was attacked by two people at the Olmos district municipality. One of the attackers was identified by the journalist as a municipal employee.\footnote{158}

421. The Office of the Special Rapporteur learned of a death threats received on January 25, 2012 by Moisés Campos, a journalist and host of the weekly program “Noticias TV,” in Tocache, one day after publishing a report on alleged acts of corruption committed by local authorities.\footnote{160} Likewise, the Office of the Special Rapporteur was informed of a campaign to discredit and threaten journalists Rosario Romání, Esther Valenzuela and Gudelia Machaca - with the newspapers La Calle and Estación Wari, in Ayacucho - after their papers published a series of reports raising questions about the controversial purchase of heavy machinery by the regional presidency. The journalists denounced the campaign on January 26, 2012.\footnote{161}

422. The Office of the Special Rapporteur was informed of e-mail threats received by Jaime Antonio Vásquez Valcárcel and Jorge Martín Carrillo Rojas, director and editor, respectively, of the newspaper Pro & Contra, in Iquitos. They denounced the threats on May 16, 2012. According to the information, in at least one of the e-mails received, the threat warns the journalists to stop reporting about the mayor of Maynas, over whom the newspaper had raised questions.\footnote{162}

423. On May 21, Ramiro Muñoz Terrones, a journalist and host of the program ‘Despertar Campesino’, on radio station Cusco, in Catamarca, was wounded in the leg by an unidentified individual. According to the information received, the attack took place days after he was threatened by a...
person assumed to be an official with the Cutervo municipality over his criticism of the mayor.\textsuperscript{717} Another Cutervo journalist - Jhon Llatas Delgado - was also threatened after raising questions about the mayor.\textsuperscript{718}

424. According to information received, on June 17 a number of people beat Jaime Alfredo Núñez del Prado, a journalist as well as a director and host of news show "The Other Truth," on Radio Color and Calca TV, in the Calca province, Cusco region. According to the information, the attack took place while the journalist was alleging that certain irregularities had been committed by the Calca mayor.\textsuperscript{719}

425. According to information received, while covering protests against the Conga mining project in Cajamarca, a number of journalists were attacked, both by protesters and by individuals assumed to be public officials. Along with this, the Office of the Special Rapporteur received information indicating that on November 29, 2011, protesters cut the transmission cable of the Canal N satellite team to prevent a correspondent of the channel from broadcasting images.\textsuperscript{720} Likewise, on April 16, 2012, members of community defense organizations known as “ronderos” held and assaulted Éler Alcántara Rojas, a journalist with Radio El Edén news program ‘Free Expression’, in Cebelin, for more than two hours. They beat, insulted and threatened him for supposedly taking the side of the company in charge of the Conga mining project in Cajamarca.\textsuperscript{721} Likewise, on May 31, 2012, Alejandro Huamán, of TV Norte, was beaten by individuals assumed to be police officers. With regard to the incidents that took place on May 31, the Interior Minister regretted the overreach by the police and ordered an investigation.\textsuperscript{722} On June 14, 2012, individuals assumed to be police officers attacked journalists covering the conflict, among them Daniel Jayo of Sol TV, Luis Chilón of Radio Programas del Perú, Edwin Lozano of Frecuencia Latina TV, Karina Aliaga, of the channel ATV and Alejandro Huamán, of the program ‘Gotas de Lluvia’ on TV Norte. On June 26, a group of unidentified individuals attacked Canal N and Canal ATV workers and technical teams.\textsuperscript{723}


426. In the same context, the following people suffered attacks and a number of incidents of aggression: Aleida Dávila, a journalist and director of the newspaper El Cajacho and Renerio Sánchez, Juan Guerrero and Oscar Lino, the latter two with radio station Onda Popular. Likewise, on July 4, 2012, at least five journalists were attacked by individuals assumed to be police officers. According to information received, Ramiro Sánchez, director of the newspaper El Mercurio, was struck several times. Likewise, photographer Frank Chavez Silva was injured, while reporter Francisco Landauri Miranda and cameraman Nestor Galarza Mandujano, with the television station ATV, and reporter Yudith Cruzado Lobato, with Radio Programas del Perú (RPP), were pushed and struck. The information received also indicates that on June 20 and 21, 2012, Jackqueline Fowks, a journalist and correspondent in Peru with Spanish newspaper El País, received several intimidating phone calls of a sexual nature that the journalist connected with her recent coverage of mining project protests.

427. On July 28, alleged police officers apprehended Jorge Chavez Ortiz, a journalist responsible for the blog Mi Mina Corrupta, and held him for several hours. The motive for his apprehension seems to have been his account of how the alleged police officers turned off a screen in a public plaza in Celendín while people were watching a message from the President of the Republic.

428. The Office of the Special Rapporteur received information indicating that Antolin Pinedo Golac, director of news program 'La Palabra' on Radio Tropicana was allegedly held by what are believed to have been peasant patrols on August 8 and 9 in Soritor, Moyabamba province. According to information, the journalist had been taken so that he could give his version of certain comments interpreted by members of the patrols as “insulting." Pinedo was taken on the night of August 8 and was not freed until the afternoon of the following day after having been forced to ask forgiveness and sign the document in which he committed to apologizing on his news program for three days, and should he fail to do so, to pay a fine of 3000 nuevos soles (about US $1,155), and of fer services on 60 peasant patrol bases (a punishment known as “cadena ronderil").

429. According to information received, on May 10, 2012, the Third Criminal Chamber of Free Convicts of Lima ruled to acquit Luis Valdez Villacorta, the former mayor of Coronel Portillo, and Zoilo Ramírez Garay, a municipal official, who had been suspected of being the masterminds behind the murder of journalist Alberto Rivera Fernandez, which took place in 2004. Previously, on February 1,
2011, the Temporary Criminal Chamber of the Supreme Court annulled the ruling acquitting former mayor Luis Valdez and ordered a new oral trial in which Zoilo Ramírez would also be judged. Days before being murdered, journalist Alberto Rivera Fernández criticized the municipal administration and linked senior local officials with drug trafficking activity. The Office of the Special Rapporteur urges the authorities to find out the motives of the crime, identify and punish those responsible, and provide just reparations to the relatives of the victim.

430. According to information received, Rosario Huayanca Zapata, a journalist with the Ica Human Right Commission [Comisión de Derechos Humanos de Ica] (CODEHICA in its Spanish acronym), was threatened on October 4 in two telephone calls, and with an envelope that contained four bullets and a note saying, “the next one goes in you,” along with a demand for payment of US $30,000. According to the information received, CODEHICA has backed victims in a number of recent cases of possible human rights violations.

431. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Subsequent liability

432. The Office of the Special Rapporteur was informed that on June 5, the Twelveth Criminal Court of Lima handed down the criminal conviction of Juan Carlos Tafur, director of Diario 16, and Roberto More, a journalist with that newspaper, for an article linking Peru’s former national police director and former interior minister to alleged illegal acts. According to the information received, the judge issued a suspended sentence against the journalists of two years in prison, and ordered the payment of 60,000 soles (about US $23,000) to the former police general.

433. According to the information received, on November 5, the Third Criminal Court of Huamanga admitted a criminal complaint for the crime of defamation against journalists Esther Valenzuela Zorrilla, Rosario Romani Díaz and Manuel Ventura Mariluz, with the newspaper La Calle. The complaint was brought by the director of the Irrigation and Integral Rural Development Program [Programa de Irrigación y Desarrollo Rural Integral] (PRIDER in its Spanish acronym), with the regional Ayacucho government, Eduardo César Huacoto Díaz. He alleges that his honor has been damaged due to questions raised and criticisms leveled by the journalists regarding alleged irregularities in the exercise of his public authority.
434. The Office of the Special Rapporteur considers it relevant to indicate that these cases have taken place in a context in which President Ollanta Humala has declared publicly and repeatedly that he will not use criminal proceedings to block debate on matters of public interest. At the same time, the Congress of the Republic has studied a number of reforms that would eliminate crimes of defamation, at the least for public officials, or substitute prison sentences for fines. Parallel to this, the Supreme Court of Justice has handed down directives on the subject, and in recent rulings has overturned criminal convictions for the crime of defamation of public servants or former public servants. 734

435. Principle 10 of the IACHR’s Declaration of Principles establishes that, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

23. Dominican Republic

436. The Office of the Special Rapporteur observes with satisfaction the judgment handed down by the Constitutional Court on September 21, 2012, upholding an amparo ruling ordering all the information on the appointment of advisors for the Chamber of Deputies be turned over, including names, surnames, positions and salaries. The Constitutional Court emphasized the importance of the right to access to public information and the State’s obligations of transparency. Likewise, it struck a balance between the right to access to information and the rights to privacy of public officials and protection of their personal information, finding that pursuant to inter-American standards on the issue, the latter can only restrict the right to access to public information under exceptional circumstances, given that otherwise “citizens lose an essential mechanism for controlling corruption in public administration.” 735

437. On March 1, the First Collegiate Court of First Instance of the Judicial District of Santiago ruled to acquit three individuals accused of murdering cameraman Normando García and a taxi driver who was speaking with him. The murders took place in August, 2008. According to information received, the judges found that the evidence provided was not sufficient, and they did not admit testimony from the lead police investigator in the case. Normando García had broadcast images of an alleged attack that one of the defendants committed against another individual. The Office of the Public Prosecutor announced that it would appeal the ruling. 736

438. The Office of the Special Rapporteur learned that on April 23, Wilton Guerrero, a senator with the ruling party, publicly denounced that someone was plotting to murder journalist Nuria Piera. Days...
prior, the journalists had alleged that the residences and businesses of people who had provided information for an article published on March 31 on the possible funding of Haitian electoral campaigns by Dominican politicians had had their homes and businesses searched.737

439. According to information received, during a protest on September 27 seemingly against a Canadian mining company in the city of Cotuí, Sánchez Ramírez province, at least two journalists were injured. According to the information, individuals assumed to be police officers fired teargas bombs and pellets at the demonstrators and assaulted journalists Ramón Antonio Salcedo Soto - correspondent with the newspapers Hoy and El Nacional - and Wilson Aracena - photographer with the newspaper Hoy - while they were covering the incidents.738

440. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

24. Suriname

441. The Office of the Special Rapporteur expresses concern over amnesty legislation passed by the Suriname Parliament on April 5, 2012. The legislation seeks to consolidate impunity for human rights violations committed during military rule (1982-1992) in Suriname and eliminate exceptions to the 1992 Amnesty Act that apply to crimes against humanity and war crimes. According to the information received, the reform would leave the murders of five journalists in impunity. The journalists were murdered on December 8, 1982. They were part of a group of 15 people who were executed in Fort Zeelandia.739

442. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

25. Trinidad and Tobago

443. The Office of the Special Rapporteur expresses its satisfaction at the commitment expressed on June 26 by the Prime Minister of Trinidad and Tobago, Kamla Persad-Bissessar, to review

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criminal defamation laws and “bring them in line with international best practice”. According to the information received, the Prime Minister expressed her interest in amending the laws at the close of the General Assembly of members of the International Press Institute (IPI) in Port-of-Spain.\textsuperscript{740} Later, on November, 2012, during the annual Christmas media luncheon, the Prime Minister announced that the “now archaic defamation laws [were] currently under review, with the intention to bring them more in line with international best practice.”\textsuperscript{741} The Prime Minister informed that the process was being carried out by the Attorney General and that she would keep the journalists informed of all the review process. For his part, the Attorney General made remarks indicating that the aim of this process was to limit these types of laws and to abolish criminal libel.\textsuperscript{742}

444. The Office of the Special Rapporteur was informed that national authorities rejected the disproportionate use of force by the police during the execution of a search warrant at Caribbean Communications Network TV 6 (CCN) on December 29, 2011. According to information received, more than 20 police officers entered the television station’s building to search for a video that was broadcast during a show of the station in October, 2011 and that contained images of an alleged sex crime. The broadcast of the images is alleged to have violated the Telecommunications Act and the Sexual Offences Act. According to the information, the broadcaster cooperated with the police investigations, the reporter responsible for the information apologized publicly and the station temporarily suspended the program. Although the broadcaster did not object to the search warrant, it did argue that the use of public force by the police to obtain the video was unnecessary and unjustified. Likewise, the police authorities themselves stated that the number of officers used to serve the warrant was excessive.\textsuperscript{743}

445. The Office of the Special Rapporteur learned of the government’s energetic rejection of a police search of the newspaper Newsday and of the house of journalist Andre Bagoo. The searches took place on February 9, 2012 and were carried out by the Anti-Corruption Investigation Bureau (ACIB). According to the information, the police were searching for information allegedly obtained illegally and used as the basis of an article published on December 20, 2011. The article was about a dispute among members of the Integrity Commission of Trinidad and Tobago, the body in charge of monitoring the ethical conduct of public officials. The police had asked the journalist to reveal his sources, but the newspaper rejected the request. As previously mentioned, the government has expressed its absolute rejection of the police action against the newspaper and the journalist.\textsuperscript{744}

446. Finally, the Office of the Special Rapporteur was informed that in October of 2012, the private telephone records of journalist Anika Gumbs-Sandiford, with newspaper Trinidad Guardian, were


leaked with the alleged purpose of tracking a source she used in an article published in September, 2012.745

26. Uruguay

447. The Office of the Special Rapporteur received with satisfaction the public announcement of President José Mujica on the preparation of a decree intended to regulate the placement of government advertising the country. The proposal has received support from multiple civil society organizations. According to the information, the draft decree is currently under review, and should it be approved, it would make the country the first in the region to adopt nationwide regulations on the placement of government advertising.746

448. According to information received, on March 6, an Uruguayan court ordered the processing and arrest of a former police officer suspected of being an accomplice to the murder of journalist and teacher Julio Castro. Castro was kidnapped, tortured and murdered in 1977 by members of the Information and Defense Service. Castro's remains were found in 2011, buried at a military facility. According to the information, Judge Juan Carlos Fernández Lecchini denied a statute of limitations pleading brought by the defense and declined, due to lack of evidence, to process a member of the armed forces allegedly responsible who could be connected with the order to commit the crime.747

449. The Office of the Special Rapporteur received information indicating that the government approved a decree regulating digital television. According to the information, digital television will be open and free throughout the country and will include public, private and community channels. The decree stipulates that seven of the channels will be reserved for community media. Likewise, authorizations will be granted for 15 years, with the option to renew.748

450. The Executive Branch legalized 54 community radio stations, thereby concluding its study of 412 requests for legalization that had been submitted during the census established by Law 18.232 on Community Radio Broadcasting. The new group is added to the other 38 broadcasters that were authorized in 2008. According to Uruguay legislation, in order to be considered community, a broadcaster must, inter alia, be owned collectively and have a social purpose, and not be operated for profit.749


451. According to information received, on March 29, a contentious administrative judge ordered the National Public Education Administration [Administración Nacional de Educación Pública] (ANEP in its Spanish acronym) to turn over a list of educational centers accredited by municipalities and firefighters to the Center for the Archiving and Access of Public Information [Centro de Archivo y Acceso a la Información Pública] (CAINFO in its Spanish acronym). The ruling was handed down in response to an access to public information suit brought by the organization. The judgment reaffirmed the existence of a specific State obligation with regard to access to information that is in the public interest.750

452. According to information received, on October 31, the Uruguayan government published a decree establishing the regulations for the National Archives System Act (Law No. 18.220 of December 20, 2007). This decree establishes the conditions for systemizing and making effective access to national archives, pursuant to the Access to Public Information Act and the judgment handed down by the Inter-American Court of Human Rights in the case of Gelman v. Uruguay.761

453. The Office of the Special Rapporteur was informed that journalist Luis Díaz, with newspaper El Pueblo, was attacked on December 10, 2011, while covering a soccer match. According to the information received, two police officers guarding the entrance to the Ernesto Dickinson Stadium, in the city of Salto, held him and tried to seize his camera when the reporter tried to photograph the officers attacking a woman. Later, the police officers prevented the journalist from entering the stadium. The police launched an investigation to identify those responsible for the attack. According to information received, in May, 2012, the journalist filed a criminal complaint over the incidents.752

454. On August 6, an anonymous threat mentioning five journalists with Radio Young, in the city of Young, Río Negro, was left on the door of a business near the broadcaster. According to the information, the message also mentioned a commissioner, a judge and a prosecutor, and concluded with the words “there is going to be blood and mourning.”753


455. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

27. **Venezuela**

456. The Inter-American Commission on Human Rights has received information regarding the status of the right to freedom of expression in Venezuela from both civil society and the State of Venezuela. On February 22, 2013, the Venezuelan State forwarded official letter No. AGEV/000039 to the IACHR from the Integration and Multilateral Affairs Office of the State Agency for Human Rights before the Inter-American and International Systems. This letter addressed the situation of freedom of expression in Venezuela and provided information on the specific cases that have been reported to the IACHR and which are presented in this report.

1. **Attacks and Threats against the Media and Journalists**

457. The IACHR is very troubled by the reported attacks on the media and journalists in Venezuela and by the failure to investigate these acts and punish those responsible.\(^{755}\) The IACHR was informed of the threats that journalist Luis Carlos Díaz allegedly received in November 2011 and in January 2012 by way of his Twitter account and his mobile phone. The threats were said to have been prompted by his activity on social networks and his comments about the computer attacks that a number of prominent Venezuelan figures allegedly experienced. According to the information reported, on January 7 a group of hackers that calls itself N33 reportedly announced on Díaz’s Twitter account that they would call him; when they did, they left a threatening voice message saying “We’re going to blow you up.” On November 20, Díaz allegedly received messages coming from an account purportedly belonging to a state channel; the messages said “You’re a marked man” and “Did you enjoy the little surprise?” The messages were followed by a telephone call in which they insulted him. Díaz is coordinator of the Gumilla Center’s Communications and Networks Area. The Gumilla Center is a Jesuit research and social action institution.\(^{756}\) On January 28, the Twitter accounts of the director of the digital version of the weekly *Sexto Poder*, Alberto Rodríguez (@AlbertoRoPa), and journalist Orian Brito (@OrianTV) were reportedly hacked by the N33 group, as a result of which the two journalists lost access to their accounts. On January 31, Brito’s personal files started to turn up on the same account, along with threatening messages against journalists critical of President Hugo Chávez. These incidents were said have happened after the journalists claimed that the Venezuelan Government was recruiting minors for armed activities.\(^{757}\) On March 7, the N33 group reportedly hacked into the Twitter account of the director of the newspaper *El Nuevo País*, Edgar C. Otálvora (@ecotalvora), and from there sent out images and messages insulting to the opposition presidential candidate, Henrique Capriles.\(^{758}\)

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\(^{754}\) This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2012 annual report, assigned to the Office of the Special Rapporteur for Freedom of Expression.

\(^{755}\) At the hearings the IACHR held on March 27 and November 1, 2012, concerning the situation of freedom of expression in Venezuela, the State was asked to provide information on the investigations conducted into the cases of aggression committed against journalists and media workers. However, the State has to date presented no information in this regard.


458. On January 18, 2012 unknown persons were said to have fired shots at a team of RCTV journalists and stole their equipment while they were covering the announcement of the results of the student elections at two schools of the Universidad Central de Venezuela. According to what was reported, the journalists caught on tape two hooded men throwing tear gas grenades at the door leading out of the auditorium where the election results were announced. Before escaping, the armed men had reportedly fired shots into the air.  

459. According to the information received, Omar Arévalo, a columnist with La Prensa de Barinas, had been receiving threats since February 2012 and was said to be the target of a smear campaign after he published reports of alleged irregularities in the Barinas mayor’s office.  

460. One report received recounted how, on February 8, 2012 a group known as the “Unified Community Brigades” had allegedly assaulted a Globovisión correspondent in the state of Aragua by the name of Carmen Elisa Pecorelli, as she was covering the visit by a commission appointed by the Office of the Attorney General of the Republic to investigate the deaths of a number of newborns at the Maracay hospital.  

461. The IACHR learned that on February 19, 2012 a journalist working for the newspaper Visión Apureña, Mario Castillo, had allegedly been attacked by a member of the National Guard in a hospital in the city of San Fernando de Apure. According to the information received, the journalist attempted to photograph a member of the military who was being admitted to the hospital after sustaining an accidental bullet wound to the foot, whereupon the National Guardsman reportedly insulted and threatened the journalist.  

462. On March 5, 2012 several dozen supposed civil servants and members of a group known as Los Motilones, allegedly appeared at the Barinas radio station called La Barinesa 92.7 FM, as it was broadcasting the program called ‘Punto y Coma’, hosted by the journalist and candidate for the Bolívar Mayor’s Office, Adolfo Superlano. According to what was reported, the group’s presence at the station was intended to intimidate the station director after the station had carried, for several days, a program about the possible contamination of the Barinitas water supply. Superlano had reported the situation to the Public Prosecutor’s Office and had asked for protection.  

463. On March 11, 2012 unknown persons had reportedly set fire to the home of journalist José Ramón González, General Secretary of the Apure-Amazonas section of the National Association of Journalists [Colegio Nacional de Periodistas – CNP]. According to the information received, in the early morning hours the perpetrators had forcibly burst into the home, spread gasoline inside and set it on fire.

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761 Colegio Nacional de Periodistas (CNP), February 9, 2012. Periodistas de Aragua denuncian atropellos contra su desempeño profesional [Journalists from Aragua complain of attacks on the practice of their profession]; Espacio Público. February 9, 2012. Agridida periodista de Globovisión en el Hospital Central de Aragua [Attacked Globovisión journalist in the Aragua Central Hospital].


763 Instituto Prensa y Sociedad (IPYS)/IFEX. March 9, 2012. Radio announcer reports being threatened by regional government personnel; Barinas, March 6, 2012. Gobernación intenta otro golpe contra la libertad de expresión [Government attempts to land another blow on freedom of expression].
Some days following the incident, González had received threats and attempts were made to extort money from him.  

464. Likewise, on March 11, 2012 alleged members of the La Piedrita Collective, an illegal armed group operating in a low-income neighborhood of Caracas, reportedly drove two hearses to the facilities of Globovisión; the coffins inside the hearses were said to contain the remains of two recently assassinated members of the group. According to what was reported, the La Piedrita Collective blamed Globovisión for the deaths of the two gang members. The group claimed that the two had been murdered by a paramilitary group. On March 10, another group known as Secretariado Revolucionario de Venezuela, demonstrated outside Globovisión’s facilities and blamed it for creating “violence through the media” and “glorifying” the violence that occurs in Caracas’ neighborhoods. In 2004, the Inter-American Court of Human Rights had ordered precautionary measures for Globovisión. In the process, the State was ordered to adopt such measures as might be necessary to “safeguard and protect the lives, safety, and freedom of expression of the reporters, executives and employees of Globovisión and of the other persons who are in the facilities of said broadcaster and who are directly linked to the journalistic operation of this broadcaster” as well as “to protect the perimeter of the head offices of the Globovisión social communications broadcaster.”

465. According to information received, journalist Sara Vargas García, with Anzoátegui’s channel Órbita TV, is alleged to have received threats on March 15 and 16, 2012 delivered by phone and by a written note. The warnings were said to coincide with news the journalist had reported concerning two recent kidnappings.

466. The IACHR learned that a caricaturist with the newspaper El Universal, Rayma Suprani, allegedly received a series of threatening and insulting messages after the host of the state television program “La Hojilla”, Mario Silva, had branded her a “racist” and “classist”. On March 20, 2012 the caricaturist had reportedly filed a complaint with the Public Prosecutor’s Office concerning the insults and threats. The program “La Hojilla” is carried on public television and is known for challenging any critics or opponents of the National Government.

467. The IACHR was informed of attacks on five media outlets. According to reports, on the night of March 19, 2012 unidentified persons fired several shots at the newspaper Nuevo Día, in Coro, Falcón state. There were no casualties. The police who investigated the incident found that bullets had

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penetrated the main door to the newspaper’s headquarters. On October 5, unknown persons allegedly tossed an explosive device at the Nuevo Dia building. One person who happened to be walking by was injured. This would be the third attack against a newspaper since June 2010.

468. On May 28, an individual was said to have thrown a grenade at the building housing the offices of the newspaper Qué Pasa; on May 29, unknown persons reportedly fired shots at the building housing the state television station Catatumbo Televisión, and on June 3 armed men allegedly fired several shots at the facility of the newspaper Versión Final. None of these attacks claimed any casualties. On July 10, unidentified persons reportedly threw an explosive device at a vehicle belonging to the Carabobo newspaper La Costa.

469. From the information received, it appears that in early June, María Isoliet Iglesias, Deivís Ramírez, Tomás Ramírez González and Luis García – all journalists with El Universal newspaper - had filed a complaint with the Public Prosecutor’s Office because of a threatening anonymous message received at the newspaper which warned of an attack on the journalists who reported on the prison crisis that occurred at the La Planta prison.

470. The IACHR was informed that on August 1, alleged members of the National Guard had seized camera equipment belonging to newspaper photographer Huanis Albaro, with the Diario De Frente, and had erased the photographs. Apparently, the photographer had shot photographs of violent incidents that occurred in a public place in the city of Barinas.

471. According to information received, on August 22 journalist Delvalle Canelón and a photographer who accompanied her –both from Globovisión– were allegedly assaulted by private citizens as they attempted to report on incidents of violence occurring at a prison.

472. Furthermore, on September 12, persons presumed to be military troops attacked journalist Haydeluz Cardozo and photographer Jairo Nieto, both from the newspaper El Impulso, as they were searching for information about the seizure of food trucks from the Lara state governor’s office.

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According to reports, the journalists were beaten and their camera equipment damaged when the military struggled with them to block their attempt to enter the facilities where the trucks were being kept.  

473. According to reports received, Bolivarian National Guardsmen supposedly attacked cameramen from *Globovisión* and *DAT TV* and confiscated their camera equipment when the journalists attempted to film an action taken by the National Guardsmen against persons participating in a student protest against the La Cabrera viaduct in Carabobo state.  

474. On September 20, National Guardsmen were alleged to have harassed Raúl Araque, photographer with the newspaper *Notitarde*, as he was trying to cover the fire at the El Palito refinery in the state of Carabobo. According to accounts, the photographer was doing his job when he was allegedly surrounded by a group of Guardsmen who pointed their guns at him and ordered him to hand over his equipment.  

475. According to information received, César Aponte, a journalist with ANTV public television, was assaulted on October 24 by security personnel at the Universidad Central de Venezuela, as he was trying to cover news about the University Council.  

476. The IACHR was told that on November 1, unknown persons allegedly fired shots at the offices of the newspaper *El Regional del Zulia*, in Maracaibo. According to accounts, the authorities conducted investigations at the scene of the events and allegedly claimed that this was an isolated incident.  

477. At the public hearings that the IACHR held on March 27 and November 1, 2012, on the subject of freedom of expression in Venezuela, the parties who had requested the hearing described how the assaults and intimidation had a deterrent effect on freedom of expression, which they attributed mainly to public servants or persons associated with the Government. They also underscored the fact that no one is made to answer for these violations. They expressed concern over the fact that the media in Venezuela are being discredited and about the lack of follow-up to the investigations conducted. They observed that the failure of the justice system to take action and the sheer number of attacks on the media in 2012 had an intimidating effect on the practice of journalism. For its part, the State said that the complaints filed in connection with these violations must be duly supported by sufficient evidence. It added that the restrictions on freedom of expression in Venezuela are not the work of the State; instead, they are a function of the power wielded by the private media. 

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478. In addition, in its observations to this report, the State indicated that information regarding attacks and threats against journalists and the media is asserted in the “publications of Venezuelan media outlets and Venezuelan NGOs,” when “according to Venezuelan law, the only evidence in cases of attacks are the complaints filed before the Office of the Prosecutor General, [which is] the only way for a criminal investigation to be opened.” The State underscored that Venezuela has “a hundred media outlets, ninety percent of which are politically biased against the government of President Chávez, and their information is mostly false, in violation of the Constitution of the Bolivarian Republic of Venezuela, Article 58 of which [provides], ‘All persons have the right to timely, accurate, and impartial information […]’.”

479. Principle 9 of the Declaration of Principles of Freedom of Expression, approved by the IACHR in 2000, states the following: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

2. Election-related assaults

480. The IACHR also received information concerning the spike in attacks on journalists and other media personnel during the electoral process. The IACHR continues to observe a climate of extreme polarization that obstructs and, in many cases, altogether prevents journalists from practicing their profession of keeping the public properly informed. For example, on February 14, 2012 Aragua police officers grabbed photographer Luis Rivas, with the newspaper *El Aragüeño*, and took away his camera equipment as he was covering the commotion related to the seizure of the voting records for the internal elections within the *Mesa de la Unidad Democrática* (MUD), an opposition party, in the municipality of Mario Briceño Iragorry. Later, the police returned the camera equipment, but without the memory card.

481. According to information received, on March 3, 2012 alleged government supporters in Táchira state were said to have attacked journalist Luz Dary Depablos, a reporter from *Globovisión*, the only television channel critical of the Government, when she attempted to approach several government ministers in a political event. On March 4, in the San José de Cotiza neighborhood of Caracas, men wearing red shirts surrounded journalist Sasha Ackerman and cameraman Frank Fernández—both from *Globovisión*—and stole their equipment and the images they had captured when they filmed an incident in which unidentified persons fired shots into the air as opposition presidential candidate Henrique Capriles was at a march. One person with the politician allegedly sustained an injury to the forearm.

482. According to information received, on March 12, 2012 opposition supporters in the community of Cabimas allegedly attacked a *Catatumbo* TV journalist, Fidel Madroñero, and his cameraman, Ricardo Carrillo, as they were trying to take pictures of supporters of President Hugo Chávez. According to what was reported, the alleged assailants tried to grab the recording equipment...
and had stolen some of the journalist’s personal effects. On March 17, supposed members of the San Agustín de Maracay Community Council in the state of Aragua, allegedly attacked journalist Julie Arévalo and cameraman Fernando Peña, from the network TVS, and journalist Lourdes Maldonado and photographer Javier Troconiz from the newspaper El Siglo, as they were trying to cover a demonstration staged by an opposition political party. The assailants had allegedly attacked Troconiz and threw stones at the TVS team, forcing both teams to leave the scene of the events.

483. According to reports, on March 19, 2012 Llafrancis Carolina Colina Petit, a journalist from Ávila TV, allegedly filed a complaint with the Public Prosecutor’s Office against opposition deputy and candidate for the governorship of the state of Aragua, Richard Mardo, claiming that he had physically attacked her during a campaign event in La Victoria, Aragua. On March 21, supporters of presidential candidate Henrique Capriles allegedly attacked Carolina Zapata, a journalist from Venezolana de Televisión, a state-run television channel, who was recording the statements made by the candidate while at a march in San Cristóbal, Táchira. On April 17, Televén cameraman Oneiver Rojas was allegedly beaten by an opposition leader, who had also attempted to attack Jorge Amorim, host of the “La Hojilla” program on Venezolana de Televisión, as they were covering a Capriles political event in Anzoátegui. On May 10, Danny Vargas, a cameraman from Venezolana de Televisión, was allegedly been beaten and his equipment taken as he was filming a campaign event organized by the candidate for the office of mayor of the municipality of Pedraza in Barinas. Likewise, on July 26, persons participating in an opposition political meeting in Guárico were alleged to have shoved Giovana Guilién, a journalist with Venezolana de Televisión (VTV) public television, and attempted to grab the camera equipment from the cameraman who accompanied her.

484. On September 4, members of candidate Henrique Capriles’ press and security team allegedly attacked journalists Carolina Zapata and Blanca Castejón, correspondents from Venezolana de Televisión and Radio Nacional de Venezuela, as they were trying to interview the presidential candidate

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at a political event in Ureña, Táchira state.\textsuperscript{793} Similarly, on September 9, persons presumed to be members of the opposition attacked Lorena Benítez, a journalist with the National Public Media System. According to what was reported, the journalist was covering a campaign event staged by the opposition candidate in a Caracas neighborhood, when her assailants allegedly insulted her and threw some liquid on her. When she attempted to photograph the event, the journalist was reportedly beaten.\textsuperscript{794}

485. According to information received, on September 12 persons alleged to be supporters of President Hugo Chávez reportedly attacked the photographer from \textit{Agence France Presse (AFP)}, Geraldo Caso Bizama, as he was attempting to photograph the arrival of opposition candidate Henrique Capriles at the Puerto Cabello airport. According to what was reported, a group of persons wearing red shirts and the insignia of the governing party had allegedly surrounded the photographer to take away his credentials and equipment and threatened him with rocks.\textsuperscript{795} Similarly, on September 30, Cristian Hernández, a photographer with the Caracas newspaper \textit{Tal Cual}, was allegedly verbally and physically assaulted by some 30 persons wearing red shirts, as he was on his way home after covering the march held to mark the close of the opposition candidate’s campaign.\textsuperscript{796}

486. According to the information available, on October 4 and 7, groups of persons identified by the colors and insignia of the party in power, allegedly surrounded the headquarters of Globovisión, striking a threatening posture. Globovisión’s editorial position is critical of the Government.\textsuperscript{797} Against this backdrop, Kelvin Charles, a United States journalist with Miami’s \textit{Martí TV} and \textit{Mega TV}, was alleged to have been struck on the leg on October 4, as he was taping the crowd outside Globovisión’s headquarters.\textsuperscript{798}

487. The IACHR was informed that on the day of the presidential elections, October 7, 2012, photographer Demetrio Caraindro, from the newspaper \textit{Correo del Caroní}, had allegedly been assaulted. According to the reports, persons presumed to be members of the military had reportedly insulted him and attempted to beat him and grab his camera equipment, as the reporter was covering a dispute that broke out while the polls were being closed in Puerto Ordaz, Bolívar state.\textsuperscript{799}

488. On October 7, a team from the newspaper \textit{Últimas Noticias} was allegedly attacked and threatened with a gun by persons who reportedly identified themselves as “community communicators”,

\textsuperscript{793} Espacio Público. September 5, 2012. \textit{Corresponsales de VTV y RNV agredidas por equipo de Capriles en Táchira} [VTV and RNV correspondents attacked by Capriles’ entourage in Táchira]; Venezolana de Televisión (VTV). No date. \textit{Agredidas corresponsales de VTV y RNV por equipo de Capriles en Táchira} [VTV and RNV correspondents attacked by Capriles’ people in Táchira].


\textsuperscript{795} Radio Nederland. September 13, 2012. \textit{Agreden a colaborador de AFP en escaramuza entre chavistas y opositores} [AFP collaborator attacked in skirmish between Chávez supporters and the opposition]; Noticias 24. September 12, 2012. \textit{Agreden a colaborador de AFP en enfrentamiento entre chavistas y opositores} [AFP collaborator attacked in clash between Chávez supporters and opposition].


\textsuperscript{797} Instituto Prensa y Sociedad (IPYS). October 11, 2012. \textit{Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales} [Venezuela: Obstruction in the news business did not let up during presidential elections].

\textsuperscript{798} Instituto Prensa y Sociedad (IPYS). October 11, 2012. \textit{Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales} [Venezuela: Obstruction in the news business did not let up during presidential elections].

as the team was attempting to cover news of an episode of violence that occurred outside the polling station in the Kennedy housing development in Macarao. 

489. The IACHR was informed that on October 8, Argentine journalist Jorge Lanata and his news team from Canal 13 were temporarily detained at Maiquetía International Airport, as they were getting ready to leave the country after covering the presidential elections. According to the reports, agents of the Bolivarian National Intelligence Service (SEBIN) allegedly held the journalist and his team incommunicado for several hours and seized their journalistic materials. According to Lanata, the agents reportedly interrogated him separately and accused him of “espionage.” When he entered the country on October 3, both the journalist and his news team had allegedly reported a similar situation, in which they were detained and questioned. 

490. According to the information received, Luis Alfonso Cabezas, director of Convite, a civil society organization, allegedly received telephone threats on October 11, after publishing an article in the October 7 edition of the newspaper El Nacional; the article was about the quality of hospital care in the country. According to what was reported, music from the PSUV election campaign could be heard in the background of the threatening telephone calls he received. 

491. During the hearing held on November 1, 2012, the IACHR received information concerning an alleged practice of usurping the identities of human rights defenders, journalists, media outlets, state institutions, politicians and other public figures by way of their e-mail and social networking (Facebook and Twitter) accounts and websites. In most cases, the usurped accounts and websites have allegedly been used to send messages that call into question the activities of the account or website owner and of other public figures in Venezuelan society. In general, the messages reportedly have political overtones and are intended to drum up support for the government party’s nominee or candidate in the presidential elections. However, other statements reportedly announced the death of public figures, or

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803 The following were among the citizens, government representatives and other institutions that allegedly reported having been the victims of this kind of hacking in 2012: the ethical hacker Rafael Nuñez, January 6; the president of the Caracas Metro, Haiman Troudi, January 11; Diego Arria, a candidate in the primaries leading up to the presidential elections, January 12; the president of the Venezuelan Association of University Deans, Rita Elena Añez, on January 27; the Deputy on the Bolivar State legislative council and a primary candidate for the office of mayor of Caroni, Wilson Castro, February 9; the online portal of the Miranda Governor’s Office, February 12; writing Leonardo Padrón, February 24; the Governor’s Office of the state of Zulia, June 2; the website of the weekly Sexto Poder, June 7; Globovisión news channel, August 5; the president of the National Assembly, Diosdado Cabello, September 8; the online news portal Noticias24.com, September 24; the director of the Venezuelan Observatory of Prisons, Humberto Prado, October 4; the Mesa de la Unidad Democrática, around October 4; the Secretary General of the PIEDRA party, Ricardo Koesling, on October 6, and the former presidential candidate María Bolívar, on October 9. Other persons and institutions allegedly reported that their e-mail and social networking accounts had been hacked, but were not subsequently used to spread false statements in the account owner’s name. These included the following: political leader David Smolansky, on January 30; journalist Patricia Poleo and her partner Nixon Moreno, on June 11; the executive director of the Instituto Prensa y Sociedad in Venezuela, Marianela Balbi, on July 14; the website of the National Electoral Council; deputy Ismael García; news analyst on Globovisión’s program ‘Buenas Noches’, Ricardo Rios; political scientist Carlos Valero, and journalist Francisco “Kico” Bautista, all on October 7. IACHR. 146th Session. November 1, 2012. Information supplied during the hearing on the Right to Freedom of Expression in Venezuela. Available at: IACHR Archives.
made homophobic and anti-Semitic comments or insults.\textsuperscript{804} According to the information received, N33 is alleged to be the group behind these activities. In other cases, the perpetrators’ identity is unknown. For its part, the State claimed that the Government’s own websites had also been hacked.\textsuperscript{805}

492. This practice became even more pronounced in the days immediately before and after the presidential election, when multiple attacks were reported on the internet sites and Twitter accounts of public figures. According to information received, on October 6 the news portal \textit{La Patilla} was allegedly the target of a cyber attack that made it impossible for the administrators to update the page; on October 7, as the announcement of the election returns was at hand, the websites of \textit{Globovisión}, \textit{6to Poder}, \textit{Noticiero Digital}, \textit{Radio Nacional de Venezuela (RNV)} and \textit{La Iguana TV} went down.\textsuperscript{806}

493. Regarding attacks in the context of the elections, the State reiterated in its observations to this report that these “complaints based on news articles do not implicate the Venezuelan State.” In its opinion, “If no complaints were filed before the Office of the Public Prosecutor, they do not constitute evidence of any kind, for the reasons stated in the previous chapter.”\textsuperscript{807}

494. As previously observed, Principle 9 of the Declaration of Principles of Freedom of Expression, approved by the IACHR in 2000, provides that: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

3. Attacks, threats and preconditions in the context of complaints over contamination of the water supply

495. The IACHR has received information concerning the difficulties that opposition or independent media encounter when trying to cover events of interest to the public, such as alleged the contamination of the water supply in various communities. The IACHR was told that on March 21, 2012 Examining Court 25 of the Caracas Metropolitan Area agreed to a request from the Public Prosecutor’s Office to require that “the national and regional print media and radio, television and digital news conduct themselves with the utmost sense of responsibility when reporting information related to the \textit{alleged contamination of the potable water supply} in the country; the court held that any news reported on such subjects must be based on the proper technical supports, backed by a competent institution.”\textsuperscript{808} [italics added]. The request from the Public Prosecutor’s Office was prompted by various reports of an oil spill said to have occurred in the Guarapiche River and complaints from a number of media outlets regarding the quality of the water supply in some sectors of Caracas, Valencia and Maracay. On March 20, 2012, one day before the court’s decision was delivered, President Hugo Chávez had reportedly urged the Public Prosecutor’s Office and the Supreme Court to investigate those who had circulated information

\textsuperscript{804} The following were among the web pages blocked in 2012: Laclase.info, on May 3; the news portal La Pantilla, on May 17 and October 6; the official campaign website for presidential candidate Henrique Capriles Radonski, on August 14; the web portal of \textit{Sexto Poder} and \textit{Noticiero Digital}, both on October 7. IACHR. 146th Session. November 1, 2012. Information supplied during the hearing on the Right to Freedom of Expression in Venezuela. Available at IACHR Archives.


\textsuperscript{806} Instituto Prensa y Sociedad (IPYS). October 11, 2012. \textit{Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales} [Venezuela: Obstruction in the news business did not let up during presidential elections]; Espacio Público. October 16, 2012. \textit{Ataques informáticos sacuden las redes sociales en el país} [Hacker attacks shake up social networks in the country].

\textsuperscript{807} In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” P. 21.

\textsuperscript{808} Public Prosecutor’s Office, Bolivarian Republic of Venezuela. March 21, 2012. \textit{Acuerdan medida cautelar innominada que exige responsabilidad al difundir información sobre presunta contaminación del agua} [Agreement reached on untitled precautionary measure that demands accountability when circulating information on alleged contamination of the water supply].
concerning the alleged contamination. President Chávez had reportedly said the following: “I’m not a judge, but I am the head of State and am compelled to call upon each and every sector of the government to accept its responsibility. I am urging, demanding that the Attorney General of the Republic, Dr. Luisa Ortega, accept her responsibility. I am respectfully urging the Chief Justice of the Supreme Court, Dr. Luisa Estela Morales, to accept her responsibility. We cannot stand by idly as these campaigns are waged.”

496. In its observations to this report, the State of Venezuela maintained that, “We have been telling you for fourteen years that our Constitution is more advanced with respect to human rights than the American Convention on Human Rights. At several hearings we have read and explained to you [that] Articles 57 and 58 define the meaning of freedom of expression and freedom of information. According to our Constitution, it is possible in cases of news that causes social alarm and consternation—such as the articles in all the Venezuelan newspapers that said the drinking water throughout the country was polluted—for a Court of the Republic to require the media […] to act with extreme responsibility in disseminating information related to the alleged pollution of the country’s drinking water supply, and they should have the proper, accurate technical evidence backed by a competent body.”

497. The IACHR received information to the effect that on January 19, 2012, Bolivarian National Guardsmen (GNB) held Giselle Almarza, a journalist with Globovisión. According to the reports, Almarza and her cameraman Dali Gómez had taken photographs of a supposed oil spill in the town of La Pica, Monagas state. Peasant farmers from the area warned the journalists that GNB personnel were going to detain them. The journalist was held for 40 minutes by the GNB and personnel from the state-owned Petróleos de Venezuela (PDVSA), who asked her to hand over the taped materials, as she did not have authorization to film. In the end, they allowed her to continue her work.

498. The IACHR received information alleging that on February 14, 2012 reporter Florantonia Singer and her photographer Carlos E. Ramírez, both with the newspaper Últimas Noticias –part of the Capriles media group - were stopped as they were seeking information about an oil spill on the Guarapiche River in Monagas state. According to what was reported, military troops had stopped the journalists and held them until officials from the state-owned Petróleos de Venezuela (PDVSA) arrived on the scene.

499. On March 15, 2012 purported members of a community council in the region of Isla de la Culebra, in the state of Carabobo, violently disrupted the live broadcast of the Globovisión program
'Radar de los Barrios', and attempted to grab the microphone from the journalist when people from the area were complaining of problems with the quality of the town's water supply.\footnote{Espacio Público. March 16, 2012. \textit{Irrumpen en programa en vivo de Globovisión} [Live Globovisión broadcast interrupted]; Knight Center for Journalism in the Americas. March 19, 2012. \textit{Members of community council in Venezuela violently interrupt live broadcast of TV program}; Colegio Nacional de Periodistas (CNP). March 16, 2012. \textit{Irrumpen de forma violenta en grabación de "Radar de los Barrios"} [Violent disruption during taping of "Radar de los Barrios"].}

500. According to information received, on March 20, 2012 the National Assembly reportedly approved a request from one of its members whereby the Ombudsperson’s Office would be ordered to conduct an investigation into the publication of an allegedly racist message in a caricature that appeared in the newspaper \textit{Tal Cual}. The caricature, which appeared against the backdrop of complaints about the oil spill in various sectors of Venezuela, depicted a man in a military beret similar to the one worn by President Hugo Chávez, opening a tap that dispenses dark water, as he explains to two children: “Enough with white supremacy […] now we have Afro-descendant water.”\footnote{Últimas Noticias. March 20, 2012. \textit{Tildan al caricaturista Weil de racista} [Caricaturist Weil branded a racist]; Últimas Noticias. March 21, 2012. \textit{Piden sanciones contra caricaturista Weil} [Sanctions sought against caricaturist Weil]; Instituto Prensa y Sociedad (IPYS). March 20, 2012. \textit{Asamblea Nacional pide investigación contra caricaturista} [National Assembly seeks investigation of caricaturist].}

501. The IACHR was informed that three journalists and one photographer were allegedly held in the town of Freites, by persons presumed to be members of the Bolivarian Army and personnel of the PDVSA’s Department to Prevent and Control Losses. The journalists were reportedly returning from covering an oil spill in that community. According to what was reported, the supposed agents had allegedly detained Argel Fernández and Sergio Salazar, reporters from the newspaper \textit{El Tiempo}, and Susana Quijada and photographer José González, both from \textit{Mundo Oriental}. The agents claimed that the journalists had “taken information from a privately-owned oil area” and would therefore be required to make a statement. The journalists were reportedly released an hour and a half later.\footnote{La Verdad. August 17, 2012. \textit{Derrame de crudo en Anzoátegui afectó morichales en Freites} [Crude oil spill in Anzoátegui affected moriche palms in Freites]; Mundo Oriental. August 16, 2012. \textit{Detienen a periodista y fotógrafo por cubrir derrame de petróleo} [Journalist and photographer detained for covering oil spill].}

502. As has been repeatedly stated, Principle 9 of the Declaration of Principles of Freedom of Expression, approved by the IACHR in 2000, provides that: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

4. \textbf{Journalistic Materials Withheld and Seized}

503. On February 8, 2012 officials of the Bolivarian Militias allegedly held journalists Abrahán Carvajal and Jesús García, from the newspaper \textit{Últimas Noticias}, in a Caracas hospital where the journalists were obtaining information for a campaign to prevent traffic accidents. According to the reports received, the journalists had permission from a head of traumatology, but even so the militia members took them away to the hospital’s security office, confiscated their equipment and notes, and forced them to take off some of their clothing to search for video memory cards. After holding the journalists incommunicado for three hours, the militia officials had allegedly allowed them to leave with their belongings.\footnote{Instituto Prensa y Sociedad (IPYS)/IFEX. February 14, 2012. \textit{Journalists Detained by Members of Militia}; El Mundo. February 8, 2012. \textit{Periodista de Últimas Noticias relata abusos de la Milicia} [Últimas Noticias Reporter Tells of Militia’s Abuses]; Colegio Nacional de Periodistas (CNP). February 9, 2012. \textit{Milicia de Venezuela desnudó a reporteros durante detención} [Venezuelan Militia stripped reporters during detention].}

504. Information received by the IACHR indicates that on April 30, 2012, agents of the Bolivarian National Guard had held two technicians working for the \textit{Globovisión} news organization and temporarily confiscated their broadcasting equipment. According to the information received, this event
took place while the journalists were covering a riot inside the La Planta prison in Caracas. Before the journalists were apprehended, the Minister for Prison Services, Iris Varela, had reportedly told the VTV state television channel that Globovisión was staging a “show” and trying to create “anxiety”. She also allegedly warned Globovisión to withdraw from the vicinity of the prison and threatened to have its equipment seized.\(^{617}\)

505. In this same vein, the IACHR received information concerning the alleged detention of Daniel Guillermo Colina, a Globovisión journalist, and his cameraman and assistant; it was also told that the news material gathered by that team had been retained. According to what was reported, on the morning of May 17, 2012 Mr. Colina and his team were allegedly stopped by agents of the Caracas Police Force, as they were covering disturbances inside the La Planta preventive detention facility. Furthermore, the news material obtained by the team was confiscated. The authorities allegedly claimed that the purpose of the measure was to protect the journalists by getting them away from the area of the turmoil.\(^{618}\) According to information received, similar incidents involving Globovisión personnel covering news events at the detention facility had occurred on April 30 and May 8.\(^{619}\)

506. Furthermore, on August 28, supposed agents of the Bolivarian National Guard had held journalist Adriana Rivera and cameraman Raúl Romero from the newspaper El Nacional, for at least a half hour when they were trying to report on a fire at the Amuay Refinery Complex in Falcón state.\(^{620}\)

507. According to the information received, on October 22, persons presumed to be members of the Bolivarian National Guard allegedly detained the vehicle carrying a portion of the daily circulation of the newspaper Extra de Monagas and confiscated several thousand copies, which took a serious toll on the newspaper’s circulation in the region. According to what was reported, the military had claimed that security agencies were after the vehicle, which the newspaper’s executives denied.\(^{621}\)

508. The State reiterated in its observations that this was a matter of events “summarized in newspaper articles, without the proper complaint having been filed before the Office of the Public Prosecutor.” In its opinion, this information was reported “for purposes of having a false file opened in the Inter-American Human Rights System, and still disparaging (sic) country, which has commited the offense of failing to obey the government of the United States, the financial backer of the OAS.”\(^{622}\)

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\(^{617}\) Colegio Nacional de Periodistas (CNP). April 30, 2012. *Ministra Iris Varela amenaza vía telefónica por el sistema de medios públicos a equipo de Globovisión* [In a phone conversation with a public television channel, Minister Iris Varela issues threat against the news team at Globovisión]; Espacio Público. April 30, 2012. *Detenidos por la Guardia Nacional operadores de microondas de Globovisión* [Globovisión’s microwave operators detained by National Guard]; El Universal. April 30, 2012. *Ministra Varela se pronuncia ante situación en La Planta* [Minister Varela speaks out about the La Planta situation] (see video at 3:35); El Universal. April 30, 2012. *Fuego cerrado en la cárcel de La Planta* [Fire at the La Planta prison extinguished].


\(^{622}\) In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” P. 22.
Principle 8 of the Declaration of Principles of Freedom of Expression, which the IACHR approved in 2000, provides that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

Subsequent imposition of liability

The IACHR has repeatedly underscored the need to review the framework of laws in which the Venezuelan media operate. In particular, the IACHR has called the authorities' attention to laws written in ambiguous language and establishing disproportionate penalties, laws that give judicial and administrative authorities too much latitude or discretion, or that fail to offer sufficient guarantees to ensure that freedom of expression can be exercised without fear of reprisals. Against the backdrop of polarization and juridical uncertainty described above, the events described in the following paragraphs were reported in 2012.

According to the information received, on October 18, 2011, CONATEL’s Bureau of Social Responsibility allegedly fined Globovisión the sum of 9.3 million bolívares fuertes, the equivalent of 7.5% of its gross earnings for 2010. The official reports asserted that the fine was imposed because of violations of the final paragraph of Article 7, and subparagraphs 1, 2, 4 and 7 of Article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media (Ley Resorte), alleged to be the result of the news reports the channel aired between June 16 and 19, 2011, in connection with the prison situation.

The final paragraph of Article 7 of the Resorte Law reads as follows: “In the messages that the radio and television services broadcast live and direct during the all-users block and the supervised-users block, graphic descriptions or images of real violence may be aired if essential to an understanding of the information, to protect the physical integrity of the persons, or as a consequence of unforeseen situations where the providers of radio or television services are unable to avoid broadcasting them. Graphic descriptions or images shall conform to ethical principles of journalism apropos respect for the human dignity of all users and of those persons who are the subject of the news; yellow journalism techniques shall not be used such as skewing the news in such a way as to affect the users’ right to be correctly informed, in accordance with the corresponding law, and shall in no case engage in sensationalism, scandal mongering or dwell on extraneous details.”

The final paragraph of Article 27 of the Resorte Law as cited in Administrative Order No. PADRS-1.913, establishes that:

1. Incite or promote hate and intolerance for religious, political, gender-related, racist, or xenophobic reasons.
2. Incite or promote and/or advocate crime.
3. Foment anxiety in the population or affect the public order.
4. Incite or promote disobedience to the established legal order …“

Article 29 of the Resorte Law as cited in Administrative Order No. PADRS-1.913, establishes that those subject to the application of the law shall face punishment of “a fine of up to ten percent (10%) of gross revenues in the year immediately preceding the year when the violation was committed, and/or suspension for up to 72 continuous hours of transmission, when they violate Article 27.”

at the El Rodeo Penitentiary.\textsuperscript{827} In its decision, the Bureau of Social Responsibility had reportedly concluded that the television channel transmitted “messages that promote alterations of public order, justify crime, incite the existing legal regime, promote hatred for political reasons and foment panic among the citizenry during the days of June 16, 17, 18 and 19, 2011.”\textsuperscript{826} According to what was reported, on January 20, 2012, “a contentious-administrative petition was filed” with the Political-Administrative Chamber of the Supreme Court (TSJ). It was filed “together with a petition for injunctive relief and, secondarily, a petition seeking precautionary measures that would suspend the effects of the decision.”\textsuperscript{829} These petitions were filed by Globovisión to challenge the decision of the Bureau of Social Responsibility. In its petition, Globovisión claimed violations of freedom of expression, not simply because a fine was imposed but also because of the size of the fine. According to Globovisión, it had simply broadcast a direct report on the events and the relevant government-sourced information. They asserted that the intent of that news was not to foment anxiety or affect the public order. Furthermore, they argued, the information that Globovisión imparted had no such effect. They asserted that articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media (\textit{Ley Resorte}), which set forth the conduct that carries a penalty, were unconstitutional and violated the principle of legality, the principle of freedom from \textit{ex post facto} law, the principle of proportionality and the principle of the rationality of public powers. Finally, they alleged that the penalty was imposed “without the benefit of any preliminary proceeding.”\textsuperscript{830} In a March 6 ruling the Political-Administrative Chamber denied the petition for injunctive relief and, in a March 15 ruling, declared the petition seeking a precautionary measure suspending the effects of the court decision to be out of order. However, as of the date of this report, the court had not yet ruled on the nullity petition.\textsuperscript{831}

512. Then, on June 28, 2012, the Political-Administrative Chamber of the Supreme Court reportedly granted “a petition filed by the National Telecommunications Commission (CONATEL) and the aforementioned Bureau seeking enforcement of the fine.” Accordingly, the court reportedly ordered an enforceable attachment in the amount of 24.4 million bolivares (some 5.6 million dollars) on Globovisión’s property. The Court arrived at that figure by doubling the fine and adding the enforcement costs.\textsuperscript{832} On June 29, Globovisión paid the fine of 9.3 million bolivares under protest. On July 3, the Political-Administrative Chamber of the Supreme Court lifted the attachment measure. Globovisión reportedly argued, \textit{inter alia}, that the attachment was a new means ofPressuring the channel, and that it had been forced to pay the fine even though other judicial actions were still pending.\textsuperscript{833}

\textsuperscript{827} Bolivarian Republic of Venezuela. Bureau of Social Responsibility 201 and 152. October 18, 2011. \textit{Administrative Order PADRS-1.913}, Chapter II.


513. In its observations to this report, the State indicated with regard to this issue that “the radio spectrum is publicly owned—that is, administered by the Venezuelan State—and there is an institution called CONATEL, which sanctions radio and television stations that fail to comply with the Law on Social Responsibility in Radio, Television and Electronic Media. That law establishes sanctions for the media that violate its provisions. That is perfectly legal, and we have been explaining the situation to the Commission for several years.”

514. The State further established that “up to the moment this report was presented,” the opposition media “have never been subject to measures involving shut-down, censorship, or the confiscation of publications, in spite of the fact that they have frequently engaged in prolonged campaigns calling for the overthrow of the government and have instigated political assassination, civil war, and ethnic and racial hatred.”

515. The IACHR was told that on January 26, 2012 in response to a complaint filed by the Ombudsperson’s Office, a court in the Child Protection Section of the Guárico judicial district had reportedly ruled that the newspaper La Antena de Guárico was to comply with its obligation under Article 74 of the Organic Child and Adolescent Protection Law, which was to wrap editions that contain reports and images that are inappropriate for children and adolescents.

516. The IACHR also learned of a March 30, 2012 decision by the Barinas Judicial District’s First Juvenile Protection Trial Court of First Instance in which the newspaper La Prensa was ordered to pay a fine equivalent to one percent of its gross earnings in fiscal period 2010. The fine was ordered because of the newspaper’s publication of photographs of dead bodies at crime scenes, which were deemed to be a violation of the Organic Child and Adolescent Protection Law. The complaint against the newspaper was brought by the Ombudsperson’s Office. The ruling held that “while the law does not prohibit publication of such images, it requires that any publication in which they appear must come in a wrapping with a label warning that the publication contains printed materials, illustrations or photographs inappropriate for children and adolescents.”

517. The Commission is not unaware of the duty of special protection that States have with respect to children and adolescents. However, an authority’s invocation of that obligation of special protection and of the principle of the child’s best interest as grounds for restricting another Convention-protected right must be based on objective reasons that have a clearly identified relationship to those obligations and principles in each specific case. In addition, such restrictions must abide by a regulatory

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836 Article 74 reads as follows: “Printed or audiovisual materials, books, publications, videos, illustrations, photographs, readings and chronicles that are inappropriate for children and adolescents must have a wrapping to seal their content and a warning label stating that the material is not for children and adolescents. When the covers or packaging of these materials contain pornographic information or images, they must have an opaque wrapping.” National Assembly of the Bolivarian Republic of Venezuela. Organic Law for the Protection of Children and Adolescents. Official Gazette No. 5.859, Special Edition. December 10, 2007. Ombudsperson’s Office. April 26, 2012. Diario La Antena no podrá publicar imágenes cruentas [At the request of the Ombudsperson’s Office, La Antena newspaper may not publish crude images]; Últimas Noticias. April 26, 2012. Diario La Antena no podrá publicar fotos cruentas [La Antena newspaper can no longer publish crude photos].


framework that has the safeguards necessary to ensure that no discretionary use is made of excessively broad categories and that, in all instances, the sanctions are strictly proportionate.

518. According to what was reported, on October 10 Councilman Nelson Urbina of the Carirubana Municipality was convicted of defaming [difamación e injurias] the mayor of that community. He was sentenced to three years in prison. The criminal case against him reportedly started in 2007, when the mayor filed a complaint in response to articles critical of his performance in office, which the town councilmen reportedly published in an editorial opinion piece. Urbina was taken to the Coro Prison in the state of Falcón, to serve his sentence.839

519. Principle 10 of the Declaration of Principles of Freedom of Expression, which the IACHR approved in 2000, provides that: “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Likewise, Principle 11 of this Declaration reads as follows: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

520. For its part, the Inter-American Court has addressed the issue of civil liability and wrote that civil penalties in matters involving freedom of expression must be proportional so that they do not have a chilling effect on that freedom, since “the fear of a civil penalty, considering the claim […] for a steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to affect the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”840

6. Access to information

521. When the topic of access to public information came up in the public hearings that the IACHR held in March and November 2012 on the situation of freedom of expression in Venezuela, the petitioners spoke about the difficulties that journalists have in getting access to information that the State has in its possession, and to government events and offices.841 They also made the point that Venezuela does not have a law on access to public information and expressed concern over a Supreme Court decision that would require journalists to explain why they were requesting public information and how they planned to use the information they were seeking.842 The State, for its part, said that these limitations...
were legitimate; that journalists cannot be provided with every piece of information they ask for. It also argued that not every media outlet can be accommodated at every event, and access to information is guaranteed because Venezuela has public radio and television and official press releases are issued following government events and are accessible to everyone.843


523. According to the information received, in 2012 various amparo petitions were brought by members of civil society in connection with requests for information filed with government agencies and never answered. In this connection, on March 16 a petition seeking constitutional relief for failure to answer a request for information filed with Petróleos de Venezuela concerning alleged oil spills in 2010 and 2011, was declared inadmissible by the Capital Region’s Sixth Contentious-Administrative Law Court.845 Likewise, on May 23, the Constitutional Chamber of the Supreme Court dismissed a petition for amparo relief that was based on the fact that a request filed with the Ministry of the People’s Power for Women and Gender Equality seeking information on plans to treat and prevent violence against women went unanswered.846 On June 5, the Constitutional Chamber dismissed a petition seeking amparo relief where the petitioner wanted information turned over on the amount that the Ministry of the People’s Power for Communications and Information had spent on government advertising.847 On June 18, a petition seeking amparo relief because the Ministry of the People’s Power for Heath had failed to answer a request seeking information on the importation, preservation and distribution of medications from Cuba, was also dismissed by the Constitutional Chamber.848 In all these cases, the court held that the petition seeking amparo relief was not the proper avenue to pursue to request access to public information.


844 Article 56 of the new Internal Rules of Procedure and Debate of the National Assembly of Venezuela appears in a chapter on the Operating System of the National Assembly and provides that: “In order to guarantee access to information in accordance with Article 108 of the Constitution of the Republic, plenary sessions shall be transmitted by the National Assembly’s Fundación Televisora (ANTV) and the State television station may provide support for transmission. Conditions shall be provided so that media outlets interested in transmitting the information produced in the course of the session may do so through the ANTV signal.” Article 87 of the previous Rules provided that: “All sessions shall be public. In view of the content of Article 108 of the Constitution, audiovisual communications media may partially or totally transmit the development of the sessions.” National Assembly of the Bolivarian Republic of Venezuela. December 22, 2010. Reglamento Interior y de Debates de la Asamblea Nacional [Internal Rules of Procedure and Debate of the National Assembly]; National Assembly of Venezuela. September 5, 2000. Reglamento Interior y de Debates de la Asamblea Nacional [Internal Rules of Procedure and Debate of the National Assembly].


524. According to reports received, on August 6 journalists from private media outlets were excluded from a Chávez campaign event in Guacara, Carabobo state. According to what was reported, the journalists had their credentials taken away and were told that they could not get into the event because it was being broadcast via the National Public Media System.  

525. On October 2, the Second Contentious-Administrative Law Court handed down a decision blocking access to crime figures for 2008, 2009, 2010 and the first half of 2011. According to what was reported, the Court held that the Laboratory, Criminal and Forensic Investigation Corps (CICPC) does not have the authority to release that information to the public. The Court concluded that while the CICPC Law provides that one of this institution’s functions is to prepare statistics on crime, “there is nothing to suggest that one of the CICPC’s functions is to provide that information to private parties.”

526. On October 23, the Second Contentious-Administrative Law Court reportedly agreed to hear the petition that Espacio Público filed against the National Telecommunications Commission (CONATEL) for refusal to provide information. In a request dated April 30, 2012, Espacio Público had allegedly requested information concerning the proceedings prescribed under the Law on Social Responsibility in Radio, Television and Electronic Media (Resorte law) for administrative sanctions, and a list of the persons or organizations that pay taxes, rates and contributions under the Organic Telecommunications Act, and other information. As of the date of this report, the court had not yet issued its decision on the merits. It had asked CONATEL to issue a report explaining the reasons for the delay in handing over the information. 

527. With regard to access to information, the State asserted that the issue had been “sufficiently explained in the hearings and memoranda presented since 2003.” At the hearing on the right to freedom of expression in Venezuela held at the IACHR on March 27, 2012, the petitioners argued, among other things, that only those media outlets in Venezuela that are part of the State and very few private media outlets are able to participate in press conferences and are granted access to information in the power of the Government. In their view, these limitations on the right to access to public information constitute a pattern of restrictions that characterizes a State policy. In this regard, the representative of the State maintained that, “every time there is a public ceremony, a press release is issued about what is taking place. It is also broadcast by State media and television stations, so that anyone who wishes to be informed of these public ceremonies in the most sufficient, complete, and total manner can redistribute it and even rebroadcast what airs on the public networks. And they do this, in fact, and the public system, which is very limited, has also in fact re-broadcast content from private media, and thus in this sense, there is no restriction of information.”

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849 Noticias 24. August 6, 2012. Denuncian el retiro de las credenciales a los medios privados que iban a cubrir evento de Chávez [Private media intending to attend Chávez event have their credentials taken away; complaints filed]; 6to Poder. August 6, 2012. Prohíben a medios privados cubrir acto de campaña de presidente Chávez en Carabobo [Private media not permitted to cover President Chávez’ campaign event in Carabobo].

850 Second Contentious-Administrative Law Court. October 2, 2012. Expediente No. AP42-O-2012-000070 [Case No. AP42-O-2012-000070]; Office of the Public Prosecutor of the Bolivarian Republic of Venezuela. Ley del Cuerpo de Investigaciones Científicas, Penales y Criminalistas [Law on the Laboratory, Criminal and Forensic Science Corps] [G.O. 38.598 of 01/05/07]. Under Article 11.3, it is the function of the CICPC, “[t]o prepare and analyze crime statistics in coordination with the National Institute of Statistics, and then present those statistics to the ministry with competence in police affairs and justice, when so requested for the purpose of adopting policy on prevention and applying the measures necessary to ensure achievement of the State’s goal in the area of security.”


853 IACHR. 144th Period of Sessions. March 27, 2012. Hearing on the Right to Freedom of Expression in Venezuela. [31:00 – 32:00].
raised the absence of institutional mechanisms to guarantee the right to public information in Venezuela. The State’s representative held that “The Inter-American Convention on Human Rights itself says that there is a set of circumstances under which, for the security of the State, among other reasons, information can be restricted. It is not—in no State in the world is there a situation in which information requested by a journalist must necessarily be surrendered.”

528. Principle 4 of the IACHR’s Declaration of Principles of Freedom of Expression provides that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

7. Other related developments

529. The IACHR received information to the effect that the authorities have shut down a number of radio and television stations for noncompliance with or violation of the established regulations. The IACHR is asking the authorities to meticulously apply the rules of due process given the impact that the enforcement of sanctions can have on the exercise of freedom of expression. According to the information received, between November and December 2011, the National Telecommunications Council (CONATEL) allegedly shut down at least 11 radio stations. In a number of these cases, the broadcasting equipment and materials used in broadcasting were also seized. CONATEL claimed that the stations were shut down because they were operating illegally.855 The IACHR was told that on orders from CONATEL, agents of the Venezuelan National Guard took over four radio stations in the state of Monagas on March 30, 2012 claiming that they were “enforcing an administrative penalty” because the radio stations in question were “allegedly broadcasting on a frequency without having the necessary permit and concession.” The authorities suspended the radio stations’ broadcasting and their equipment and materials were confiscated. One of the affected radio stations is Caicareña 100.5 FM, owned by the brother of the governor of Monagas. The other stations shut down that day were Venezuela Olímpica 97.9 FM, Única 104.9 FM and Líder 100.7 FM. Caicareña was allegedly shut down by force, and at least one person was injured. CONATEL announced that two of its employees had been injured during the operation.856 The Venezuelan Broadcasting Chamber supported the shutdown of the “clandestine” stations.857

530. In this respect, the State indicated that the aforementioned situation “refers to the shutdown of several radio and television stations by the competent authorities. We responded to the

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855 Espacio Público. E-mail received on February 24, 2012. Available at: IACHR Archives; El Nacional. February 16, 2012. Conatel inició procedimientos sancionatorios contra las emisoras Xtreme y Cosmo [CONATEL institutes proceedings to impose penalties on Xtreme and Cosmo stations].
Commission about this at the proper time; they are stations that were operating without the proper authorization from CONATEL."\textsuperscript{858}

\textsuperscript{858} In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, "Observations of the Venezuelan State to the IACHR Annual Report of 2012." Specific observations to the section on "State respect and guarantee for the exercise of freedom of expression." P. 23.
CHAPTER III
DOMESTIC CASE LAW ON FREEDOM OF EXPRESSION

A. Introduction

1. In this report, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights provides a synthesis of important rulings from the region’s domestic high courts on the issue of freedom of expression in the Americas. This review is a continuation of the practice begun by the Office of the Special Rapporteur of documenting and disseminating, through its annual reports, the domestic court rulings that represent progress on a domestic level or that enrich regional scholarship and case law while at the same time incorporating inter-American standards on the issue into its reasoning.

2. As in other annual reports, this type of review seeks to contribute to a positive dialog between the bodies of the Inter-American system and domestic jurisdictions, with the conviction that the sharing of different experiences leads to a virtuous cycle of mutual learning.1

3. Effectively, the Court and the Inter-American Commission have repeatedly recognized that all domestic courts - regardless of level or hierarchy - play a crucial role in developing and implementing regional human rights standards. As the Court has found, local justice systems operate not only to guarantee the rights of individuals in specific cases, but also, through their rulings, they can broaden and strengthen the content of constitutional provisions and domestic laws connected with a particular right, thereby also strengthening the provisions of international instruments such as the American Convention. Likewise, the system’s organs have emphasized that domestic judges play an important role in the process of implementing international human rights law in domestic legal systems.

4. For this reason, this Office continues to make its best efforts to document the court rulings that represent important local progress in the recognition and protection of the right to freedom of expression, and disseminate them in its annual reports, keeping that documentation updated and standardized. In some cases, these rulings must also be considered models to follow on the issue. This work also allows the Office of the Special Rapporteur to determine the degree to which the right is protected in the different countries of the region, as well as the characteristics of each level of protection. The results thus far have been notable. As this report demonstrates, there is a clear trend in important courts of the Americas toward a true guarantee and protection of the right to freedom of thought and expression of persons, meaning decisive steps toward the consolidation and preservation of pluralist and deliberative democratic systems.

5. This document is divided into two parts. The first part briefly explores the most relevant aspects of the inter-American legal framework on freedom of expression that have served as the basis for the selection of the judgments presented herein. For the purposes of this review, the determination that domestic progress has been made or a best practice has been established will be based on how well a judicial ruling measures up to the principles, scope and limits of the right to freedom of expression according to the interpretation of the authorized organs of the inter-American system and the highest standards set by the region’s courts and tribunals.

6. The second part collects rulings from different countries throughout the region, organizing them thematically and summarizing them so as to make it easy to understand the way in which each ruling constitutes local progress or the way in which it implements regional standards.

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7. Finally, as in other annual reports, the Office of the Special Rapporteur recognizes that an exhaustive review of the rulings made with regard to this right goes beyond the scope of this report. The Office of the Special Rapporteur will refer only to the emblematic court rulings on which it has received information.

B. Inter-American legal framework regarding freedom of expression

8. For the purposes of this report, domestic progress or the identification of best practices starts with the standards used to adopt the corresponding ruling and its impact on the greater exercise of freedom of thought and expression. In principle, these are rulings that at the very least reduce arbitrary or disproportionate limits on freedom of expression and contribute to strengthening guarantees of the existence of public and plural debate under democratic conditions, pursuant to the inter-American legal framework on the issue.

9. As this Office of the Special Rapporteur has expressed on prior occasions, the inter-American system for the protection of human rights is probably one of the systems that establishes the most guarantees for the exercise of freedom of thought and expression. Effectively, in its Article 13, the American Convention on Human Rights places a very high value on freedom of expression and establishes its own limited system of restrictions. The same reinforced level of guarantee can be found in the American Declaration of the Rights and Duties of Man - Article IV - and the Inter-American Democratic Charter - Article 4. This stricter level of guarantee is based on the broad concept of the autonomy and dignity of persons, which is based on the recognition of freedom of expression not only as a right derived from the idea of human autonomy, but also as a right with instrumental value for the exercise of other fundamental rights and with an essential role in democratic systems.

10. On this latter aspect, the IACHR and the Inter-American Court have highlighted in their case law that there is a structural relationship between democracy and the right to freedom of thought and expression. This relationship is so important that the organs of the system have emphasized that the objective itself of Article 13 of the American Convention is to strengthen the functioning of pluralist and deliberative democratic systems by protecting and fomenting the free circulation of information, ideas, and expression of all kinds.

11. This relationship between the right to freedom of expression and democracy - defined as “strict” and “indissoluble” - is partly explained by the dual dimensions of this right. Effectively, and as the Inter-American Court and the IACHR have indicated, freedom of expression has an individual component consisting of each person’s right to express his or her own thoughts, ideas and information, as well as a collective or social aspect, consisting of every person’s right to seek and receive any information.

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2 The article holds that: “1.Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. // 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals. // 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. // 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject to law by prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. // 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

3 “Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” American Declaration of the Rights and Duties of Man. Article IV.

4 “Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. // The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.” Inter-American Democratic Charter, Article 4.
Taking this dual dimension into account, inter-American case law has found that freedom of expression is a \textit{means for the exchange} of information and ideas among people and for mass communication among human beings. It has specified that for the common citizen, the knowledge of others’ opinions or the information available to other people is just as important as the right to disseminate one's own beliefs or information. The case law has also emphasized that a particular act of expression has both dimensions simultaneously. For this reason, a limitation of the right to freedom of expression at the same time affects the right of the person wishing to disseminate an idea or information and the right of members of society to learn about that idea or information. Additionally, the right to information and to receive the greatest number of opinions and variety of information requires a special effort for achieving access to the public debate under equal conditions and without discrimination of any kind. This presupposes special conditions for inclusion that allow for the effective exercise of this right for all sectors of society.  

A large portion of the development of the subject in scholarship and in the case law of the system’s bodies highlights the importance assigned to the dual dimension of the right to freedom of expression and its role in democracy. Specifically, based on this relationship between democracy and freedom of expression, the Court and the Inter-American Commission have in recent years defined a general framework regarding the principles and standards linked to the interpretation and application of Article 13 of the Convention - and IV of the American Declaration - that places emphasis on the special protection of speech regarding the public interest or State officials and the conditions under which legitimate limitations to this right may be established in such cases.

This general framework promotes the recognition of at least the following principles: 1) all forms of expression, regardless of content and level of acceptance by society at large or the State, are presumed generally to be covered; 2) expression having to do with matters of public interest and individuals who are holding or seeking to hold government positions, and expression that includes elements constitutive of the personal identity or dignity of the person who makes the expression enjoy greater protection under the American Convention, and the State must therefore refrain to a greater degree from imposing limitations on these forms of expression; 3) to be admissible, the limitations must be established through subsequent liability for exercising the right, with prior restraint (censorship) and restrictions that have discriminatory effects and that are imposed through indirect mechanisms, such as the ones proscribed in Article 13(3) of the American Convention, being prohibited; 4) the examination of the legitimacy of the limitations imposed requires that the restrictions be established clearly and precisely by law, that they be aimed at achieving legitimate objectives recognized by the Convention, and that they be necessary in a democratic society (three-part test); and 5) the standard requires that due to the type of speech to which they apply or the medium they employ, some types of limitations must be exceptional and subjected to an examination that is stricter and more demanding in order to be valid under the American Convention (\textit{strict necessity test}).

The judgments reviewed herein show the way in which different domestic courts have incorporated regional standards into their domestic legal systems. Likewise, some of the rulings mentioned in this report have been pioneer in making fundamental progress on the issue of freedom of expression and have become required points of reference not only for the courts and tribunals of other States but also for the bodies of the regional system itself. Effectively, it has been possible thanks to some of the rulings noted hereinafter to promote freedom of thought and expression and strengthen inter-American scholarship and case law.

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C. Judicial rulings on the subject of freedom of expression

Hereinafter, we will present some of the most significant decisions that in the opinion of the Office of the Special Rapporteur constitute important domestic progress or best practices on the subject of freedom of expression. They are organized according to the main standard or rule of the right that they develop. The initial sections contain extracts from some of the rulings that address generally the scope and characteristics of the right to freedom of expression. These are included here for their relevance in the later analysis of the legitimacy of limitations to the right, a central aspect of the rulings reviewed.

1. Case law on the importance, scope and function of freedom of expression in democratic systems

In decisions that have clearly been in harmony with the organs of the inter-American human rights system, the highest courts in the region have generally recognized the importance and special character of the right to freedom of thought and expression in the context of their constitutional legal systems. The priority given to this right has been attributed to the instrumental role it plays in democratic systems and to its being an indispensable tool for the exercise of other rights. As this aspect has been broadly developed by a variety of courts, in this section the Office of the Special Rapporteur will highlight some of the relevant court rulings that have been emblematic on this issue.

In a judgment dated February 1, 2006, the Court of Constitutionality of Guatemala indicated in a ruling on the constitutionality of the articles of the Penal Code that establish the crime of desacato that freedom of expression is “a fundamental right inherent to persons […] and one of the liberties that are a positive sign of true constitutional rule of law […].” In this sense, it explained that “the free expression of thought is one of the rights that make respect for the dignity of a person possible by allowing a person to freely translate his or her ideas and thoughts into expression that can give rise to value judgments and subsequent decision-making, not only of individuals but also of groups, within a democratic society.” In the opinion of this high court, this is “how one explains that in modern constitutional history, the exercise of this right has deserved constitutional protection.”

In this important ruling, the Court of Constitutionality of Guatemala turns to what was established by the Inter-American Court of Human Rights in Advisory Opinion OC/5 and the Declaration of Principles on Freedom of Expression where they determine that “the right to and respect for freedom of expression is established as an instrument that allows for the free exchange of ideas and functions to strengthen democratic processes, while at the same time guaranteeing the citizenry a basic tool for participation.” This criteria was reiterated by the Court of Constitutionality of Guatemala in a ruling dated September 14, 2010. Citing comparative law, the Court recalled that the deep commitment to the freedom of expression of all persons and the need to protect robust, open and uninhibited debate on subjects of public interest require the State to tolerate attacks even when they seem or in fact are harsh, caustic or unpleasant.


\[\text{8 The judgment examined the constitutionality of articles 411, 412 and 413 of the Penal Code of Guatemala regulating the crimes of desacato against presidents of State bodies (art. 411), desacato against authority (art. 412) and evidence for leveling accusations of these crimes (art. 413).} \]

\[\text{9 Republic of Guatemala. Court of Constitutionality. Judgment on Appeal of Amparo Judgment, Case File 4628-2009, September 14, 2010. Available at: http://www.cc.gob.gt/siged2009/mdfWeb/fmConsultaWebVerDocumento.aspx?St_Documentoid=815146.html. This ruling of the Court of Constitutionality of Guatemala overturned a ruling convicting a candidate for representative elections with the Professional Association of Veterinary Doctors and Zoologists before the Superior University Council of Guatemala of lacking “professional ethics” and “respect for one of its members, both in speech and in writing,” after he criticized the quality of the education provided at one of the universities in that country during his campaign. Basing its ruling on the importance and function of the right to freedom of expression in democratic proceedings, the Court of Constitutionality of Guatemala ordered that a new ruling be issued based on the court's case law on the subject.} \]
20. The Constitutional Chamber of the Supreme Court of Justice of Costa Rica ruled similarly in a judgment dated March 29, 2011. \(^\text{10}\) Therein, it ruled on an *amparo* remedy brought against an agreement reached by the University Council of the Universidad de Costa Rica preventing a foreign guest from giving a conference there because in the past he had made statements that were discriminatory against a variety of minorities. In its ruling, the Chamber expressed that:

“It should also be taken into account that freedom of expression is an indispensable requirement for democracy - although certainly not the only one - as it allows for the creation of public opinion, essential for giving content to a number of principles of the constitutional rule of law, such as for example the right to information, the right to petition and rights having to do with political participation. The opportunity for all people to participate in public debate constitutes a necessary condition for the construction of a social dynamic of exchange of knowledge, ideas and information that allows for the reaching of consensus and taking of decisions among components of diverse social groups; but it also constitutes a channel for the expression of dissenting opinions, which in a democracy are just as necessary as concurring opinions. For its part, the exchange of opinions and information that arises from public debate contributes to forming personal opinions, while both combined form public opinion, which ends up being expressed through the channels of representative democracy.”

21. This relationship between democracy and freedom of expression has also been recognized by the Supreme Court of Justice of the Nation of Mexico in a number of rulings. That court has found that freedom of expression is a right that is “functionally essential in the structure of the constitutional rule of law”\(^\text{11}\) and that in its “public, collective and institutional aspects” it becomes the “centerpiece for the proper functioning of representative democracy.”\(^\text{12}\)

22. For its part, the Supreme Court of Justice of the Argentine Nation issued a ruling on June 24, 2008, in the case of Patitó, José Ángel et al. v. *Diario La Nación* et al.\(^\text{13}\) that emphasized that “with regard to freedom of expression, this Court has repeatedly ruled that it holds an eminent place in a republican regime. In this sense, the Court has held for some time that […] among the liberties that the National Constitution enshrines, freedom of the press is one of the most important, to the point that without its due protection, the democracy that exists would be an impaired one and democracy in name only […]”

23. Analogously, the Constitutional Tribunal of Bolivia ruled in a judgment dated September 20, 2012,\(^\text{14}\) that Article 162 of the Penal Code was unconstitutional. That article established harsher prison sentences for those convicted of defamation (*calumnia, injuria o difamación*) against a public official (*desacato*). The court explained that freedom of expression is an essential human right that holds a “preferential position” in the constitutional system due to the role it plays in a democratic system. Taking up once again one of its previous rulings, it indicated that freedom of expression “constitutes one of the most important rights of an individual and one of the fundamental pillars of all democratic States,” and that “the State duty to respect and guarantee fundamental principles in a democratic society includes the obligation to promote open and plural public debate.”

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\(^\text{11}\) United States of Mexico. Supreme Court of Justice. Direct *Amparo* Appeal 2044-2008, June 17, 2009. Available at: [http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440.010.doc](http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440.010.doc)

\(^\text{12}\) United States of Mexico. Supreme Court of Justice. Direct *Amparo* Appeal 2044-2008, June 17, 2009. Available at: [http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440.010.doc](http://www2.scjn.gob.mx/juridica/engroseoncerradoonpublico/08020440.010.doc)


24. In a judgment dated April 30, 2009, the Supreme Federal Tribunal of Brazil declared that the Press Act, which was passed during the military regime, established harsh punishment for journalists for the crime of defamation [difamación y injurias], allowed for prior restraint and established other measures that restricted the exercise of freedom of expression, and was therefore not compatible with the Federal Constitution. To this effect, the Tribunal carried out an extensive examination of the scope and importance of freedom of expression in a democratic system, referencing among other sources the inter-American system's standards on the subject.

25. The Tribunal found that freedom of the press is an expression of the freedoms of thought, information and expression with an intrinsic relationship to democracy, and that therefore it must enjoy extra protection to ensure it can be exercised fully. In this regard, the Supreme Tribunal highlighted that the press is a natural opportunity for the formation of public opinion and an alternative to the official version of the facts. In that sense, critical thought in journalism is an integral part of full and trustworthy information. This standard was reiterated by the Tribunal in a judgment dated September 2, 2010.

26. The Constitutional Court of Colombia has repeatedly established in multiple rulings the priority status of the right to freedom of expression in the constitutional framework of that country. So for example, in recent ruling C-422/11 of May 25, 2011, the Court ruled that judges who hear cases on defamation [injurias y calumnias] must interpret those criminal offenses restrictively in ways that favors the “expanding scope of freedom of expression.” In this ruling, the Court reiterated the thesis that it has held since its beginning - and that is based on “the special importance of this right in the Colombian legal system - [...] that the right occupies a place of privilege within the catalog of fundamental rights.”

27. Prior to this, in ruling T-391/07 of May 22, 2007, regarding a writ of protection brought by Radio Cadena Nacional (RCN) against the Council of State, the Constitutional Court of Colombia indicated that “the principal justification for making freedom of expression central to contemporary constitutional systems is that, through its protection, representative democracy, citizen participation and self governance are facilitated in each nation. This argument highlights that communication and the free flow of information, opinions and ideas in a society are essential elements for democratic and representative governance, for which reason freedom of expression, on allowing open and vigorous debate on public matters, serves a central political function.”

28. Of particular interest are the considerations developed by the Constitutional Court of Colombia in this ruling with regard to the way this right specifically functions in its political dimension. For this Court:

“In its political dimension, freedom of expression serves a number of specific functions: (i) the broad and open political debate protected by this freedom informs and improves on the quality of public policy in that it

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permits “the inclusion of all sectors of society in the communication, decision making and development processes,” inclusion that “is fundamental for their needs, opinions, and interests to be taken into account in the design of policies and decision making,” thus allowing equitable exercise of the right to participation; (ii) freedom of expression keeps the channels for political change open, using critical analysis to prevent those that govern from becoming indefinitely rooted in an illegitimate position; (iii) solid protection of the free communication of information and ideas prevents governmental abuses of power by supplying a counterweight through the opening of a channel for the exercise of the power of citizen participation and oversight of the public; in other words, it provides an opportunity for the discussion of matters in the general interest, an opportunity that in turn reduces the risk of government oppression; (iv) it promotes sociopolitical stability on providing an escape valve for social dissent and thereby establishing a framework for managing and processing conflicts that do not threaten to erode societal integrity; (v) it protects active political minorities at a given time, preventing them from being silenced by majority or prevailing forces; and (vi) on a more basic level, it is a necessary condition for ensuring the free expression of the opinions of voters when they cast their ballots for a political representative. It has also been noted that freedom of expression (vii) contributes to the formation of public opinion on political matters and the consolidation of a duly informed electorate, given that it gives substance to citizens’ right to understand political matters, thereby allowing them to participate effectively in the operation of democracy, thereby (viii) bringing to life the principle of representative self-government by citizens themselves, and (vii) the responsibility of those governing the electorate, as well as (ix) the principle of political equality. Finally, it has been emphasized that (x) freedom of expression strengthens the individual autonomy of the political subject in a democratic regime, and that (xi) on allowing the construction of opinion, it facilitates societal control over the operation not only of the political system, but also of society itself, including the legal system and its need to develop or change.”

29. As will be explained later on, according to this Tribunal, “the multiplicity of reasons that justifies granting generic freedom of expression a privileged position in the Colombian constitutional system has an immediate practical consequence: there is a constitutional presumption in favor of freedom of expression.”

2. Case law on the scope and entitlement of freedom of expression

30. In the terms of Article 13 of the American Convention, freedom of expression is a right held by every individual, without discrimination of any kind. According to Principle 2 of the Declaration of Principles, “all people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

31. As the Inter-American Court has indicated, the conditions for bearing the right to freedom of expression cannot be restricted to a particular profession or group of individuals, nor to the scope of freedom of the press: the “American Convention guarantees this right to every individual, irrespective of any other consideration; so, such guarantee should not be limited to a given profession or group of individuals. Freedom of expression is an essential element of the freedom of the press, although they are not synonymous and exercise of the first does not condition exercise of the second.”

32. Likewise, the Commission and the Inter-American Court have emphasized the Democratic scope of freedom of expression, which implies both the ability of every individual to put forward expression and ideas, as well as the ability to seek, receive and disseminate information of all kinds, orally, in print, in the mass media, or through any other medium of an individual’s choosing. In this sense, the organs of the system have recognized that Article 13 of the American Convention includes:

1) the right to speak - that is, to express orally thoughts, ideas, information or opinions; \(^{24}\) 2) the right to speak necessarily implies individuals’ right to use the language of their choosing to express themselves; \(^{25}\) 3) the right to write - that is, to express thoughts, ideas, information or opinions in writing or in print; 4) the right to disseminate spoken or written expression of thoughts, information, ideas or opinions through the medium chosen for communicating to the largest number of receptors possible; \(^{26}\) 5) the right to artistic or symbolic expression, to the distribution of artistic expression, and to access to art in all its forms; \(^{27}\) 6) the right to seek, receive and access expressions, ideas, opinions and information of all kinds; 7) the right to have access to information about oneself contained in public or private databases or registries, with the correlative right to update, correct or amend it; and 8) the right to possess information in writing or any other form, to transport that information, and to distribute it. \(^{28}\)

33. All of the rulings collected in this report begin with the assumption that the right to freedom of expression universal, something that is generally recognized in the constitutions of the countries of the region. Thus for example, the Constitutional Court of Colombia in the aforementioned judgment T-391/07 of May 22, 2007, \(^{29}\) found that all individuals are entitled to the right to freedom of expression, without any discrimination regarding the characteristics of the individual, the content of the speech, or the way in which the speech is received or distributed.

34. On this last point, it expressed that the media, as vehicles for the full exercise of the right to freedom of expression, must be recognized as bearers of this right. In this regard, it would be appropriate to mention that the Constitutional Court has recognized that the right to open a media outlet is a fundamental right that must be recognized universally and without discrimination, and with restrictions that are strictly necessary with regard to certain types of media that wish to use the electromagnetic spectrum. \(^{30}\)

35. The scope of the right to freedom of expression in the rulings reviewed in this report is likewise broad. Although the majority of the rulings examined refer to expression through the mass and print media, the courts recognize that the right to freedom of expression likewise protects multiple other forms of expression, artistic expression among them. This has been established by, for example, the


\(^{27}\) IACHR. Pleadings before the Inter-American Court in the Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Transcripts available at: I/A Court H.R. Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Judgment dated February 5, 2001. Series C No. 73, para. 61(b).


Supreme Federal Tribunal of Brazil, in a judgment issued on August 1, 2011, in which it examined the constitutionality of the requirement that the country’s musicians be part of a professional organization.

3. Case law on the presumption of ab initio coverage for all kinds of expression, including offensive, shocking or disturbing speech

36. The organs of the inter-American system have explained that in principle, all forms of speech are protected by the right to freedom of expression regardless of their content or the degree to which they are accepted by society or the State. This Office of the Special Rapporteur has emphasized that this general assumption that all expression is covered is explained through the State’s obligation to remain neutral toward content and by the resulting need to guarantee that, in principle, no individuals, groups, ideas or means of expression are excluded a priori from the public debate.

37. According to this order of ideas, the Inter-American Court has reiterated that freedom of expression must be guaranteed not only with regard to the distribution of ideas and information favorably received or considered inoffensive or indifferent, but also with regard to those that offend and shock. These are the demands of pluralism, tolerance and the spirit of disclosure without which a truly democratic society could not exist.

38. In the last decade, domestic courts have taken significant steps toward protecting this kind of expression, preserving the significant value that it has for democratic societies. For example, according to a judgment dated September 2, 2010, for the Supreme Federal Tribunal of Brazil, freedom of expression guarantees the right of a journalist - the same as any other person - to express his or her ideas “including with a tough, blunt, sarcastic, ironic or irreverent tone, especially against State authorities and bodies.” The Supreme Court of Justice of Argentina also used this criteria in a recent judgment dated October 30, 2012, handed down in the case of Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al. on derechos personalísimos. In that ruling, the Argentine Supreme Court took up the case law of the European Court of Human Rights and the Inter-American Court on the subject and recalled that “journalistic freedom includes the opportunity to use a certain degree of exaggeration, to the point of provocation.” On ruling in this specific case, it found that “toleration of these excesses are better for democracy than the other alternative,” which would be turning judges into the arbiters of societal debate. For this high court, “in addition to the fact that this role would be inappropriate for the courts, it would dangerously restrict the freedom of public debate.”
39. The Permanent Criminal Chamber of the Supreme Court of Justice of Peru ruled similarly in a judgment dated June 18, 2010. The court was ruling on a lawsuit seeking the nullification of a prison sentence for the crime of defamation handed down to the director of a weekly newspaper with local circulation. In the ruling, the Chamber recognized that “harsh and caustic criticism or attacks that are sharp and unpleasant [are] necessarily tolerable in order to secure freedom of opinion and guarantee public debate on matters of local interest in the administration of State institutions.” According to the Chamber, in cases in which public and societal interest is in play, “the context in which the expressions being questioned were issued must be taken into account.” In this sense, it emphasized that “the tone and content of the statements that are tolerable as part of the exercise of freedom of expression are related to the degree to which the news item awakens general or societal interest.”

40. The rulings of the Constitutional Court of Colombia have had a similar tone. In judgment C-010/00, this high court explained that “as international case law on human rights has highlighted, freedom of expression seeks to protect not only the dissemination of information or opinions that the State and the majority of the population consider inoffensive or indifferent, but also ideas or information that are not viewed favorably by a majority in society and that may be judged disturbing or dangerous. Pluralism, tolerance and the spirit of disclosure, without which a truly democratic society does not exist, require that these dissident opinions and information also be protected”. In this line of reasoning, it expressed that the constitutional assumption of coverage of freedom of expression in principle covers all forms of human expression, and that constitutional freedom protects both the content and the tone of expression.

41. Another case relevant for the application of the fundamentals of this principle can be found in the April 23, 2009, ruling Patricia Mujica Silva v. Liceo Experimental Artístico y de Aplicación de Antofagasta República Juan Rojas Navarro, whereby the Supreme Court of Justice of Chile found that the decision made by public school authorities to expel one of its students “for holding ideas that they saw as contrary to the values that the entity professed” was arbitrary and violated the constitutional guarantee of freedom of expression. In its analysis of the specific case, the high court found that the decision was based solely on disagreement with positions held by the student. In this regard, it ruled that “although it is evident that the student proposed that fellow students take political action and strongly criticized the legal regime of the education system and his school […] the action being appealed violates freedom of expression […] because it punishes legitimate communication of ideas.”

42. Finally, on explaining the reasoning for which the University of Costa Rica must foster a broad opening to the expression of all types of speech, the Constitutional Chamber of the Supreme Court of Justice of that country held in a decision dated March 29, 2011, that “suspending a conference because the presenter had expressed a series of controversial ideas prevents both public discussion on those subjects and the formation of public opinion. Further, the expression of the ideas of the presenter could allow those who disagree with him to further refine their convictions, or allow those who agree with

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him to change their opinions on hearing the public debate, or just the opposite. However, this is how a democracy is built: through dissent and consensus."

4. Case law on specially protected speech

43. The Office of the Special Rapporteur has held that although all forms of expression are in principle protected by the right enshrined in Article 13 of the American Convention, certain types of speech receive special protection due to their importance for the exercise of other human rights or for the consolidation, functioning and preservation of democracy.

44. Effectively, inter-American case law has repeatedly recognized that the functioning of democracy requires the greatest possible level of public discourse on the functioning of society and the State in all its aspects - that is, on matters of public interest. In a democratic and pluralist system, the actions and omissions of the State and its officials must be subjected to rigorous scrutiny, not only by internal oversight bodies, but also by the press and public opinion. Public administration and matters of common interest must be subjected to oversight by society as a whole. Democratic oversight of public administration through public opinion increases transparency in State activities and causes public officials to take responsibility for their actions. It is also a measure for achieving the highest degree of citizen participation.

45. According to the case law developed in recent years by the bodies of the inter-American system, a democratic and pluralist system must tend toward greater and broader circulation of information, opinions and ideas relating to the State, matters of public interest, public officials performing their duties or candidates to public positions, or private individuals voluntarily involved in public matters, as well as speech and political debate, leaving little space for State restriction of information, opinions and ideas. In this regard, Principle 11 of the Declaration of Principles states that, "[p]ublic officials are subject to greater scrutiny by society."

46. In clear harmony with this development, the region’s courts have handed down important decisions in the last decade that provide special guarantees for this type of speech with regard to illegitimate limitations, in particular limitations oriented toward protecting the honor and reputation of public officials. For example, in the previously cited September 20, 2012, judgment of the Plurinational Constitutional Tribunal of Bolivia in which it ruled crimes of desacato unconstitutional, it stated that “due to the very nature of the work they do - work in the public interest - authorities are exposed to a variety of criticism. Thus, in the case of Herrera Ulloa [v.] Costa Rica (2004), the Inter-American Court of Human Rights recalled that: "[l]those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate.""

47. According to the Constitutional Court of Guatemala, Principle 11 the Declaration of Principles on Freedom of Expression "reveals that due to the performance of the function that falls to them, public officials are subject to greater scrutiny by society, therefore laws that penalize offensive expression directed at public officials are in violation of the right to freedom of expression and the right to information." For this high court, a democratic system needs critical expression “to encourage the corresponding scrutiny of the public function. Prohibiting this type of speech is inappropriate in a system […] that delegates the exercise of sovereignty that belongs to the people. Therefore, those who make up this latter element of the State must be permitted the right to criticize official conduct, especially the

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conduct of those who serve in the three bodies which have been delegated with the power to govern, particularly if that conduct exceeds limits established in the Constitution and by law. 43

48. In judgment T-298/09 of April 23, 2009,44 the Constitutional Court of Colombia, citing once more its settled case law on the subject, indicated that “on issues of clear relevance to the public in which a public servant is involved, the right to freedom of expression and information becomes broader and less flexible. Effectively, as already indicated, when a person has voluntarily decided to become a public personality or when he or she has the power to in some way exercise State authority, that person has the duty to bear up under greater criticism and questioning than a common person who holds no public authority and who has not decided to submit him or herself to public scrutiny.” In further development in judgment C-442-11 of May 25, 2011,45 the Court indicated that “political speech, debate on matters of public interest, and speech that constitutes a direct and immediate exercise of additional fundamental rights that must necessarily be connected to freedom of expression in order to be exercised, all enjoy a greater degree of protection”. This reinforced protection “has a direct effect on admissible State regulation, and the standard of constitutional oversight to which the limitations [on these types of expressions] are subjected.”

49. In similar terms, in a judgment dated November 23, 2011,46 the Supreme Federal Tribunal of Brazil ruled in a case of a direct action of unconstitutionality on the interpretation of Article 33(2) of Law No. 11.343 of 2006, which criminalizes drug consumption. The Tribunal found that the law should not include anything that could allow for a ban on demonstrations and public debate on the legalization or decriminalization of drug consumption. The Court explained that criticism of crime policy, being as it is a matter in the public interest, is specially protected by the right to freedom of expression. The high court recalled that “the collectivization of critical thought and the right to criticize institutions, persons and institutes must be fomented as expression of the citizenry and as a way of seeking out the truth or essence of things.” Finally, it emphasized that “criminalization of conduct cannot be confused with discussion about its criminalization […] Otherwise, it would not be compatible with the dynamism and diversity - both cultural and political (pluralism) - of the democratic society in which we live, where freedom of expression is the best expression of freedom.”

50. Following this reasoning, in a ruling dated June 24, 2008,47 the Supreme Court of Justice of Argentina found that “one of this Court’s functions is to support, contribute to and protect the basic consensuses for the functioning of a society in which different opinions can coexist together in tolerance. One of these fundamental principles is that of freedom of expression and oversight of public officials, as well as discussion of their decisions.” In that sense, the Court emphasized that “there can be no liability for criticism or dissent, even when expressed heatedly, as every plural and diverse society needs democratic debate nurtured with opinions whose goal is social peace.” The same tone is found in a recent ruling by the Supreme Court of Justice of Argentina dated October 30, 2012.48 In Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al. on derechos personalísimos, following what has been established by

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the Inter-American Court, the Supreme Court of Justice of Argentina found that expression regarding a person’s suitability for holding a public office enjoys greater constitutional protection.

51. Likewise, in a ruling dated June 18, 2012, the 33rd Criminal Court of the Superior Court of Justice of Lima explicitly adopted the case law and scholarship of the organs of the inter-American system regarding broad debate in matters of public interest and greater scrutiny in speech about public officials, as well as the narrower space for restrictions in these areas. In this regard, it recognized the case law of the Inter-American Court of Human rights in the sense that there should be less opportunity for restrictions to political debate or debate on questions of public interest, and that in the terms of Article 13 of the American Convention, opportunity for restrictions on expression concerning public officials or other persons exercising functions of a public nature must be particularly narrow. Regarding this latter issue, it reiterated that “those persons who have an influence on issues in the public interest are exposed to greater scrutiny, and are consequently at greater risk of criticism.”

52. In analyzing the case in question, the Court found that “honor with regard to individuals who have exercised a public function and are public personalities [as in the case of complainant] are based on the legal status they assume.” For the Court, “on having been a State minister and member of the Congress of the Republic, a greater opportunity for criticism is required, [which] does not mean that he does not have honor, but rather that he does but in a more limited sense due to the function he has taken up.”

53. The 17th Criminal Circuit Court of the First Circuit in Panama ruled likewise in judgment No. 13 of July 17, 2012, whereby it acquitted three journalists that had been charged with the crime of defamation for expression that supposedly damaged the honor of a National Police of Panama official. The Court recognized that the facts leading to the criminal complaint were verified in the exercise of public functions and therefore deserved the attention and coverage of the accused as part of their work as journalists. In this regard, the Court recognized that “this is established in Article 11 of the Declaration of Basic Principles on Freedom of Expression of the Inter-American Commission on Human Rights, (X ANNIVERSARY - October 19, 2000-2010), which indicates, among other things, that ‘public officials are subject to greater scrutiny by society.’”

54. For its part, the Supreme Court of Justice of the Nation of Mexico, with the support of the jurisprudence and scholarship of the organs of the inter-American system, has established case law standards in this regard. Thus, in its judgment dated June 17, 2009, the Supreme Court held that “freedom of the press and the right to give and receive information provides especially vigorous protection for expression and circulation of information related to politics, and more broadly, matters of public interest.” For this high court, protection of the free circulation of this kind of speech “is especially relevant in order for these freedoms to fully accomplish their strategic functions with regard to the formation of public opinion in the structural scheme of representative democracy.” Citing this Office of the Special Rapporteur’s 2008 annual report, it highlighted that special protection for political speech and speech on matters of public interest “extends to electoral speech, which focuses on candidates seeking to hold public office.” For this Tribunal, “citizen oversight of the activities of individuals who hold public office or have held it in the past (officials, elected positions, members of political parties, diplomats, private individuals performing state or other functions in the public interest, etc.) increases transparency in State activities and promotes the accountability of all of those who have governing duties. This necessarily means that there is greater space for disseminating the statements and evaluations that are inseparable from the political debate or matters of public interest.”


55. It emphasized that, “[o]ne of the specific rules that has been most agreed upon in the area of comparative law and international human rights law […] is the rule according to which individuals who hold or have held public responsibilities […] as well as candidates seeking to hold them, have a right to privacy and honor that is generally more flexible than the right held by ordinary citizens when it comes to the actions of the mass media in exercising their rights to express themselves and inform.” In this regard, it recalled “the instrumental relationship between freedom of expression and information and the proper development of democratic practices.”

56. As a corollary to this, for the Supreme Court of Justice of Mexico, it is possible to speak of a favorable “bonus” or “special” position of the right to freedom of expression and the right to information when those rights come in conflict with the so-called “personal rights” [derechos de la personalidad] of public officials, among which are the right to privacy and the right to honor; “this is for reasons strictly linked to the type of activity that they have decided to perform, which requires intense public scrutiny of their activities.” On referring to the facts of the case, it found that “the threshold of the intensity of the criticism and debate to which persons like the one referenced in the news item in question can be exposed is very high and not easy to cross for reasons that open the door to claims of civil or criminal liability.”

5. Case law on crimes of desacato

57. Likewise, in accordance with the foregoing, the IACHR and its Office of the Special Rapporteur have indicated repeatedly that application of the criminal offense of desacato to those who disseminate expression that is critical of public officials is, per se, contrary to the American Convention, given that it constitutes an application of subsequent liability for the exercise of freedom of expression. This is unnecessary in a democratic society, and it is disproportionate due to the serious effects it has on the person issuing the expression and on the free flow of information in a society. Likewise, Principle 11 of the Declaration of Principles establishes that, “[l]aws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

58. According to the Inter-American Commission, these types of laws are a measure to silence unpopular ideas and opinions and dissuade criticism by causing fear of legal action, criminal sanctions and fines. Regarding this, the IACHR has been emphatic that the desacato legislation is disproportionate due to the sanctions it establishes for criticism leveled at government institutions and their members, thus suppressing debate that is essential for the functioning of a truly democratic system, as well as unnecessarily restricting the right to freedom of thought and expression. 


53 The Inter-American Court has also examined, in specific cases, the disproportionate nature of desacato laws and of the prosecution under those laws of individuals who exercise their freedom of expression. For example, in the Case of Palamara Iribarne v. Chile the Inter-American Court noted that “by pressing a charge of contempt, criminal prosecution was used in a manner that is disproportionate and unnecessary in a democratic society, which led to the deprivation of Mr. Palamara-Iribarne’s right to freedom of thought and expression with regard to the negative opinion he had of matters that had a direct bearing on him and were closely related to the manner in which military justice authorities carried out their public duties during the proceedings instituted against him. The Court believes that the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism leveled at government institutions and their members, thus suppressing debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression.” In the Case of Tristán Donoso v. Panama, the Inter-American Court highlighted the positive fact that after convicting Mr. Tristán Donoso for defamation [calumnia] based on the statements he made about a senior official, the country’s laws changed to prohibit sanctions for desacato and other limitations on freedom of expression. Cf., IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework of the Right to Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 142-143. Available at: http://www.oas.org/en/iachr/expression/doconpublicationonINTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINA L%20PORTADA.pdf

59. In what has been a clear showing of fruitful dialogue that has arisen between the organs of the system and the States in the region, in the last decade laws that criminalize defamation of public officials in Mexico, Panama, Uruguay, Costa Rica, Argentina and El Salvador have been struck down. Legal rulings that have sought to adjust legal frameworks to meet inter-American standards on the subject have been particularly important for this trend, declaring as they have that these types of laws are not compatible with Article 13 of the American Convention.

60. This was the case with the Court of Constitutionality of Guatemala in the aforementioned judgment dated February 1, 2006, in which it found that criticism of the performance of a public function is constitutionally exempt from criminal liability. In this regard, it explained that “due to the performance of the function that falls to them, [public officials] are subject to greater scrutiny by society, such that laws that penalize offensive expression directed at public officials are in violation of the right to freedom of expression and the right to information.”

61. For the Court, “it is inescapable that the expectation of being criminally sanctioned for expression of opinions can have a chilling effect on those who express them, such that although the criminal provision does not explicitly provide for censorship, it indeed can cause citizens to self censor in matters regarding which, in a democratic system, criticism is necessary for providing a basis for the corresponding scrutiny of public functions.”

62. In this ruling, the high court recognized that the right to freedom of expression is not absolute and is subject to subsequent liability. However, it held that “in the case of statements about public officials regarding actions taken in the exercise of their duties, [subsequent liability] can only be established and later punished through civil sanctions, as […] the existence of a criminal sanction could inhibit the oversight of public administration that is necessary in a democratic society should the sanction be used as an instrument to repress criticism of public administration.”

63. This Court explicitly recognized that “the Inter-American Commission on Human Rights has found that laws that establish the crime of desacato are not compatible with Article 13 of the American convention on Human Rights. It determined that they are not compatible with the standard of necessity and that the objectives they seek are not legitimate, on finding that this type of law lends itself to abuse as a means of silencing unpopular ideas and opinions and repressing debate that is necessary for the effective functioning of democratic institutions.” The Court of Constitutionality of Guatemala ruled similarly in judgment 863-2010 of August 24, 2010.

55 For Instance, Mexico repealed the federal norms that permitted individuals who offended the honor of a public official to be tried for criminal defamation, and a number of the states of the Mexican Federation have done the same. In 2007, the National Assembly of Panama similarly decriminalized defamation in relation to criticism or opinions regarding official acts or omissions of high-ranking public servants. In April 2009, the Supreme Court of Brazil declared the Press Law incompatible with the Brazilian Constitution; the Law had imposed severe prison and pecuniary penalties on journalists for the crime of defamation. In June 2009, the legislature of Uruguay eliminated from the Criminal Code the sanctions for the dissemination of information or opinions about public officials and matters of public interest, with the exception of those cases where the person allegedly affected could demonstrate the existence of “actual malice”. In November 2009, the legislature of Argentina passed a reform to the Criminal Code doing away with prison terms for the crime of defamation, and decriminalizing speech about matters of public interest. Following this trend, in December of 2009, the Supreme Court of Costa Rica derogated a provision of the Press Law that established a prison penalty for crimes against honor. Similarly, in December of 2011 the Legislative Assembly of El Salvador approved a reform that substituted fines for prison sentences where crimes against honor are concerned and established greater protection for expressions dealing with public figures or matters of public interest.


In a similar fashion, in a judgment dated September 20, 2012, the Constitutional Plurinational Tribunal of Bolivia declared Article 162 of the Penal Code unconstitutional. The article called for a harsher prison sentence for those who commit defamation against a public official (desacato). The judgment includes a broad reflection on the history of the criminal offense, the proportionality of this kind of punishment, the right to equal treatment of citizens and public officials, and the incompatibility of the crime of desacato with international human rights commitments.

For the Tribunal, desacato creates an unconstitutional situation of inequality of public officials and citizens, which in turns disproportionately affects the right to freedom of expression. For example, on examining the constitutionality of the criminal offense of defamation against a public official, the Constitutional Tribunal held that “the opportunity to allege, in the public interest, the commission of a crime and, fundamentally, acts of corruption, must be practically without restrictions. The ability to make those allegations must be guaranteed for all citizens, who cannot find their capacity to allege acts of corruption to be limited.”

In this regard, it emphasized that “the crime of desacato represents a disproportionate reaction to false allegations of the commission of crimes by public servants, as it means that a criminal complaint can only be brought against a public official when it is certain that a crime has been committed. This unnecessarily disincentivizes citizens from denouncing irregularities and prevents serious criminal investigations from being launched to corroborate or dismiss the complaints. This understanding [of desacato laws] does not mean leaving public servants defenseless when they are accused falsely of the commission of crimes.”

In this judgment, the Constitutional Tribunal recognized “the regional tendency of eliminating the aforementioned criminal offense, a trend that is also broadly supported by human rights bodies: fundamentally, on our continent, by the case law of the Inter-American Court of Human Rights and the work of the Inter-American Commission on Human Rights.” In this regard, it held that “maintaining this criminal offense in a domestic legal system not only represents a failure to comply with our international commitments, but also discredits democratic and legitimate governments in the eyes of the rest of the international community - of course, including the Plurinational Constitutional Tribunal itself - by raising unjustified suspicions regarding the violation of freedom of expression, an aspect that necessarily should be taken into consideration for finding the crime of desacato unconstitutional.”

6. Case law on the admissibility of limitations to freedom of expression: general framework

The Commission and the Inter-American Court have indicated that the right to freedom of expression is not absolute and can be subjected to certain limitations, according to subparagraphs 2, 4 and 5 of Article 13 of the American Convention. In order to be legitimate, those limitations must meet a series of specific conditions. Particularly, Article 13(2) requires that three basic conditions be met for a limitation on the right to freedom of expression to be admissible: 1) the limitation must be defined precisely and clearly in a law – in the formal and material sense, 2) the limitation must be oriented toward achieving the legitimate objectives authorized by the American Convention, and 3) the limitation must be necessary in a democratic society for achieving the legitimate aims that it seeks; strictly proportional to the aim pursued; and suitable for achieving the crucial objective that it seeks to achieve.

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69. During the last decade, the highest courts in the region have explicitly incorporated inter-American precedents on the subject. This has been done, among other places, by the Court of Constitutionality of Guatemala, in previously cited ruling 1122-200560; the Supreme Court of Justice of Argentina in Patiño, José Ángel et al. v. Newspaper La Nación et al.;61 the Plurinational Constitutional Tribunal of Bolivia;62 in its recent judgment of September 25, 2012; the Supreme Court of Justice of the Nation of Mexico; and the Constitutional Court of Colombia in its reiterated case law.63 In their rulings, the courts extensively cite inter-American case law and scholarship, demonstrating its crucial role in the implementation of inter-American standards.

70. For example, in its previously-cited judgment of September 20, 2012,64 the Plurinational Constitutional Tribunal of Bolivia found that the reasoning used by the Inter-American Court of Human Rights in the case of Herrera Ulloa v. Costa Rica as far as the requirements for establishing subsequent liability “must be used to interpret the Constitution” of Bolivia.

71. Likewise, the Constitutional Court of Colombia has in a number of rulings explicitly recognized that “the general framework of admissible limitations to freedom of expression is provided by articles 19 of the International Covenant on Civil and Political Rights and 13 of the American Convention on Human Rights, which orient interpretation of Article 20 of the [Colombian Constitution] and other concordant law.”65 Effectively, for the Colombian high court, “a close reading of these provisions reveals that in order to be constitutional, limitations on freedom of expression (in the strict sense), information and the press must meet the following basic requirements: (1) they must be established by law precisely and in a limited fashion; (2) they must seek to achieve certain crucial aims; (3) they must be necessary for achieving those aims; (4) they must be subsequent and not prior to the expression; (5) they must not constitute censorship in any of its forms, which includes the requirement to remain neutral regarding the

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60 In its judgment, the Court of Constitutionality indicated that “responsibility in the exercise of free expression of thought is supported in the framework of international human rights law, as set forth in the principles contained in Articles 13(2) of the American Convention on Human Rights and 19(3) of the International Covenant on Civil and Political Rights.”

61 In the judgment, the Supreme Court of Argentina indicated that “as held by the Inter-American Court of Human Rights in the case "Herrera Ulloa v. Costa Rica", the legality of restrictions placed on the freedom of expression contained in Article 13(2) of the American Convention on Human Rights turns on whether they seek to satisfy an imperative public interest.” The Court emphasized that “given various means of achieving this objective, the one that least restricts the right protected should be chosen. In light of this standard, it is insufficient to demonstrate, for example, that the law fulfills a useful or convenient purpose; in order to be compatible with the Convention, restrictions must be justified according to collective goals that, due to their importance, clearly prevail over the social need to enjoy to the fullest extent the right guaranteed by Article 13 and do not limit this right to a greater degree than is strictly necessary. That is, the restriction must be proportionate to the interest that it justifies and be narrowly tailored to reach this legitimate objective (Advisory Opinion 5/85, November 13, 1985, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism; "Case of Herrera Ulloa v. Costa Rica", Judgment of July 2, 2004; European Court of Human Rights, Case of "The Sunday Times v. United Kingdom", Judgment of March 29, 1979, Series A, No 30; "Barthold v. Germany", Judgment of March 25, 1985, Series A. No 90").

62 In this judgment, the Plurinational Constitutional Tribunal of Bolivia reiterates the holding in: I/A Court H.R. Caso Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Series C No. 107, paras. 113. 120.


content of the expression being limited; and (6) they must not interfere excessively with the exercise of this fundamental right.”

72. For this high court, “any legal or factual action, either general or specific in nature, that directly or indirectly limits the exercise of freedom of expression in any of its manifestations, carried out by any Colombian State authority, regardless of its rank or position within the State structure, must be considered a possible invasion of the exercise of this right, and therefore must be submitted to strict constitutional review for the purposes of determining if the requirements that make a State limitation on the exercise of this important freedom admissible have been met.”

73. Likewise, the Supreme Court of Justice of the Nation of Mexico has indicated repeatedly in its case law that “the general rule is that people can freely express their opinions without any limitation.” In that sense, the court has found that in order to be considered legitimate, “restrictions on the right to freedom of expression and information must be established by law, seek the protection of one of the interests or rights protected by law under Article 13(2) of the American Convention, and meet the standards of reasonableness and proportionality.”

7. Case law on the need for limitations to be established clearly and precisely by law

74. Both the Commission and the Inter-American Court have held “that every limitation on freedom of expression must be established beforehand in a law and established explicitly, strictly, precisely and clearly, both substantively and procedurally. This means that the law’s text should clearly establish the grounds for subsequent liability to which the exercise of freedom of expression could be subjected.” It has been emphasized that vague, ambiguous, broad or open-ended punitive laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment and can lead to broad judicial interpretations that unduly restrict freedom of expression.

75. In the cases Kimel v. Argentina and Usón Ramírez v. Venezuela, the Inter-American Court specified that “should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the nullum crimen nulla poena sine lege praevia principle. Thus, they must be formulated previously, in an express, accurate, and restrictive manner. The legal system must afford legal certainty to the individuals,” especially when

66 Republic of Colombia. Constitutional Court. Judgment T-391/07, May 22, 2007. Available at: http://www.corteconstitucional.gov.co/relatoria/2007/T-391-07.htm. According to the Constitutional Court of Colombia, “[t]his presumption is de facto and allows for the submission of evidence to the contrary; nevertheless, the authority that establishes the limitation bears the burden of demonstrating that the strict constitutional requirements for establishing a limitation in this area are met.” In this sense, it explained that the presumptions impose three burdens on the authorities: (i) the burden of definition, which consists of defining the end that is pursued by restricting the freedom, the legal base for the restriction and the specific effect that the freedom could have on the legal interest that is sought to be protected by the limitation; (ii) the burden of argument, according to which the authority must demonstrate that the constitutional presumptions do not apply to the case; (iii) the burden of proof, by which the authorities must demonstrate the validity of the evidence that they present in order to justify restrictions on freedom of expression.


criminal law is the most severe and restrictive measure for establishing liability for illegal conduct. For the Inter-American Court, "this means a clear definition of the conduct in question that establishes its characteristics and allows for it to be differentiated from activity that is not punishable or from noncriminal illegal activity."73

76. The review of judgments contained hereinafter will examine closely not only the existence of a prior law as a basis for limitations to the right to freedom of expression, but also the degree of precision and clarity of its provisions as one of the essential aspects of this requirement.

77. For example, in its previously cited ruling T-391/07 of May 22, 2007,74 the Constitutional Court of Colombia explained that "pursuant to applicable international human rights treaties and by virtue of the legality principle, limitations on freedom of expression must be established by law clearly, explicitly, in a restrictive manner, beforehand, and precisely, for which reason authorities establishing those restrictions outside legal authorization or without such authorization violate this constitutionally protected freedom." According to this high court, "the degree of precision with which the corresponding laws are drafted must be sufficiently specific and clear to allow individuals to regulate their conduct in keeping with them. This requirement is identified with the prohibition on limiting freedom of expression with vague, ambiguous, broad or nonspecific legal mandates." Although the court recognizes that it is impossible to reach a level of absolute certainty in the wording of laws, "the degree of precision, specificity and clarity in the legal definition of the limitation must be such that it avoids discrimination, persecution and arbitrary actions by the authorities in charge of enforcing the law in question." On ruling on the action for protection, the Constitutional Court of Colombia found that the restriction under discussion was based on vague parameters whose specific content was not clarified by the judge who ordered the measure, such as "public morality," the "defense of public patrimony," the "cultural heritage of the nation," "public safety," "public health," and the "rights of radio consumers and users in Colombia."

78. The legitimacy of vague and ambiguous restrictions to freedom of expression had already been taken up by the Constitutional Court of Colombia in ruling C-010/00 of January 19, 2000,75 which raised questions regarding a law ordering radio broadcasters to follow "ambiguous and nonexistent 'universal dictates of decorum and good taste,' as the order implies the predominance of certain world views over others."76 It expressed that these notions have to do with aesthetic criteria that is highly indeterminate and culturally relative, subject to ex post facto definition by the entities regulating radio frequencies, and that the law fails to recognize "the requirement that limitations to freedom of expression be established specifically, restrictively and beforehand, by law, as Article 13-2 of the Inter-American Convention (sic) and Article 19 of the International Covenant on Civil and Political Rights of the United Nations indicate."

79. In that judgment, the Court also ruled unconstitutional the provision that prohibited a "haranguing, speechifying or declamatory tone" in radio broadcasts. For the court, "the enormous ambiguity that the application of this restriction would imply would place freedom of expression at excessive risk, without it being clear that the provision helps to achieve an important constitutional aim." Thus, it highlighted that "even if one could eventually theoretically define what a haranguing, speechifying, or declamatory tone is, the practice of defining whether a specific broadcast should or

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76 Article 2. "Without prejudice to the freedom of information, broadcasting services should be designed to disseminate culture and affirm the essentials values of the Colombian nationality. Radio programs must use the Castillian language properly and respect the universal standards of decorum and good taste."
should not be classified as having one or more of these features would be very problematic, as what is at issue is a classification of degree that is very difficult to specify. It is therefore not clear as of what level of vehemence or passion on the part of the speaker we would begin to see a tone that could be qualified as harassing or speechifying. For this reason, the definition of which content is punishable would be left to the subjective criteria of the authorities in charge of monitoring compliance with those regulations."

80. Similarly, in a judgment dated June 21, 2012, the Supreme Court of the United States ruled in the cases of FCC, et al. v. Fox Television Stations, Inc., et al., Petitioners v. Fox Television Stations, Inc. et al. and the case of FCC, et al., petitioners v. ABC, Inc., et al.77 that the provisions on the use of “fleeting expletives” that the Federal Communications Commission applied to issue fines to these networks and their affiliates were excessively vague from a constitutional point of view, which may have had a chilling effect on expression. In its analysis of the cases, the Court found that the history of Federal Communications Commission regulation makes it clear that the policy in force at the time of the broadcasts in question did not provide reasonable warning to Fox or ABC. In this regard, the Court recalled that according to the “void for vagueness” doctrine, a punishment or sanction does not provide due process if its legal basis does not give a “person of ordinary intelligence” reasonable warning regarding what is prohibited or is so standardless that it authorizes or invites arbitrary or discriminatory application.

81. Although the Supreme Court did not examine the First Amendment implications of the Federal Communications Commissions’ indecency policies, it indicated that “even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.”

82. As a corollary to this, in recent years some courts in the region have ruled specifically on the formulation of the crime of defamation [injuria y calumnia] in criminal codes and their compatibility with the fundamental nullum crimen nulla poena sine lege praevia principle and the right to freedom of expression. For example, in the judgment declaring Article 1 of the Press Law of the state of Guanajuato unconstitutional,78 the Supreme Court of Justice of Mexico explained that when rules that establish subsequent liability “are criminal in nature and allow individuals to be deprived of property and fundamental rights - including, in some cases, their liberty - the requirements regarding [strict formulation of the law] are even more vigorous.” On examining the facts of the specific case, it concluded that the provision that served as the basis for the criminal conviction in question79 does not “satisfy the conditions of the restrictiveness that is part of the general nullum crimen nulla poena sine lege praevia principle, nor the requirement, functionally equivalent in this case, that every restriction of freedom of expression be established beforehand in a law with the status of statute, whose wording is clear and precise.”

83. In this regard, the Supreme Court explained that, first of all, there is “a patent lack of clarity […] produced by the structurally defective construction of something that in our system […] is subjected to strict requirements: the wording of a criminal offense.” Second, it found that some of the terms of the provision were obviously vague and excessive in scope, as they made reference to merely hypothetical damages and covered both direct violations of reputation, such as simple “discrediting,” and violations that individuals could suffer “to their interests.” For the Court, “the presence of this latter expression irredeemably blurs the interest or right that the legislators supposedly must protect from abusive exercises of freedom of expression and leaves the criminal offense completely open.”


84. Analogously, the Court of Constitutionality of Guatemala indicated in the aforementioned ruling of February 1, 2006, that the principle of legality in criminal matters is even more relevant in democratic systems when what is at issue is punishing “the carrying out of conduct that according to the spirit of a constitutional system cannot be punished as criminal.”

8. Case law on the need for limitations to be oriented toward achieving a legitimate aim recognized by the American Convention

85. The second condition that limitations on freedom of expression must meet according to the Convention is that they must be oriented toward achieving aims that are authorized by the Convention. Effectively, the American Convention narrowly establishes the aims that can serve as a basis for a legitimate limitation of freedom of expression, those being respect for the rights or reputations of others and the protection of national security, public order, or public health or morals. These are the only aims authorized. This is explained by the fact that the limitations must be necessary in order to achieve imperative public interests that, due to their importance in specific cases, clearly prevail over society’s need for full enjoyment of the freedom of expression protected by Article 13.

86. This Office of the Special Rapporteur has emphasized that States are not free to interpret the content of these aims however they wish in order to justify the limitation of freedom of expression in specific cases.

87. With a similar tone, in previously-cited judgment T-391/07, the Constitutional Court of Colombia explained that in order to be legitimate, limitations on freedom of expression must “seek to accomplish certain imperative ends or aims that have been set forth in the abstract in applicable treaties - the protection of the rights of others, protection of security and public order, protection of public health and protection of public morals - but that the limitations must be specific and set forth by law.”

88. In this regard, the Court observed that these ends (a) must be subjected to strict interpretation in order to maximize the range of freedom of expression; (b) the list of aims must be a restrictive one, outside of which there are no additional justifications or aims for limiting freedom of expression; (c) in harmony with the principle of legality, it is not enough to invoke aims in the abstract to justify a particular limitation; it must be demonstrated in each specific case that the elements exist to conclude that a specific and imperative public interest effectively exists; (d) it must be compatible with the essential principles of a democratic society and social rule of law, and (e) it must be compatible with the principle of human dignity.

89. In the case in question, the Court specified that “it is not enough to limit the broadcasting of sexually explicit expression with the mere invocation of “public morality” - a very vague concept - without specifying the form this takes in this particular case as far as a specific interest deserving of constitutional protection. Nor can broadcasts be restricted based on a mention of the “rights of children” in the abstract, without closely and strictly bearing the burden of proof of demonstrating both the predominant presence of children in the audience to a particular expression and the damage that they have suffered or could clearly suffer by virtue of that expression.”

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9. Case law on the requirement that the limitation must be necessary in a democratic society, suitable for achieving the imperative aim that it seeks to achieve, and strictly proportional to the end sought.

90. Inter-American case law has been emphatic in the sense that States that place limitations on freedom of expression are required to demonstrate that the limitations are necessary in a democratic society for achieving the imperative aims that they seek. In this sense, it has specified that in order for a restriction to be legitimate, it must clearly establish the true and imperative need for establishing a limitation: that is, that the aim cannot be reasonably achieved by means that are less restrictive to human rights, which in turn suggests that the means of restriction is in reality the least burdensome available. In addition, it has established that any limitation to the right to freedom of expression must be a suitable instrument for achieving the end sought through its imposition - that is, it must be a measure that effectively leads to achieving the legitimate and imperative aims pursued.

91. But restrictions to freedom of expression must be more than suitable and necessary. In addition, they must be strictly proportional to the legitimate aim that justifies them, and they must hew strictly to achieving that aim, interfering as little as possible in the legitimate exercise of that freedom. According to the Inter-American Court, in order to establish the proportionality of a restriction that limits freedom of expression with the aim of preserving other rights, three factors must be evaluated: (i) the degree to which the other right is affected - greatly, intermediately, moderately; (ii) the importance of ensuring the other right; and (iii) if ensuring the other right justifies restriction of freedom of expression. There are no a priori answers or formulas for general application in this area: the result of the balance struck will be different in each case, in some cases giving precedence to freedom of expression, in others to the other right. If subsequent liability applied in a specific case turns out to be disproportionate or does not serve the interests of justice, Article 13(2) of the American Convention has been violated.

92. In harmony with this, a number of judgments from the Constitutional Court of Colombia have explained that pursuant to international treaties, “the third requirement established in order for limitations on freedom of expression to be acceptable […] is that they must be necessary and proportional for achieving the aim pursued.” In a number of its rulings, the Court has found legal provisions, administrative actions and court orders to be in violation of the Constitution for failing to meet this requirement.

93. For example, in previously cited ruling C-010/00, the Court found a number of provisions of Law 74 of 1966, on radio broadcasting, to be unconstitutional after subjecting them to a strict examination of proportionality pursuant to the requirements established by the country’s Constitution and the American Convention. First, the high court observed that a provision that prohibits certain types of expression on the radio may seek a constitutionally significant aim, such as preventing the disturbance...
of public order, but it would not be constitutional solely for this reason. The Court explained that the measure must also be suitable and proportional on pursuing that aim. In this regard, it emphasized that “in order for the limitations to be legitimate, it is necessary, pursuant to the terms of the Inter-American Court, for the restriction not only to hew closely to achieving that aim, but that in addition, that the restriction be the one that places the least limitation on freedom of expression.”

94. In the specific case in question, the Constitutional Court found that a provision that prohibits radio broadcasts with a “haranguing, speechifying or declamatory tone” does not meet this standard, as “one could call on listeners in a heated and emphatic tone to respect public order and obey laws, meaning the provision would exclude completely innocuous speech.” A provision prohibiting journalistic or news programs on the radio from portraying another person through imitation of that person's voice also does not meet this standard. The Court indicated that although the prohibition in question is a clear and narrow restriction, “it restricts freedom of expression beyond what is strictly necessary to ensure the truth of the news.” It explained that “those programs could include a section, clearly differentiated from the presentation of the news, in which imitations and parodies of some personality are used in a critical or humorous way. Under those conditions, and as long as the media outlet takes the necessary measures to prevent causing any confusion for the listener, the Court finds that the absolute prohibition of voice imitations is excessive, even for these programs.”

95. Finally, on examining the legitimacy of a law that bans broadcasting person-to-person messages over the radio, such as greetings and dedications, the Court expressed that it could not find a constitutional interest of great importance to justify it. On one hand, it considered an argument according to which the ban seeks to ensure “greater seriousness among broadcasters on preventing the dissemination of banal, capricious or colloquial messages over the radio.” Regarding this, the Court found that “this aim is not sufficiently constitutionally relevant for authorizing a general legal restriction of freedom of expression, as established in the law being challenged.” On the other hand, it weighed an argument according to which this prohibition protected the reputation of individuals and the public order. Although it recognized that the aims were legitimate in this case and of sufficient constitutional importance to authorize a restriction of radio freedom, it emphasized that “in no way is it clear that a general ban on broadcasting these interpersonal messages constitutes a proportional and necessary measure for achieving these aims, given that not only is the prohibition absolute, meaning that totally innocuous and banal communications are unjustly excluded, but also, the law could establish more effective measures that are less harmful to freedom of expression in order to protect these same constitutional rights.”

96. Another case relevant for the application of a balance of proportionality can be found in judgment, C-417/09 of June 26, 2009, in which the Constitutional Court of Colombia used the standards developed previously to examine the legitimacy of a provision of the Penal Code that restricted individuals accused of defamation [calumnia] from exercising the exceptio veritatis. The provision in question prevented the judge from admitting evidence regarding the veracity of the imputation of a sanctionable conduct that has been the subject of a judgment of acquittal, termination of investigation or dismissal of the charges. The Constitutional Court found that as the issue involves a fundamental right that is


89 The provision examined is Article 224(1) of the Criminal Code, according to which:

“Article 224. Defenses. Criminal responsibility will not result from the conduct described in the preceding articles if the truth of the imputations is proven.

However, no proof will be admitted:

1. Regarding the imputation of any sanctionable conduct that has been the subject of a judgment of acquittal, termination of investigation or dismissal of the charges or the equivalent, unless it is due to the prescription of the cause of action, and

2. Regarding the imputation of conduct that involves sexual, romantic, marital or family life, or the victim of a crime against liberty and sexual integrity.
especially valuable for the Colombian constitutional system, as is the right to freedom of expression and information, a more strict and intense balance of proportionality must be applied. In its ruling, the Court indicated that in these kinds of balances, it is not enough to establish that the measure is legitimate, apt and effectively leads to achieving the proposed aim: “one also must also study whether the provision is necessary and strictly proportional.”

97. The judgment found that the provision under examination had a legitimate aim from a constitutional perspective, as it sought to protect fundamental rights like honor and good name. In addition, the provision was adequate and even effectively led to achieving that aim. However, the Court found that the balance of proportionality related with necessity and strict proportionality led to a different conclusion. After noting that other legal measures existed that were sufficient and pertinent for achieving the legitimate aim sought, the Court then stated the following:

“The measure taken by the provision is neither imperative, nor useful; in contrast, it is extremely burdensome for freedom of expression. Exceptio veritatis frees a plaintiff accused of the crime of defamation [calumnia o injuria] of criminal liability when that person demonstrates that the statements were true. Specifically, what distinguishes the provision under review is that it excludes these grounds for exemption even for situations in which the person accused of the crime of defamation [calumnia] demonstrates the truth of his or her statements. [...] That is, according to the provision under review, for cases in which a final ruling has been handed down by the criminal justice system, the only possible route is forgetting, independent of the conduct a person has been accused of and its seriousness for the legal system and the functioning of national institutions.

Evidently, this represents a radical limitation to freedom of expression that, given the preeminent character of this right, cannot be accepted from a constitutional perspective. Therefore, the conclusion is that the provision under review does not cross the threshold of necessity, as it employs an excessive measure for protecting honor and good name, and, from that substantive point of view, the principles of res judicata and legal certainty, abolishing in practice the freedom of expression and information for the cases in question. That is, in the words of the Inter-American Court of Human Rights, which have been taken up by this constitutional court, the provision does not meet the requirement of providing for a measure ‘interfere to the least extent possible with the effective exercise of the right.’”

10. Case law on subsequent civil liability

98. As far the imposition of subsequent liability through civil sanctions, the Inter-American Court established in the case of Tristán Donoso v. Panama that these could be just as intimidating and have just as much of a chilling effect on the exercise of freedom of expression as a criminal sanction. In this regard, it observed that “the fear of a civil penalty, considering the claim […] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”

99. In a judgment dated April 30, 2009, the Supreme Federal Tribunal of Brazil found after examining the unconstitutionality of the Press Act passed during the military regime that the rewarding of excessive pecuniary indemnities against media outlets can constitute in itself a powerful inhibiting influence on freedom of expression. For the tribunal indemnities of this kind violate the proportionality principle of restrictions and are therefore a violation of freedom of expression. In this sense, it found that “the magistrate must take into account that every conviction of a media outlet, in whatever form it may take or tool it may use, inhibits the future exercise of freedom of expression and therefore reduces the possibility of moving forward in democratic learning.”

11. Case law on the special protection of opinions and the nonexistence of a crime of opinion

100. As inter-American scholarship and case law have specified, “truthfulness or falseness may only be established in respect of facts, not opinions.”91 Consequently, no one can be held liable for a simple opinion about a person or particular fact.92

101. The Supreme Court of Justice of Argentina ruled similarly in a October 30, 2012, judgment in the case of Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al on derechos personalísimos. In that ruling, the high court granted constitutional protection to the broadcasting of opinions over the radio that, although potentially considered shocking or painful for the listener, must be tolerated for the purposes of fostering broad and democratic debate in society.

102. In the case, the Supreme Court examined through an extraordinary remedy the legitimacy of a civil damages award for the broadcast of expression that was allegedly defamatory [injuriosas y calumniosas] toward a former public official. The first thing that the high court observed was that it was necessary to specify whether what was at issue was expression in which “priority is given to the statement of facts (factual assertions) or if on the contrary, one is in the presence of expression in which ideas, opinions, critical or value judgments, or, why not, conjectures and hypotheses are what predominate.”93 In this regard, it held that the expression could be guilty of serious hyperbole without making accusations “of any specific illegal fact and that, therefore, the expression cannot be subjected to a test of veracity. Thus one is limited to attributing a certain ideology” to the author; the court reiterated that, pursuant to inter-American case law, on issues of public interest, freedom of expression protects the expression of ideas that “shock, irritate or upset public officials or any sector of the population.”94

103. With that same structure of ideas, the Constitutional Chamber of the Supreme Court of Costa Rica95 has emphasized in a number of judgments that the right to correction and reply is granted only in response to the dissemination of newsworthy or factual information considered to be inaccurate

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94 Republic of Argentina. Supreme Court of Justice. Judgment of October 30, 2012, “Quantín, Norberto Julio v. Benedetti, Jorge Enrique et al. on derechos personalísimos”. Available at: http://www.csjn.gov.ar/confal/ConsultaCompletaFallo.do?method=verDocumentos&id=693527. The Constitutional Court of Colombia has also examined the different treatment that should be accorded to opinions or value judgments. In the previously cited judgment 417/09 of June 26, 2009, the Court indicated generally that “an opinion, unless it is expressed with the express and effective purpose of offending and causing real harm to persons or unless it involves the inclusion of speech that is not protected, ... is and must be free, because in a democratic and pluralistic State founded upon the dignity of the human being, inter alia, taking into account that an opinion consists of a point of view, a judgment, a perception of reality derived from the exercise of other fundamental liberties such as thought, conscience and religion, and must be the subject of broad respect and protection, even when it contains expressions that are considered ungracious, offensive or disturbing for the State or for others. That is to say that in contrast to the affirmation of facts that are presented by means of the exercise of freedom of information or the press, which are seen as having factual support, complying with the constitutional requirements of truth and impartiality or social responsibility in the case of the communications media, an opinion is an idea, an appearance or a way of seeing the world, and if it is found to be unjust or impertinent, it should be fought with other opinions or appearances, and not with sanctions of any kind, least of all criminal.” Constitutional Court of Colombia. Judgment C-417/09, of June 26, 2009. Available at: http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm
and damaging, and not with regard to “personal ideas or opinions held by their author - good or bad, and whether or not they are shared - and whose free expression is also protected by constitutional law.” On the same subject, individual criminal court judge of Paraguay Manuel Aguirre Rodas, in a judgment dated June 30, 2011, acquitted a journalist accused of the crime of defamation [injuria y calumnia], on finding that the news item, which referred to allegations of political corruption, contained opinions based on verifiable documents and sources, which did not merit a sanction\(^6\).

12. **Case law on the application of the principle of “actual malice” when establishing subsequent liability**

104. Interpreting the American Convention, Principle 10 of the Declaration of Principles states that, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

105. The Inter-American Court has taken the opportunity to rule on the application of the standard of “actual malice.” Thus for example, in the case of *Usón Ramírez v. Venezuela*, the Inter-American Court found that the statements for which Usón was convicted had been formulated conditionally, and as a consequence could not be understood as an expression intended to cause damage: “[i]n this case, when conditioning his opinion in such a way, it is clear that Mr. Usón Ramírez was not stating that a premeditated crime had been committed, but that in his opinion such a crime seemed to have been committed in case the hypothesis about the use of the flamethrower was true. An opinion conditioned in such a way cannot be subjected elements which question veracity. Furthermore, the above shows that Mr. Usón Ramírez lacked any specific intention to insult, offend, or disparage since if he had had the intent to do so, he would not have conditioned his opinion in such a way.”\(^7\)

106. In harmony with this, in cases of subsequent liability, senior courts in the region have used this standard when evaluating whether someone is individually liable for the publication of information that is in the public interest. For example, in the previously-cited judgment of June 28, 2008, the Supreme Court of Justice of Argentina noted in the case of *Patitó, José Ángel et al. v. Diario La Nación et al.*\(^8\) that it has incorporated into its case law “the principle of actual malice, and not the test of truth as adequate protection of freedom of expression” when what is at issue is the publication of expression that may have negative effects on the reputation of persons connected with public issues. Effectively, in this ruling, the high court reiterated its settled case law in the sense that “with regard to information referring to public officials, public figures, or private individuals who have participated in public issues, when the news item contains false or inaccurate expressions, those who consider themselves affected must demonstrate that those who made the expression or accusation knew the news item was false and acted with the knowledge that it was false or with evident recklessness with regard to its veracity.”

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107. The Supreme Court explained that “the principle of actual malice, in contrast to the test of veracity, does not operate based on the objective truth or falsehood of expression, given that it is applied when it is already accepted that the truth of the statements at issue cannot be proven, or when the statements are erroneous, or even false. What is subject to discussion and proof, if actual malice is at issue, is whatever knowledge that the journalist or media outlet had (or should have had) of the falsehood or possible falsehood. This is the first difference, and an important one. The second difference, no less important, is that the specific content of the subjective factor to which the concept of actual malice alludes (knowledge of the falsehood or negligent indifference regarding the possibility of falsehood) cannot be presumed to be the case; rather, it must be proven with evidence by the person bringing suit against the journalist or media outlet.”

108. In this ruling, the Supreme Court expressed that the principle of actual malice is based on the recognition of the role that investigative journalism plays in public matters in a democratic system. According to the court, “excessive rigor and intolerance of error would lead to self-censorship, depriving the citizenry of the crucial information necessary for making decisions about their representatives.” Based on these considerations, the Court concluded that on having failed to apply this principle in the case in question, “the space necessary for the development of broad and robust public debate on subjects of general interest and that has been guaranteed by Article 14 of the National Constitution was unacceptably restricted.” This standard was repeated in a later ruling handed down on May 19, 2010, in the case of Di Salvo, Miguel Ángel v. Diario La Mañana on daños y perjuicios.99

109. Likewise, the First Chamber of the Mexican Supreme Court of Justice found in a judgment dated June 17, 2009,100 that the standard of malice “requires expression that allegedly causes damage to the reputation of a public official to have been issued with the intention of causing that damage, with the knowledge that the facts being disseminated were false, or with clear negligence regarding the review of apparent veracity or lack of veracity of the facts. Otherwise, individuals could be gripped by the fear of completely accidentally committing a violation and becoming liable for the issuing of expression or information, which could directly or indirectly lead to abruptly restricting the exercise of their rights to express themselves or inform.”

110. The Permanent Criminal Chamber of the Supreme Court of Justice of Peru explained that “meddling with the reputation or the right to honor of a politician or a public official - whose position is political in nature - subject to appointment by a political body or not - in the exercise of political authority will be legitimate [...] as long as the facts, which entail matters of public or general interest, are true - understood as subjective veracity: knowledge of the falsehood of what was expressed or later knowledge that the fact being alleged is false (specific intent and willful ignorance, respectively) - and that, where appropriate, the judgment calls have sufficient factual basis.”101 In this regard, it recalled that when what is at issue is expression directed at public officials exercising their public authorities, the limitations on the right to freedom of expression must be interpreted restrictively.

111. Another case that is illustrative in its application of the doctrine of “actual malice” can be found in judgment No. 161 handed down on June 2, 2010, by the Criminal Appeals Court of Uruguay.102 In this ruling, the Tribunal overturned the conviction of the managing director of weekly Tres Puntos, in Paysandú, for the crime of defamation that had been based on two articles raising questions about

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connections between regional police and acts of corruption. According to the Tribunal, the facts must be examined “according to the ‘actual malice’ of the author of the article, which is what is legally required in order to cross the threshold of criminal responsibility.” In this regard, it found that the accusation was exempt from liability, as pursuant to this doctrine, “the news items do not reflect and the plaintiff has not proven - in keeping with his burden of proof under the law - that the author intended to offend anyone or violate their privacy.” For the tribunal, “the journalist divulged information about the public official that appeared plausible according to the evidence and in addition, there is no indication of any intention to discredit the official or violate his privacy with actual malice.” Finally, the Tribunal expressed that on issues in the public interest, the legal system in force in that country places the burden on the plaintiff to prove that the journalists acted with knowledge that the fact attributed was false or with the sole purpose of insulting the person or violating his privacy.

112. The 17th Criminal Circuit Court of the First Circuit in Panama ruled similarly in judgment No. 13 of July 17, 2012103, whereby it acquitted three journalists accused of the crime of defamation [injuría y calumnia] for expression issued to the alleged detriment of the honor of an official of the Panama National Police. In its ruling, the Court indicated that the journalists “did not act with actual malice, as there is no indication of a reckless disregard for the truth.”

13. Case law on the application of the principle of fair (or neutral) reporting

113. The ruling of the Inter-American Court in the case of Herrera Ulloa v. Costa Rica introduces the principle of “neutral reporting” or “fair reporting” to the inter-American system. According to this principle, those who disseminate a news item that is limited to copying statements or information from third parties will not be subjected to tests of veracity, as long as the source is cited. In the case in question, the journalist was criminally convicted because according to the judge ruling on the case, he was not able to prove the truth of facts narrated in his articles that referred to the conduct of a public official abroad, even though the news item was a faithful reproduction of content from a number of different European newspapers.104 In its ruling, the Inter-American Court found that the conviction of journalist Herrera Ulloa constituted an excessive limitation of freedom of expression, as the news item disseminated by him had been faithfully attributed to a source.

114. In a judgment dated October 11, 2011, the Temporary Criminal Chamber of the Supreme Court of Justice of Peru105 acquitted a journalist of the crime of aggravated defamation and fully annulled the July 27, 2011, judgment of the Superior Court of Ucayali upholding a conviction. The journalist had been convicted and sentenced to 18 months in prison and payment of 20,000 nuevos soles in civil damages (about US$7,400). In its ruling, the Criminal Chamber indicated that “what the defendant did […] was disseminate something that had already been previously disseminated. In the scholarship, the aforementioned conduct is known as neutral reportage.” Regarding this, it explained that “scholarship on the issue indicates that there is no liability when: 1) the individual issuing the expression limits him or herself to disseminating content that has already been disseminated, 2) the media outlet that previously disseminated the news item is identified, and 3) what is being repeated is not distorted.”

115. On ruling in the case in question, it held that “in sum, it is not that the defendant before the court has accused the citizen […] of committing criminal acts; to think this would be irrational if one takes into account that the citizen has already been brought to trial for the facts indicated in the publication, and that the publication even indicates this using underlined sections of text corresponding to links on the internet that according to the defendant would take us to the source of the information from which the information in the news item related with the plaintiff was taken, having […] faithfully reported what appeared in previous publications.” Based on this, it concluded that “the defendant has made proper

use of his right to inform through neutral reportage - that is, he has not surpassed the limits imposed on this fundamental right, in the sense that the defendant’s right to honor has not been affected, as his status as a politician holding state office subjects him to a degree of criticism.

116. On referring to the publication of information on a private individual based on information provided by an official source, the Supreme Court of New Jersey ruled that the “fair-report privilege” protects journalists who have provided accurate information regarding official documents such as court records and final judgments. Thus, in a judgment dated May 11, 2010, in the case of \textit{Salzano v. North Jersey Media Group},\textsuperscript{106} the Court explained that in general terms, “one such privilege is accorded to the publication of defamatory matter concerning another in a report of an official action or proceeding, or of a meeting open to the public that deals with a matter of public concern”. Accordingly, “if the publication, in fact, satisfies that standard, the state of mind of the publisher is irrelevant […] and thus, immune from a defamation suit because of the fair-report privilege”.

117. According to this line of reasoning, it found that the “fair-report privilege” also applies to briefs filed in any court action related to the proceedings. In this regard, it specified that “we are convinced that the public policy underpinning of the fair-report privilege—advancement of the public's interest in the free flow of information about official actions—would be thwarted by the recognition of the initial pleadings exception. A full, fair, and accurate report regarding a public document that marks the commencement of a judicial proceeding deserves the protection of the privilege”.

118. The Supreme Court of Justice of Argentina ruled in a similar sense in the case of \textit{Canavesi, Eduardo Joaquín et al. v. el Diario 'El Día' Soc. Impr. Platense SACI} on daños y perjuicios,\textsuperscript{107} brought against newspaper \textit{El Día} in the city of La Plata for having published false information on a private individual based on information provided by an official source. In a brief judgment handed down on June 8, 2010, the Supreme Court overturned the ruling against the newspaper, indicating that “it shares and adopts the reasoning and conclusions put forth in the report by the Public Prosecutor which shall be remitted for reasons of brevity.” In that report, the prosecutor held that, “the simple reproduction of news provided for distribution by public authorities does not, even when false, cross beyond what is the regular exercise of the right to report, as the status of the source excuses the press from having to confirm the truth of the facts, and because prior confirmation of the news under these circumstances would limit this right, establishing a true restriction on the freedom of information. These are the circumstances in place in the case under adjudication.” In this regard, it recalled that based on the case law of that high court in the case of Campillay, “the journalistic medium is exempt from liability when it faithfully attributes a news item to a source - as happened in this case - given that the news therein ceases to be its own. In addition, it has found that when this standard is adopted, the origin of information becomes transparent, allowing readers to connect it not with the medium through which the information has been received, but with the specific source generating it. This is beneficial for those affected by the information, as their eventual complaints - if they believe they have a right to raise them - can be directed against those who truly issued the news item, and not against those who simply provided a channel for distribution.”\textsuperscript{108}

119. The Third Criminal Chamber of the First Section of the Center of El Salvador followed a similar line of reasoning in a judgment dated July 22, 2011. In that ruling, the Chamber rejected a suit against three directors and a journalist of the newspaper \textit{La Prensa Gráfica} for the crime of defamation [\textit{calumnia}]. The suit had been brought by a member of the military named in a news item published on November 30, 2010. The Chamber found that there was no harmful intent in the publication and ruled that


it was transmitting information from third parties. The case began when La Prensa Gráfica published that unidentified sources of the Drug Enforcement Agency (DEA) of the United States and the National Civilian Police of El Salvador had revealed the names of two soldiers - one on active duty and the other retired - being investigated for alleged connections with organized crime.

14. **Case law on the liability of intermediaries on the Internet and the application of the principle of “mere conduit”**

120. In their Joint Declaration on Freedom of Expression and the Internet (2011), the special rapporteurs for freedom of expression of the UN, the OSCE, the OAS and the African Commission rejected attempts by some States to hold actors considered to be intermediaries in the provision of Internet services liable for damaging or illegal Internet content.109 This includes a broad range of actors who participate as intermediaries on the Internet - and provide services such as access to Internet connections, transmission, processing and routing of Internet traffic, storage of material published by third parties, and access to it, references to content or searches for information on the Internet, financial transactions and the facilitation of social networks. For the special rapporteurs, according to the mere conduit principle, “as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so”, intermediaries must not be held responsible.110

121. With this logic, this Office of the Special Rapporteur recognizes the ruling handed down on October 19, 2010, by the Supreme Court of Canada in the case of Crookes v. Newton,111 in which it analyzed whether an individual could be convicted for defamation for placing links on a website that lead to content that is defamatory (or allegedly defamatory) toward third parties. In its ruling, the Court found that a link or hyperlink can never in and of itself be seen as a publication of the content to which it makes reference. For this reason, the person who made it cannot in principle be sued for defamation. In this regard, it explained that a person who makes a hyperlink does not have control over the content referenced - that is, that person is only an intermediary.

122. To reach this conclusion, the Court was categorical on indicating that, “The Internet cannot, in short, provide access to information without hyperlinks.” According to the Court, “limiting their usefulness by subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression”. In this sense, it noted the potentially devastating chilling effect on the way in which the Internet functions, as the authors of articles would not risk possible repercussions by linking to other articles over whose content they have no control. For the Court, “given the core significance of the role of hyperlinking to the Internet, we risk impairing its whole functioning. Strict application of the publication rule in these circumstances would be like trying to fit a square archaic peg into the hexagonal hole of modernity.”

15. **Case law on the prohibition of prior censorship and the requirement of neutrality toward the content of expression or information**

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123. This Office of the Special Rapporteur has explained that prior censorship takes place when the government takes prior measures to prevent the free circulation of information, ideas, opinions or news using any type of proceeding that gives the State control over expression or circulation of information - for example, by prohibiting publications or confiscating them, or by carrying out any other procedure oriented toward that same end.\[112\]

124. In this regard, Principle 5 of the Declaration of Principles establishes that, “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” and Principle 7 establishes that, “prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.”

125. Likewise, in the case of “The Last Temptation of Christ ” (Olmedo Bustos et al.) v. Chile,\[113\] the Inter-American Court examined a prohibition imposed by the Chilean judicial authorities on the exhibition of the film “The Last Temptation of Christ” at the request of a group of citizens who had sought a remedy by invoking protection of the image of Jesus Christ, the Catholic Church, and their own rights. In highlighting some of the most important characteristics of freedom of expression - for example, its dual individual and collective dimensions and its critical democratic function, and recalling that this right protects both information that is positive, indifferent or inoffensive and information that is shocking, upsetting or offensive to the State or society - the Inter-American Court concluded that Chilean authorities had committed an act of prior censorship not compatible with Article 13 of the American Convention. The Tribunal noted that the violation of the American Convention had occurred not only due to the court rulings in question, but also due to the existence of an article in the Chilean Constitution setting forth a system of prior censorship for cinematic exhibition, thus conditioning the acts of all three branches of public power; it therefore ordered Chile to adapt its internal legal system to the Convention’s provisions.\[114\] The Court ruled similarly later on in its judgment in the case of Palamara Iribarne v. Chile.\[115\]

126. In this line of reasoning, in the aforementioned judgment dated April 30, 2009, the Supreme Federal Tribunal of Brazil\[116\] found after examining the unconstitutionality of the Press Act passed during the military regime that the State cannot, through any of its agencies, define beforehand what can or cannot be said by journalists. Closely following inter-American case law and the scholarship of this Office of the Special Rapporteur, the Tribunal was emphatic in indicating that “freedom of the press cannot exist between or under the claws of censorship.” In this regard, it explained that “the law prohibits the establishment of “core journalism activity,” understood as time and content guidelines on expression of thought, information and creation understood broadly.”

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127. This standard was reiterated in the previously-cited judgment of September 2, 2010. In this important ruling, the Supreme Tribunal reiterated that the State cannot decide ahead of time what individuals or journalists can or cannot say. This duty of omission, which includes its own legislative activity, includes a prohibition on determination of the content of basic journalism activities (both the moment – during elections or not – when speech can be issued and its content and information). In this sense, it emphasized that “in general, by virtue of its relationship with the public interest, journalistic criticism is not susceptible to prior censorship.”

128. Likewise, in previously-cited judgment C-010-00, the Constitutional Court of Colombia explained that “pursuant to the terms of the Inter-American Convention (sic) and constitutional law, prior censorship takes place when for any number of reasons; authorities prevent or seriously obstruct the issuing of a message or publication containing particular content. It is a measure of preventative control given that the broadcast or publication is subject to prior authorization from an authority. [...] This type of practice is strictly prohibited by the Inter-American Convention (sic) and by the Constitution.”

129. In the same way, in a ruling dated March 29, 2011, the Constitutional Chamber of the Supreme Court of Justice of Costa Rica reiterated the prohibition of prior censorship and found that prior censorship includes “every act that seeks a priori to censor or silence any demonstration, dissemination or communication of thought, ideas, opinions, beliefs, convictions or value judgments. Any prior condition, including requirements of the veracity, opportunity, or impartiality of information, will also be considered prior censorship.”

16. Case law on the prohibition of discriminatory placement of government advertising

130. Interpreting the American Convention, Principle 13 of the Declaration of Principles establishes that “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

131. Regarding this, this Office of the Special Rapporteur has indicated that arbitrary distribution of government advertising is an indirect mechanism of censorship. It is a form of pressure that acts to reward or punish and whose purpose is to place conditions on the editorial stance of a media outlet according to the wishes of the individual exercising the pressure. In that sense, it has been emphasized that regulation of the placement of government advertising must follow a series of principles as follows: (1) the establishment of special, clear and precise laws; (2) the use of government advertising for legitimate aims (to inform about public services offered and public policies implemented by the government and, in general, to disseminate information in the public interest); (3) the establishment of criteria for the allocation of government advertising, that is the States must establish procedures for the contracting and allocation of government advertising that reduce discretion and prevent suspicion of

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political favoritism in its distribution. Advertising funds must be allocated according to pre-established criteria that are clear, transparent, and objective; (4) adequate planning of the guidelines for placing government advertising; (5) the establishment of open, transparent and nondiscriminatory mechanisms for placing advertising; (6) the promotion of transparency and access to information on government advertising; (7) the establishment of external oversight of the allocation of government advertising; and (8) the promotion of media diversity and pluralism. 121

132. One of the main local precedents on this issue was set in the case of Editorial Río Negro S.A. v. Provincia de Neuquén. A ruling in the case was handed down by the Supreme Court of Justice of Argentina in September of 2007.122 The case has to do with a suit brought by the newspaper Río Negro against the province of Neuquén, whose government had suspended its advertising in that media outlet because the newspaper had published accusations of corruption. In its ruling, the Supreme Court found that the if the State decides to place government advertising, it must do so based on two constitutional standards: "1) it cannot manipulate advertising, placing it and withdrawing it from certain media outlets [based on] discriminatory criteria; 2) it cannot use advertising as an indirect means of affecting freedom of expression."

133. Citing the Office of the Special Rapporteur’s 2003 annual report, the Court found that "the State cannot arbitrarily assign advertising resources based on unreasonable standards," and found that such arbitrary placement "is a kind of pressure that, far from preserving the integrity of public debate, puts it at risk, unjustly and indirectly affecting freedom of the press and the legitimate interest that newspaper Río Negro and its readers have in the performance of provincial political officials in the exercise of their functions."

134. Later, in a judgment dated March 2, 2011, the Supreme Court of Justice reiterated the State’s obligation to adopt a government advertising policy with objective and nondiscriminatory standards, as set forth in the Editorial Río Negro (S.A.) ruling.123 The judgment upheld a 2009 ruling of the National Chamber of Administrative Contentious Federal Appeals124 that ordered the National State “to order government advertising to be distributed among the different publications” of Editorial Perfil and Diario Perfil, which had brought the amparo action against the Media Secretariat of the Leadership of the Cabinet of Ministers. This standard was reiterated in the judgment handed down on February 29, 2012, by federal Argentine judge Ernesto Marinelli.125

135. The second Chamber of the Supreme Court of Justice of Mexico ruled on a remedy of amparo and protection of guarantees filed by a radio broadcaster against the Secretary of Health over its refusal to place government advertising with the appellant.126 With explicit references to inter-American standards on the issue of freedom of expression, the Court concluded that the refusal to place advertising

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124 Chamber IV of the Chamber of Federal Contentious Administrative Law of Argentina resolved a claim presented by Editorial Perfil against the national government for having been excluded in the distribution of government advertising as a consequence of its critical editorial line. In this case, the judges of Chamber IV held that "[t]he government should avoid acts that intentionally or exclusively aim to limit the exercise of freedom of the press, as well as those that indirectly produce this result. That is to say, it is sufficient that the government action have this aim to constitute an alleged affront of this freedom. As a result, it is not necessary to cause the economic asphyxiation or bankruptcy of the newspaper."


was based on standards that do not meet the requirements of reasonableness and proportionality established in the Constitution and the American Convention. The Secretary of Health argued that the radio broadcaster did not have the characteristics necessary for disseminating the Secretary's activity, given its status as a community broadcaster and for supposedly not yet being in operation.

136. In a later judgment, referring to facts of the same nature, the aforementioned court found that on privileging some media outlets over others “solely based on the general range (capacity) of their broadcasts and not on their real coverage of all regions or communities in the country, [it is possible] that the placement of government advertising may become discretionary and restrictive due to unequal and undue distribution; these measures could lead to reduced protection of the rights of other radio broadcasters; this, in turn, could lead to undue restrictions to the communication and circulation of ideas and opinions through the discriminatory placement of government advertising, given the absence of specialized legislation and transparent and measurable criteria for placing government advertising; in this sense, these measures of restriction prevent the full exercise of the right to expression and information. Based on these arguments, it is concluded that the aforementioned measures of restriction are lacking in constitutional reasonableness and proportionality.”

17. Case law on requirement of membership in a professional organization or holding of an academic degree to exercise the profession

137. This issue was addressed in detail by the Inter-American Court in Advisory Opinion on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism OC-5 128. In that opinion, the Inter-American Court explained that because of its close relationship with freedom of expression, journalism “cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional “colegio.” Thus, for the Court, reasons of public order that justify the requirement that other professionals be members of professional organizations cannot be invoked validly in the case of journalism because it would permanently limit - to the detriment of those not members of the professional association - the right to make full use of the rights that Article 13 of the American Convention recognizes for all individuals, “it would violate the basic principles of a democratic public order on which the Convention itself is based.”

138. In this sense, Principle 6 of the Declaration of Principles expresses that, “[c]ompulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression.”

139. In agreement with what the Inter-American Court found in Advisory Opinion OC 5/85, in a judgment dated August 24, 2010, 129 the Court of Constitutionality of Guatemala ruled on an action of amparo brought by the Constitutional Vice President of the Republic of Guatemala. The action sought the nullification of a court ruling rejecting a criminal complaint filed for defamation charges [calumnia, injuria y difamación] that held that these offenses were committed in an opinion column published in a newspaper. One of the arguments put forth by the plaintiff during the court proceeding was that the author of the column was not registered with the Professional Council of Humanities and that based on this, the proceeding provided for in the Thought Distribution Act did not apply; rather, the plaintiff argued, standard proceedings must be used.

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140. In ruling the *amparo* action inadmissible, the Court held that one of the bases for its decision was that “on being a right inherent to persons, the freedom to express a thought does not require the possession of an academic degree in journalism in order to be exercised.”

141. Similarly, in a judgment dated June 17, 2009, the Supreme Federal Tribunal of Brazil ruled that the requirement to hold a journalism degree and for the professionals to register with the Ministry of Labor, as a condition for the exercise of the profession of journalist, was unconstitutional. In its ruling, the Tribunal examined whether the requirement to hold a degree was an unjustified barrier to freedom of expression. In its analysis, it explicitly included Article 13 of the American Convention and the relevant scholarship of the organs that monitor compliance with that treaty, as well as the considerations put forth by the Office of the Special Rapporteur in the 2008 annual report.

142. The first issue that the Supreme Court addressed was the scope of Article 5.XIII of the Federal Constitution, which authorizes the legislature to establish requirements and regulations for the exercise of specific professions. On this point, the Supreme Court stressed that this reservation of legal authority is not absolute and, therefore, must be in keeping with proper standards of reasonableness and proportionality. Accordingly, the Supreme Court then questioned whether the requirement of a professional degree to engage in journalistic activity could be considered a reasonable and proportionate regulation in a democratic society. To answer this question, the Supreme Court used inter-American doctrine and case law expressly.

143. First, the Court sought to establish whether journalistic activity was related to or different from other professions that required a university degree in order to practice, such as medicine or law. The Supreme Court thus considered that journalism is a profession that is distinct from those others due to the fact that it is closely related to the exercise of freedom of expression. In this respect, journalism is “the very expression and dissemination of thought and information, in continuous, professional and remunerated form.” Therefore, journalism and freedom of expression are two activities that overlap due to their very nature and cannot be considered and treated separately.

144. Based on this interrelatedness, the Supreme Court held that, “the requirement of a university diploma for the practice of journalism or the professional development of the freedoms of expression and information is not authorized by the Constitution, as it is a restriction, an impediment, a true, flat-out suppression of the effective exercise of freedom of expression, which is prohibited expressly by Article 220(1) of the Constitution.” The Supreme Court found that the offending law did not pass the proportionality test, as it was a prior restriction on the exercise of the right to freedom of expression. According to the Supreme Court, any control of this type that interferes with access to journalistic activity is a prior control that constitutes real prior censorship of freedom of expression. Analogously, on examining the validity of the requirement that Brazilian musicians be members of a professional organization, the Supreme Federal Tribunal held in a judgment dated August 1, 2011, that as far as the manifestation of the right to freedom of expression, one should be able to exercise artistic expression without any censorship, and without requirements of licenses or permits.  

18. **Case law on source confidentiality**

145. In its interpretation of Article 13 of the American Convention, Principle 8 of the Declaration of Principles explicitly indicates that, “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

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146. In this regard, in judgment T-298/09 of April 23, 2009, the Constitutional Court of Colombia ruled on an action of protection brought by a member of Congress requesting that an article published in the newspaper connecting him with acts of corruption based on an anonymous letter be corrected. With regard to the confidentiality of the source, the Court found that what is at issue is “a fundamental and necessary guarantee for the protection of true independence for journalists and for them to be able to exercise the profession and satisfy the right to information without any indirect limitations or threats that inhibit the distribution of information relevant for the public.” The Court based its statement on its case law, the Colombian Constitution, the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (Principle 8: “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential”), and on the interpretation that the court itself has performed of that Declaration. In conclusion, it indicated that “in principle, and as long as statutory legislation does not establish a clear, reasonable, necessary and proportional provision to the contrary, the confidentiality guaranteed by Article 74 of the Constitution is not subject to limitations. Any attempt to impose a restriction on that guarantee currently lacks the statutory legal support necessary.”

147. In reference to the conflict between the confidentiality of the source and the rights of third parties, the Court expressed that “in some circumstances, the confidentiality of a source is necessary even when it could compromise the rights of good-faith third parties. These are cases in which, without a guarantee of source confidentiality, information of great importance for society would remain unavailable. Effectively, especially in cases in which mafia or organized crime are involved, organizations that are not afraid to intimidate a source to keep him or her from revealing information that could affect their interests, source confidentiality becomes a priority guarantee necessary for brave and independent journalism to be able to carry out its work. In any case, it is true that journalists have important duties when publishing information that could incriminate third parties but that has been provided by a confidential source. In this sense, as the majority of pleadings received in this case have indicated that, in principle, ethical and professional rules require the media to offer to the public all the information that is available to them, except in special cases in which a source can be trusted and there are latent risks, and the information is relevant to the public. In these cases, greater diligence is required of journalists in the collection and assessment of information, although they cannot be required to reveal their sources.”

19. **Case law on the obligation to guarantee the life and safety of journalists covering armed conflict and emergency or high-risk situations**

148. In a judgment issued this year case of *Veléz Restrepo and family v. Colombia*, the Inter-American Court found that “States have the obligation to adopt special measures of prevention and protection for journalists subject to special risk owing to the exercise of their profession. Regarding the measures of protection, the Court underlines that States have the obligation to provide measures to protect the life and integrity of the journalists who face this special risk owing to factors such as the type of events they cover, the public interest of the information they disseminate, or the area they must go to in order to do their work, as well as to those who are the target of threats in relation to the dissemination of that information or for denouncing or promoting the investigation of violations that they suffered or of those they became aware of in the course of their work. The States must adopt the necessary measures of protection to avoid threats to the life and integrity of journalists under those conditions.”

149. In this sense, judgment T-1037/08 of October 23, 2008, of the Constitutional Court of Colombia, ruled on an action for protection brought against the Ministry of the Interior and Justice by a Colombian journalist who investigates issues of human rights and armed conflict. The journalist had been

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subjected to threats, harassment, persecution and psychological torture because of her professional activities.

150. In this ruling, the Court found that the fact of publicly questioning risk studies or the danger of the situation or the feeling of fear of someone who is being threatened is not compatible with State obligations, as one of the State’s special duties with regard to individuals facing situations of high or extraordinary risk is the recognition of the situation. In that sense, the State attitude “intended to ignore, hide, lie about, minimize, or justify the crimes committed” constituted an additional violation of the rights of those facing a situation of risk.

151. In these cases, the Court found, it is not possible to justify the authorities’ discrediting of the situation of risk faced by the journalist, given that “the right to freedom of expression when exercised by public officials exercising their duties has greater limitations than when that right is exercised by a common citizen,” as the Inter-American Court of Human Rights has also found.\(^{135}\) The limited scope of freedom of expression for public officials exercising their duties will be addressed in greater detail in the following section.

152. In addition, the Court held first that in order to determine that the protection that should be provided to a journalist facing special or extraordinary risk be withdrawn, “a process must be carried out in which, at least, the minimum guarantees of due process are guaranteed.” These guarantees, it stated, “must extend to all criminal and administrative areas in which the State exercises a legal authority to sanction - that is, whenever it can affect the rights of a person as a result of the actions or omissions of this person that violate or injure a right that is legally protected by the system.”

153. Finally, the Court argued that “when what is at issue is a journalist who, despite threats, decides to continue his or her investigations, that person will likely require special provisions that take into account the totality of the rights involved. In particular, it is obvious that communicators may need a certain amount of privacy to be able to interview a confidential source or make certain inquiries. In these cases, it becomes necessary to make special allotments designed to guarantee both the journalist’s safety, and his or her work and the important rights associated with freedom of expression. Specifically, the Court cannot fail to note that in these cases, not only is the right of all persons to free personal development at issue, but also the rights to freedom of expression and source confidentiality.”

154. Based on the foregoing, the Court concluded that the mandate had been violated according to which “the Ministry is obliged to adopt whatever specific, adequate and sufficient measures are necessary to prevent the extraordinary risk that has been identified from resulting in harm and to implement those measures, also in a timely fashion and according to the circumstances of each case, such that the protection is effective.”

20. Case law on the limited scope of freedom of expression for public officials exercising their duties

155. The organs of the system have recognized that the exercise freedom of expression by public officials has certain specific characteristics and connotations. Thus, when public officials exercise their freedom of expression, “they are subjected to certain limitations as far as confirming to a reasonable - although not necessarily exhaustive - degree the facts on which their opinions are based. They must do so with even greater diligence than necessary of private individuals based on the high degree of credibility they enjoy and in order to prevent citizens from receiving a manipulated version of the facts.”\(^ {136}\)


156. In this regard, this office has also specified that public officials have a duty to ensure that on exercising their freedom of expression, they are not causing a violation of fundamental rights; that their statements do not constitute arbitrary, direct or indirect interference with the rights of those who contribute to public debate through expression and dissemination of their thought; and that their statements do not interfere with the independence and autonomy of legal authorities.

157. In a similar tone, in judgment T-1191, of November 25, 2004, the Constitutional Court of Colombia ruled on an action of protection filed by a group of nongovernmental organizations dedicated to the defense of human rights against the then-President of the Republic of that country. The action argued that his statements - in which he accused them of having connections to terrorist groups - were a violation of their rights to honor and good name, and their rights to promote and defend human rights, as well as to the rights of their members to physical safety and life. In its ruling, the Court explained that the “President of the Republic [holds] the power-duty to maintain permanent contact with citizens through his speeches and public appearances,” but that “this power-duty of the President differs substantially from simple freedom of expression recognized in general for citizens. In reality, it constitutes a legitimate means of exercising the governmental authority held by contemporary democracies.”

158. In this sense, it held that “the public statements of the President of the Republic are not absolutely free, and that (i) they must strictly respect parameters of objectivity and veracity when they are simply transmitting public information or data; (ii) they are more free when taking political positions, proposing governmental policies or responding to criticism from the opposition, but that even in these events, expression of the President must include a minimum of real factual justification and meet a basic standard of reasonableness, and (iii) in all cases, his communication with the Nation must contribute to the defense of the fundamental rights of persons, especially those deserving of special protection.” Regarding this latter aspect, the Constitutional Court expressed that “as with all authorities, the President holds a position as guarantor with regard to the fundamental rights of all inhabitants of his country's territory. This means that when he addresses himself to citizens, he must refrain from issuing any declaration or statement that damages or puts at risk that category of rights.” The Court expressed that “this obligation [to refrain from making declarations that threaten fundamental rights] becomes more relevant when dealing with subjects who enjoy special constitutional protection such as human rights defenders, the reinserted, those displaced by violence, or members of peace communities.” In addition, it emphasized that the use of mass media generates “greater responsibility than what arises through the use of other non-mass communication systems.”

159. These standards were made to extend to other senior state authorities or public officials through judgments T-263/10 and T-627/12 issued later on by the Constitutional Court of Colombia. In this regard, in the judgment issued on August 12, 2012, after a review of its constitutional case law, as well as the case law of the Inter-American Court established in the cases of Perozo et al. and Ríos et al., both against Venezuela, the Constitutional Court of Colombia found that “the statements of senior public officials – whether national, local or departmental – on matters of general interest are not part of their right to freedom of expression or opinion but rather constitute a manner of exercising their duties through communication with the citizenry.”


CHAPTER IV
THE RIGHT TO ACCESS TO INFORMATION

Introduction

1. The right to access to information is a fundamental right protected by Article 13 of the American Convention. It is a particularly important right for the consolidation, functioning, and preservation of democratic systems, and as such has received significant attention from the Member States of the OAS and in international case law and doctrine.

2. The Inter-American Court has established that Article 13 of the American Convention, by expressly stipulating the rights to “seek [and] receive . . . information,” protects the right of every individual to access information under the control of the State, with the exceptions permitted under the narrow system of restrictions set forth in that instrument.

3. The right to access to information has been considered an essential tool for the public oversight of government and the operation of the State—especially for the control of corruption, for citizen participation in public matters through, inter alia, the informed exercise of political rights and, in general, for the effective exercise of other human rights, especially by the most vulnerable groups.

4. Indeed, the right to access to information is a critical tool for monitoring the public administration and operation of the State, and for keeping corruption in check. The right to access to information is a fundamental requirement for guaranteeing transparency and good governance. The full exercise of the right to access to information is an essential guarantee for preventing abuses by public servants, promoting accountability and transparency in public management, and preventing corruption and authoritarianism. Free access to information is also a means by which, in a representative and participatory democratic system, citizens can properly exercise their political rights. Indeed, political rights necessarily require the existence of a broad and vigorous debate, for which it is essential to have the public information that makes it possible to evaluate reliably progress and difficulties in the achievements

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1 The right of access to information has been one of the recurrent topics of the annual reports and publications of the Office of the Special Rapporteur. This chapter contributes to the collection of material compiled by the Office on best judicial practices of Member States in the area of access to information contained in the annual reports of 2005 (Chapter IV), 2008 (Section F of Chapter III), 2009 (Chapter IV), 2010 (Chapters III and IV), as well as the study on The Inter-American Legal Framework regarding the Right to Access to Information (Second Edition) of 2011.

2 The General Assembly of the OAS holds that the right of the access to information is “a requisite for the very functioning of democracy.” In this sense, all democratic American States “are obliged to respect and promote respect for everyone’s access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.” General Assembly of the Organization of American States. Resolution AG/RES. 1932 (XXXIII-O/03), Access to Public Information: Strengthening Democracy, June 10, 2003. Also see: AG/RES. 2057 (XXXIV-O/04), AG/RES. 2121 (XXXV-O/05), AG/RES. 2252 (XXXV-O/06), AG/RES. 2288 (XXXVI-O/07), AG/RES. 2418 (XXVIII-O/08), AG/RES. 2514 (XXXIX-O/09), and AG/RES. 2661 (XLI-O/11).


4 “Free access to information is a measure that, in a representative and participative democratic system, the citizens exercise their political rights; effectively, the full exercise of the right to access to information is necessary for preventing abuses by public officials, promoting transparency in government administration, and allowing solid and informed public debate that ensures the guarantee of effective recourses against government abuse and prevents corruption. Only through access to State-controlled information in the public interest can citizens question, investigate, and weigh whether the government is adequately complying with its public functions.” Cf. I/A Court H.R. Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151. paras. 86-87.

of different authorities. Only through access to information under the control of the State is it possible for citizens to know whether government is operating properly. Finally, access to information has an essential, instrumental function. Only through an adequate implementation of this right can individuals know exactly what their rights are, and what mechanisms are available for their protection. In particular, the proper implementation of the right to access to information, in all of its aspects, is a basic condition for the effective realization of social rights among socially excluded or marginalized sectors. Indeed, those sectors do not usually have safe and systematic alternative ways of knowing the scope of the rights that the State has recognized and the mechanisms for asserting and enforcing them.

5. This chapter continues in the vein of the reports on freedom of expression and access to public information put out by the Office of the Special Rapporteur in the fulfillment of its mandate, highlighting the good practices recognized and implemented by the judicial authorities of the OAS Member States. In the future, this Office of the Special Rapporteur also hopes to advance the study and systematization of the decisions rendered by some of the autonomous bodies entrusted with protecting the right to access to public information in OAS Member States, such as the Federal Institute for Access to Information and Data Protection in Mexico [Instituto Federal de Acceso a la Información y Protección de Datos de México] (IFAI) or the Chilean Council for Transparency [Consejo para la Transparencia] (CPLT), which have made significant progress in the improvement of good practices in the field.

6. This Office of the Special Rapporteur has recognized that, regardless of the legal frameworks of the OAS Member States, there are some court decisions that have notably promoted the standards of access to public information in the domestic law of each one of the States. The study of this case law has been vitally important, in that it makes it possible to observe, in practice, the ways in which different judges and courts have implemented the guiding principles of the right to access to public information.

7. In addition, the Office of the Special Rapporteur continues to affirm the special importance of inter-American comparative law and its role in enriching the regional case law and doctrine. Although one of the objectives of the regional human rights protection bodies is to achieve the domestic application of inter-American standards, those standards have also been elevated thanks to developments in the institutional practices of the Member States of the OAS. The interpretations of civil society and the domestic bodies of the different States continue to create the conditions for the regional system to keep on the path of strengthening and refining its doctrine and case law on the right to access to information.

8. The following paragraphs summarize some of the most important recent decisions on access to information to which the Office of the Special Rapporteur has had access. These decisions were organized according to the main issues they address. Nevertheless, it is important to note that most of the decisions refer to various issues, and therefore it is relevant to view them comprehensively.

1. Case law on access to information as a fundamental, autonomous, universal right

9. The courts of the region have continued with the good practice of recognizing the right to access to information as a fundamental universal right.

10. In a decision dated December 5, 2012, the Constitutional Division of the Supreme Court of El Salvador ruled on the constitutionality of some articles of the Regulations to the Access to Public Information Act, finding that its “indisputable status as a fundamental right” is a “starting point for approaching the right to access to information.” The Court found that this status rests on two essential pillars: “the constitutional recognition of the right to freedom of expression, which assumes the right to

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investigate or to seek and receive public or private information of all kinds that is of public interest; and (…) the democratic principle of the rule of law or the Republic as a form of government, which imposes upon public authorities the duty to guarantee transparency and disclosure in government, as well as accountability with respect to the use of public funds and resources.”

11. The “fundamental right status” of the right to access to information has certain significant regulatory implications, according to the Constitutional Division of the Supreme Court of El Salvador. Indeed, the recognition of the right to access to information as a fundamental right entails, in regulatory terms: “(a) the prohibition against altering its essential content, in both its interpretation and its regulation; (b) the recognition of its objective or institutional dimension, with its positive implications of guarantees; (c) the requirement of its harmonization, proportion, or balance with other, conflicting rights; and (d) the recognition of its expansive and optimizing force.”

12. The Argentine Supreme Court ruled similarly in its December 4, 2012 decision on a petition for a constitutional remedy (amparo), which addressed whether the National Institute of Social Services for Retirees and Pensioners (PAMI) “is obligated to provide information regarding the official advertising developed by the institute.” In resolving this issue, the Court found that it was necessary to “clarify the meaning and scope of the right to access to information.” It held on this point that, “even when the [entity requesting the information] is not a State entity, given its special characteristics and the important and significant public interests involved, the refusal to provide the requested information is an arbitrary and illegitimate act [that amounts to] an action that severely curtails rights to which (…) any citizen is entitled, insofar as the information is unquestionably of public interest; those same rights make transparency and disclosure in government fundamental pillars of a society that considers itself democratic.”

13. In a judgment handed down on February 8, 2012, the Supreme Court of Panama recognized the universal nature of the right to access to information. The case involved the appeal of a habeas data petition seeking information about the Curricular Transformation system, filed by a citizen in his capacity as the Secretary of a Teachers’ Association. When he failed to receive a reply within the legally established time period, the citizen filed the writ of habeas data in his individual capacity. The Institute questioned the petitioner’s legal standing, and the Supreme Court determined that “regardless of the letterhead on which the request was filed, or whether Mr. Herrera acted in his own name or on behalf of a third party, the information in this case is public, accessible to any interested party, without any need to justify the request.” The Court added that “every person has the right to request public access to information in the hands of the State, without the need to provide a justification. At the same time, they will have standing to file a writ of habeas data, which does not require further legal formalities—unless the information in question is personal or confidential, in which case it is understood to be of interest only to the person concerned, and no one else.” The Court thus concluded that “the nature of the writ of habeas data, its purposes, the law in question, and the public nature of the information sought, overcome the censorship of the administrative authority. The State is therefore required to provide information about its workings and activities to any person, except where it involves data that is confidential or personal, or restricted.”

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In a November 30, 2010 decision, the Constitutional Court of Guatemala ruled on several constitutional challenges to the Public Information Access Act. The Court dismissed the four charges relating to: legal entitlement to the right and the need to verify the interest in order for the right to be exercised; information considered confidential; the obligation to publish information on the salaries and emoluments of public servants; and changes to the system of the autonomous bodies as a result of requiring them to implement the Act.

With respect to legal entitlement to the right to access to information and the need for prior verification of interest in the information sought, the Constitutional Court found that “the constitutional recognition of the right to access to public information (...) signifies the ability of any citizen to obtain information from the government, without having to prove any interest other than that which arises from his own will as a citizen, in connection with the principle of transparency in government.” According to the Court, in view of the international standards, the Constitution of Guatemala recognizes that “all acts of government are public” and also that the people have the right “to access this information, as the owners of national sovereignty.” Consequently, in order to exercise this right, “the citizen needs only to express their legitimate desire to gain knowledge of the organization, the workings, and the decision-making processes of the government apparatus meant to secure their welfare and that of their peers; it is herein that their interest in the matter in question is understood to exist, and not in the purely procedural sense of the term.”

The Third Chamber of the Civil and Commercial Appeals Division of the Province of Salta, Argentina, handed down a decision on May 28, 2010, ruling on an amparo petition arising from a request for access to detailed information on government advertising expenditures in the Province of Salta. Regarding the nature of the right to access to information, the Court found that, “the right to access to information acquires substance because of its procedural and instrumental status. Without it, other rights could not exist, and thus it is vitally important to pave the way for it to be protected, refined, and maximized.” Therefore, understanding the right to access to information “as a fundamental right, and beyond the debatable notions of the concept, the general rule then will be for the citizen to have free access to public information in the hands of, or under the control of, State entities.”

In this same decision, the Third Chamber asserted the universal nature of the right to access to public information, noting in particular that the person who was requesting the access to information was a representative in the provincial legislature. On this point, it found that, “If any person can request public information, with no exclusion provided under the law, if the requesting party cannot be required to state the purpose of his request—and therefore there is no reason to inquire about his motivations or whether he has a specific interest—there is no justification to exclude the legislators of the..."
province from the access to public information provided for in Decree No. 1.574/02, as the respondent asserts.\footnote{17}

18. In Judgment 48 of September 11, 2009, the Trial Court of Mercedes, Uruguay (Second Rotation)\footnote{18} ruled on a petition for habeas data (amparo informativo) related to the disclosure of information on the procurement of government advertising. The Court held that the right to access to public information “follows from” the right to information, and it found that the latter is “a basic right, inherent in the human personality.” This understanding, says the Court’s judgment, has also been set forth in the relevant doctrine, even before the Access to Information Act entered into force.

19. In general, the essential and universal nature of the right to access to information has been widely recognized in most of the decisions cited in this report, which will be reviewed in greater detail in the sections below.

2. Case law on the principle of maximum disclosure

20. In a judgment handed down on March 18, 2011, the Constitutional Division of the Supreme Court of Costa Rica\footnote{19} heard an amparo petition that was filed against the Costa Rican Labor Ministry for refusing to turn over information relating to three lists (persons who were visited by inspectors and written up for noncompliance with the minimum wage laws, persons visited by inspectors a second time, and persons against whom complaints were filed in court). The information had been requested for purposes of journalistic work. The Ministry made the information public, but using general data and percentages. In deciding the case, the Court affirmed its case law on government transparency and disclosure\footnote{20} in the following terms: “In the context of the social and democratic rule of law, each and every public entity and body within the respective administration must be subject to the implicit constitutional principles of transparency and disclosure that must be the rule that governs every administrative action or function. The collective organizations of Public Law—public entities—must be like glass houses, the insides of which all citizens must be able to view and supervise, in the light of day.” In the opinion of the Court, “governments must create and foster permanent and fluid channels of communication or exchange of information with citizens and the collective media (…) According to this logic, administrative secrecy or confidentiality is an exception that is justified solely under qualified circumstances when constitutionally relevant values and interests are thereby protected.”\footnote{21}
21. In this specific case, the Constitutional Division of the Supreme Court of Costa Rica found that the requested information had been denied under a law that prohibits “the disclosure of data that are obtained from inspections.” In the Court’s opinion, the government denied the right to access to information “without a necessary, sufficient, or reasonable justification,” given that “the requested information is of clear public interest, as it refers to infractions involving the failure to pay minimum wages. It concerns both employees and employers, especially since the request was for general information and not information about a specific individual.”

22. The Supreme Federal Tribunal of Brazil, in a June 9, 2011 decision suspending the effects of two precautionary measures that barred the disclosure of data on the incomes of some municipal employees, underscored the preponderance of the “principle of disclosure” and the resulting “State duty to disclose public acts.” According to the Court, that duty is “eminently republican, because the ‘res publica’ […] must be managed with maximum transparency”, with the sole exception being information “whose confidentiality is essential to the security of society and the State” according to current law.

23. The Supreme Court held that every person has the right to receive information of general or particular interest from government entities, and that it must be provided within the legally established period of time to avoid the pertinent sanctions. In the Court’s opinion, the best instrument of personal defense against “possible unlawful assaults by the State” is the right to “denounce irregularities or unlawful acts” before oversight bodies. In this respect, the Supreme Court added that “the preponderance of the principle of disclosure” is an effective way to “realize the republic as a form of government.” It also indicated that “if, on one hand, there is a republican mode of administering the Brazilian State, on the other hand it is the public itself that has the right to see its State administered as a republic. The question of ‘how’ the res publica is administered should outweigh the question of ‘who’ administers it […] and the fact is that this public way of administering the government machine is a conceptual element of our Republic.” The Court concluded that failing to observe the principle of disclosure could cause serious harm to public law and order.

24. In Judgment 48 of September 11, 2009, the Trial Court of Mercedes, Uruguay (Second Rotation), held, in relation to the principle of maximum disclosure, that: “the right to access public information is related to specific principles, namely, the principle of transparency in government; this is what makes it possible to clearly see the government’s actions with respect to the use of public funds. The principle of disclosure in government activity […] in a system such as ours, the first solution is always disclosure, and restriction is the exception. Finally, […] the principle of participation, which means that citizens are informed and consulted on the matters that concern them. These principles […] are important in taking account of the purpose of this [access to information] law and the objective it pursues, which provides guidance for interpretation in case of doubt.”

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3. Case law on limits to the principle of maximum disclosure

25. In a November 30, 2010 decision on a constitutional challenge, the Constitutional Court of Guatemala, based on the standards set forth in the decision of the Inter-American Court of Human Rights in *Claude Reyes v. Chile*, in the IACHR's 2009 annual report and in the Declaration of Principles on Freedom of Expression, among others, found that the limitations on access to public information contained in the Access to Information Act were consistent with the Constitution. Thus, for example, with regard to the confidentiality of "court files in cases that have not become final," it found that the confidentiality was not applicable "in cases or proceedings that are of clear public interest, even the mere handling of their procedural aspects, whether for objective reasons pertinent to the subject addressed—e.g., general unconstitutionality—or subjective, that is, relating to the capacity in which the parties are involved, as in the case of a trial determining the liability of a public servant [...]. In society it is indispensable to have public opinion be the comptroller of government acts, and the actions of judges cannot be excluded." In addition, in relation to information defined as "confidential under the Comprehensive Protection of Juveniles Act," the Court found that children and adolescents "who are involved in court cases [...] require special treatment, given the implications of their age, in order to adequately preserve their human dignity; discretion in the handling of information is vital in view of that objective." Finally, the Court concluded by leaving the door open to the possibility of limiting the exceptions to the principle of maximum disclosure. Indeed, at the end of point VI of its conclusions of law, the Court stressed that, "naturally, in each specific case, the authority in charge of the information (those considered bound by Article 6 of the challenged law) must weigh the particular circumstances, using the necessary premises of the previously underscored canons and scopes. It can thus determine, in accordance with the constitutional principles, whether the information being requested contains elements that justify its confidentiality or secrecy as an exception to the principle of maximum disclosure."

26. In *amparo* appeal (*amparo en revisión*) decision 168/2011, of November 30, 2011 the First Division of the Supreme Court of Mexico recognized a limit to the confidentiality of information concerning preliminary investigations in criminal matters. According to this exception "secrecy cannot be claimed when the preliminary investigation concerns acts that constitute serious human rights violations or crimes against humanity." This assertion is supported in general terms by the "preferential position" of

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the right to access to information "vis-à-vis the interests that would limit it, as well as its operation as a general rule vis-à-vis the exceptional limitations established by law."35

27. In this specific case, the Supreme Court held that the duty to turn over information is also based on the judgment of the Inter-American Court of Human Rights in the Case of Rosendo Radilla Pacheco v. Mexico, paragraph 258 of which recognized the rights of victims “to obtain copies of the preliminary inquiry carried out by the Attorney General of the Republic, [which] is not subject to confidentiality, since it refers to the investigation of crimes that constitute grave violations of human rights.” The Supreme Court held that such considerations are “binding upon the Mexican State, including all judges and courts that carry out essentially judicial functions.”36

28. In its decision of March 14, 2007 on a petition of habeas data seeking access to a file relating to the denial of a promotion to a government official, the Superior Court of Justice of Brazil37 ruled on the principle of maximum disclosure. The Court found that that principle must be “observed by the government [...] including, beyond the Union, the States, the Federal District, and the municipalities.” According to the Court, disclosure is the general rule and is subject to “few exceptions, which also must be based on [current law].” In the case under examination, the Court did not find the exception for information that “is essential to the security of society and the State” contained in the Constitution; consequently, it applied the principle of maximum disclosure.38

29. In a decision of September 5, 2010, the Constitutional Court of Peru,39 ruling on the refusal of a municipality to turn over copies of a file on the rehabilitation of a public road, addressed the “relevance of the principle of transparency in a democratic State.” On this point, it held: “habeas data is linked directly to the importance that the principle of transparency in the exercise of government power has acquired in today's democratic systems. It is a constitutionally relevant principle that is implicit in the model of social and democratic rule of law [...] Where power emanates from the people, as stated in Article 45 of the Constitution, it must be exercised not only in the name of the people but also for the people.” In addition, in the Court's opinion, “putting the principle of transparency into practice helps fight corruption in the State and, at the same time, is an effective tool against the impunity of power. It enables the public to have access to the way in which power is delegated. One of the manifestations of the principle of transparency is, without doubt, the right to access to public information that this Court has developed in its case law.”40

30. In addition, with respect to the regulatory implications and the content of the principle of transparency, the Constitutional Court of Peru held that it imposes “several obligations upon public entities, not only in relation to information but also in the management of public administration in general. Thus, for example, it has been held that not just any information creates transparency in the exercise of State power; rather, it is the information that is timely and reliable for the citizen. In that respect, the World Bank Institute, which puts out the well-known governance indicators, has established four components to transparent information: accessibility, relevance, quality, and reliability.” The Court later added that the


38 Federative Republic of Brazil. Superior Court of Justice. Third Session. March 14, 2007. Habeas data No. 91-DF. Case file 2003/0235568-0. Available at: https://ww2.sti.jus.br/revistaeletronica/Abre_Documento.asp?sSeq=669609&sReg=200302355680&sData=20070416&formato=PDF


right to access to information "is also linked directly to [...] the principle of responsibility. [...] It is thus clear that the more transparent a government is, the more responsible and committed to public aims it will be. Secrecy, in general, encourages practices in the defense of individual or group interests, but not necessarily public objectives." In this case, the Court ordered that the requested information be turned over.

31. In Judgment 354/11 of November 22, 2011, the Court of Civil Appeals of Uruguay (Third Rotation) ruled on the supposed existence of a limit to the right to access to information (sensitive data). The case concerned a request for information on the number of labor union organizations (with government ties), the number of members in each organization, and the number of labor union hours requested and granted during the period from February to November of 2011. The Court found that such limitations were inadmissible, given that "neither the names of the unions nor their members were requested; rather, the request sought simply to establish quantitative data. Therefore, that information does not fall within the exceptions established in Art.10 of Law 18.381. The petitioner is interested in monitoring the criteria used by the government to comply with the allocation of "labor union hours" [...] As such, there is no infringement of the fundamental rights of any identified subject, and the requested information is excluded from the concept of sensitive or protected data." The Court consequently indicated that "it can in no way be understood that the act of providing the number of labor unions that the respondent ministry recognizes and negotiates or has dealings with in such capacity, nor the number of members in those unions (at least what is known to the respondent from making the deductions for union dues), nor the number of "labor union hours" requested in the detailed form previously expressed, exposes either the legal entities—the labor unions—or the individuals who belong to them, to any discrimination, or entails the disclosure of sensitive data relating to those particular individuals."

4. Case law on parties bound by the right to access to public information

32. In the above-cited decision handed down on December 4, 2012, the Supreme Court of Argentina found that by virtue of the international obligation of the Argentine State established in Article 2 of the American Convention (obligation to bring domestic law into line with international standards) in relation to the right to access to information, it was necessary "to guarantee this right not only in the purely administrative sphere or in institutions tied to the Executive Branch but also in all government bodies." As such, the Court found that, in "overseeing the institutions that perform public functions, the States must take account of both public and private entities that perform such functions. The important thing is for the focus to be on the service they provide or the duties they perform. Such scope means imposing this requirement not only upon public State bodies in all their branches and at all their levels, local and national, but also upon State-owned enterprises, hospitals, private institutions, or others that act in a government capacity or perform public duties." The Supreme Court found support for this in the "principle of maximum disclosure" recognized in the Inter-American Court’s Case of Claude Reyes v. Chile. Based on these considerations, the Supreme Court ruled that the Institute (PAMI), in spite of not "forming part of the national State" and having a "legal personality and financial individuality legally differentiated from the State," had the obligation to turn over the information requested by the non-governmental organization relating to the 2009 government advertising budget and the advertising outlay made during some months in that year. This was in view of the fact that the case involved "the request for


public information from an institution that manages public interests and has a function delegated by the State, and the interaction between the respondent and the government is indisputable."

33. In a decision rendered on March 18, 2011, the Constitutional Division of the Supreme Court of Costa Rica 45 addressed the question of which entities are subject to the principle of maximum transparency. It reiterated that "all public entities and their bodies, both of the Central Government and the Decentralized Government, whether institutional or corporate service providers, are required to observe [the right to access to information] (…) The right of access must be observed broadly by public enterprises that assume collective forms of organization under private law, through which some government entity performs a business, industrial, or commercial activity, and participates in the economy and the market." The Court also found that "private persons who exercise public power or authority, on a temporary or ongoing basis, by virtue of legal or contractual authorization (…) such as utilities or public works concessionaires, interested managers, public notaries, public accountants, engineers, architects, topographers, etc., may potentially become subject to this requirement when they handle or possess information—documents—of clear public interest." 46

5. Case law on access to public information related to the investigation of human rights violations

34. The First Division of the Supreme Court of Mexico, in amparo appeal decision 168/2011 of November 30, 2011, 47 ordered the Office of the Attorney General "to allow access and provide certified copies of the preliminary investigation" to the petitioner, in relation to the judicial investigations into the forced disappearance of Rosendo Radilla Pacheco. In spite of the fact that the Transparency and Access to Public Information Act of Mexico has, since 2002, prohibited the invocation of confidentiality with respect to files on the “investigation of serious violations of fundamental rights or crimes against humanity,” the Office of the Attorney General had refused to provide access to preliminary investigations. With this decision, the Supreme Court sets an important precedent in the area of access to public information related to the defense of human rights.

35. In this case, the First Division of the Supreme Court of Mexico found that “with respect to the right to public information, the general rule in a democratic State under the rule of law must be to favor access and the maximum disclosure of information,” the exceptions to which, “by constitutional mandate, must be provided by law, substantively and procedurally.” 48 It also acknowledged the dual nature of the right to access to information, “as a right in and of itself, but also as a means or instrument for the exercise of other rights,” in which case "the right to access to information is the basis upon which citizens exercise the respective oversight of the institutional workings of the State." 49

6. Case law on access to information on government advertising
In a May 28, 2010 decision, the Third Chamber of the Civil and Commercial Appeals Division of the Province of Salta, Argentina, in ruling on a petition for amparo stemming from a request for access to detailed information on government advertising expenditures in the Province of Salta, Argentina, held that, “the refusal of the respondent [the Office of the Governor of the Province of Salta] to provide the requested information is unjustified and is not based on any law; it also violates the principle of the disclosure of acts of government and the scope of the right to access to information as established in Article 13 of the Inter-American Convention of Human Rights (sic).” In the opinion of the Court, according to the evidence in the case, “the requested information arises from the State’s own administrative action, which, as such, must be documented not only because it involves the decision and execution of public spending but also because it concerns government advertising, a matter of indisputable public interest in that it is linked to freedom of expression. As stated by Dolores Lavalle Cobo, there is a very close relationship among freedom of expression, the allocation of government advertising, and access to information.” Finally, the Court held that “we must consider that observance of the duty to inform in this case is simple, since it only requires making available to the requesting party the file or files containing the documentation of the government’s decision to place the advertising in question, the action itself, and the accounting records (invoices or similar documents) that reflect its execution. In other words, the response required of the respondent does not mean that it has to draft a complete report, or perform any activity more demanding than what is stated.”

In Judgment 48 of September 11, 2009, the Trial Court of Mercedes, Uruguay (Second Rotation) ruled on a habeas data petition filed against the Departmental Board of Soriano, and ordered the disclosure of information on the procurement of government advertising. The Court found that the information relating to the procurement of government advertising must be disclosed by the respective agency to the extent that such information is not “turned over to the Board, but rather produced by the Board, and is public information from the moment it is [included] in the Board’s five-year budget.”

Case law on the right to access to information on private government contractors or providers of public services

The Constitutional Court of Peru, in a decision of August 27, 2010, addressed the obligation of private parties that provide public services to disclose requested information relating to their activities. In this case, a citizen requested that a private company (an electrical power service provider) disclose information relating to service complaints over the past five years. The company had refused to turn over the information. The Court ordered that it disclose the requested information, holding that, “[w]ith respect to access to information in the possession of non-state entities, that is, private legal entities, not all of the information they possess is exempt from disclosure. Bearing in mind the type of work they perform, it is possible for them to have some information that is public in nature, and that the general public is therefore entitled to request and obtain. In this context, the entities subject to requests for this type of information are those that, in spite of being private, provide public services or exercise government functions as provided [by law].” Indeed, according to the Court, “[p]rivate legal entities that...
perform public services or government functions are obligated to provide information on the nature of the
public services they provide, their fees, and the government functions they perform. This means that
accessible information must always pertain to one of these three aspects, and not to any others.”

39. In a decision dated April 29, 2009, Court No. 2 for Administrative Disputes and Tax
Matters of the Autonomous City of Buenos Aires, heard a petition for amparo stemming from the refusal
of the Government of the City of Buenos Aires (hereinafter GCBA) to provide information related, inter
alia, to the names of individuals associated with various private security firms, their percentages of
ownership in the firms, and their membership in the armed forces. In relation to the classification and
nature of the requested information and the criteria for considering it sensitive or classified, the Court held
as follows: “[n]o part of the requested information can be considered sensitive under the terms of Article 3
of Law 1845. This is obvious. […] The GCBA has also not asserted, nor does it arise from any applicable
law, that the requested records are classified for reasons of national or local security, or for strategic or
intelligence reasons—a situation that would obviously not make the records inviolable, but could require
greater care in judicially manipulating the disclosure of their content. In sum, neither the nature of the
information requested, nor the characteristics of the database, provides any evidence to support the
GCBA’s restriction of the information that is the subject of the petition.”

40. Additionally, in this case, the Court found that access to the information had “institutional
gravity,” to the extent that it facilitated compliance with some legal provisions relating to the transition
from dictatorship to democracy in Argentina. Indeed, the Court found that, “Law 1913 (…) establishes as
a requirement for the provision of private security services that the provider not have been convicted or
pardoned for crimes that are human rights violations. […] In this case, the information on individual
members of the agencies is of even greater institutional relevance. […] The institutionalization of the right
to information and the institutionalization of criticism are conditions sine qua non of a democratic society.”
Accordingly, the Court concluded that, “the mere possibility that persons who participated in human rights
violations during the last military dictatorship could directly or indirectly form part of business
organizations engaged in the provision of private security services is of such a magnitude that it is hard to
imagine what reasons the GCBA might have in mind for preventing the disclosure of the requested
information, using clearly avoidable procedures to do so.”

8. Case law on the subject matter of the right to access and the definition of public
document

41. In a decision of April 29, 2009, Court No. 2 for Administrative Disputes and Tax
Matters of the Autonomous City of Buenos Aires held as follows with regard to the subject matter of the right to
access: “the aforementioned rules are related to the basic principle of the disclosure of acts of
government, its nature being access to the information contained in documents—that is, physical formats
of any type. As such, it does not concern access to the news, in the sense of the product or outcome of
an activity performed by third parties; rather, it concerns direct access to the source of information—in this
case, to the document.” In the Court’s opinion, “the activity of the government vis-à-vis the exercise of the
right of access does not exactly consist of the provision of a benefit, but rather of intermediation. Certainly this configuration of the right entails some inevitable institutional requirements, including the prior existence of the document as an assumption for the exercise of the right. It can be held that the right to access to government documents is, structurally, a right to the freedom to be informed, which is based on the democratic principle of the disclosure of the information that is in the State’s possession.”

42. On this same issue, in a decision handed down on March 18, 2011, the Constitutional Division of the Supreme Court of Costa Rica reiterated that, “citizens or individuals can access any information in the possession of the respective public entities and bodies, regardless of its format, whether it be documentary (files, records, archives), electronic or digital (databases, electronic files, automated filing systems, diskettes, compact discs), audiovisual, tape-recorded, etc.”

9. Case law on the material possibility of disclosing the requested information

43. In Judgment 354/11, of November 22, 2011, the Court of Civil Appeals of Uruguay (Third Rotation) ordered the Ministry of Interior to provide the following information: the number of labor union organizations in a field, the number of members in each organization, and the number of labor union hours requested and granted in the period from February to November, 2011. In this case, the Ministry met the request for the specified information with silence, having reportedly stated before the court that its denial of access was justified on the basis of physical (nonexistent information) and legal (sensitive information) impossibility.

44. With regard to the impossibility of turning over information, the Court preliminarily dismissed “the respondent’s simple assertion that it does not possess the records requested, and that the subject matter of the request is therefore impossible.” With respect to the subject matter of the information, the Court found it necessary “to examine whether the plaintiff’s request entails the ‘production of information,’” to which, according to the Court, the respondent would not, in principle, be obligated. The decision stated that, “it must be understood that the request is for information about: (a) the number of labor union organizations in the field; (b) the number of members in each one; (c) the number of labor union hours requested from February 2011 to the present (specified month by month) for each organization; (d) the number of hours granted by the Ministry to each organization from February to the present.” The Court thus opined that, “to the extent that the data, although not systematized, can be recorded in some form in the respondent’s records and proceedings, it must be underscored that there is no demand for ‘production,’ but rather simply for compilation. Therefore, it is clear that they are not exempt from the potential aim of the ‘improper habeas data’—as the provisions of Law 18.381 have been referred to in scholarly writings.” This is the case, in that the Ministry, “at least in paying the salaries of its employees, had to have made records from which much of the information requested by the plaintiff can be gleaned.” In addition, “the number of labor unions recognized by the respondent must be evident at least from the deduction of union dues from payments and/or the allocation of ‘labor union hours’ of leave granted to its employees. The number of members of each labor union can also be easily calculated in


view of identical considerations, and the number of hours requested and granted will also emerge from those records."  

45. The Constitutional Court of Peru, in a decision of August 22, 2011, ruled that the defense alleging the nonexistence of information was inadmissible to justify the denial of access. In the opinion of the Court, the guarantee of the right to access to public information "includes not only the obligation of public bodies to turn over the information requested but also that the information be complete, up-to-date, accurate, and true. Thus, if the right to access to information in its positive aspect imposes the duty to inform upon government bodies, in its negative aspect it requires that the information provided not be false, incomplete, fragmented, circumstantial, or confusing."  

46. In this case, a municipal government had alleged the "nonexistence" of the "file in which the property title was granted." The Constitutional Court rejected this defense on the argument of the government's duty to safeguard information storage media. The Court held that, "although it is inferred [...] that the information requested by the plaintiffs was transferred from one file to another, it is the responsibility of the municipality to keep such information, and therefore it cannot avail itself of its "nonexistence" in order to avoid its obligation to provide it to the plaintiffs." The Court determined that, "the necessary procedures to locate the requested documentation must be exhausted. In its absence, and if it is proven to have been lost, the pertinent administrative file must be reconstructed, in order for copies to then be provided to the interested parties."  

10. Case law on the right to access to information on the salaries and incomes of public servants or contractors paid with public funds  

47. In decision TC/0042/12 of September 21, 2012, the Constitutional Court of the Dominican Republic ruled on a motion for the review of an amparo petition relating to the denial of access to information on the payroll and salaries of advisers working for the House of Representatives. The Court found that information relating to "names, positions, and salaries" in a public entity (House of Representatives) was not confidential. To reach this conclusion, the Court found it necessary to "weigh" the fundamental rights in apparent conflict—that is, the right to access to information and the right to privacy. This takes account of the fact that, according to one of the positions argued in the case, access to information relating to payroll and salaries—because it is private in nature—could "leave open the possibility of penetrating the private sphere of individuals.

48. In its balancing test, the Court found that "a name is a piece of information that makes it possible to identify people individually. [But it does not] involve data or information that every person might keep in a private personal and family space, removed from outside interference." It further considered that, "the purpose of the right of free access to public information is to monitor the use and management of public resources and, consequently, to put up obstacles to government corruption." Based on these premises, the Court concluded that "although the right to privacy is a fundamental value in the democratic system, just like the protection of personal data, they cannot (sic) generally—although they can in exceptional cases—restrict the right to free access to public information, since limiting it would deprive citizens of an essential mechanism for the control of government corruption."
49. In a decision of November 30, 2010, the Constitutional Court of Guatemala found that the State’s positive duty to publish information on salaries and other emoluments of public servants on its own initiative was consistent with the Constitution. In the Court’s opinion, “those numbers are in the public interest by reason of their origin, which is the national treasury, the product of tax revenues paid by the citizens for the financial support of the State.” It added that, “the citizens, being the holders of the sovereignty delegated to the government, have the prerogative to access the information administered by the government in and for the performance of its duties […] including the manner in which government resources are invested. The remuneration of public officials, employees, servants, and advisors to the public sector are, without a doubt, an important item in this respect. Herein lies the inflection point that validates the difference in treatment under the law of individuals who belong to this category, in terms of the open disclosure of their remuneration, as opposed to those in private sector employment relationships.”

50. Finally, the Court found that the information on salaries and other emoluments derived from public funds could not be considered “information included within the core of constitutionally protected personal privacy.” It also found that although it “was not indifferent to the climate of insecurity that afflicts Guatemalan society,” it was of the opinion “that such situation was not attributable to the legislative decision” being reviewed.

51. In a judgment handed down on June 9, 2011, the Federal Supreme Court of Brazil upheld the suspension of the effects of two precautionary measures that barred the disclosure on a website of data on the incomes of public servants employed by the municipality of São Paulo. The precautionary measures had been granted by a lower court at the request of two organizations, under the theory that the disclosure of the information was a violation of the employees’ rights to privacy and private life. In examining the case, the Supreme Court weighed the conflicting rights and concluded that the salaries of the municipal employees was information “of collective or general interest,” and that it was therefore subject “to official disclosure.” According to the Court, in this specific case, the public disclosure of the information did not pose a risk to “the security of the State or society as a whole.” It was also not a violation of the employees’ privacy or private lives, since “the data subject to disclosure referred to state agents (…) acting ‘in that capacity’”, and therefore the disclosure of the information is “the price they pay for choosing a career in public service in a republican State.”

11. **Case law on the obligation to have a simple, rapid, and free administrative procedure for obtaining access to information**

52. In a constitutionality decision handed down on November 30, 2010, the Constitutional Court of Guatemala addressed the State’s duty to provide an administrative mechanism for gaining

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access to information at all levels. In this case, the Court dismissed the constitutional challenge alleging that the Access to Information Act should have been passed by a special majority because it affected the autonomy of certain entities (the Act ordered the creation of information units in all government offices, including decentralized and autonomous agencies, as well as the creation of procedures to guarantee access to information). The Court held that the Act did not change the regulation of autonomous entities to the point of “altering their structure, functions, and responsibilities.” In the Court’s opinion, the Act, by creating “rules and procedures for all persons to be able to gain access to the information contained in the records, files, databases or systems of government offices” develops a “general mandate that concerns all levels of government, and does not affect the essential powers, responsibilities, or structure of decentralized or autonomous entities.” Therefore, it was not necessary to have “the favorable vote of the qualified majority in order to validly enact the challenged law.”

53. The Supreme Court of Panama, in a December 27, 2011 decision, ordered the disclosure of copies of files pertaining to the allocation of land titles, determining that the Ministry of Agricultural Development had hindered access to information by requesting that the petitioner demonstrate particular interest. The Court found that, “since it was not confidential or restricted, the petitioner was fully entitled to request [the information], and therefore the respondent authority’s demand was not necessary for the provision of the copies.” The Court dismissed the ministry’s reasons regarding the complexity of turning over the information, observing that the authority should have “communicated the reasons for the complexity to the petitioner in writing” when it responded to the request at the administrative level, and not at the judicial stage of the proceedings. It concluded that, “the information requested is not confidential or restricted, and therefore the authority had the obligation to heed the request and provide the respective information in writing within the 30-day period established in Article 7 of the Act, with the possibility of extending the period for an additional 30 days if the request was complex or extensive, through written notification to the requesting party of the extension of time and its justification.”

54. At the same time, amparo appeal decision 168/2011 of November 30, 2011, handed down by the First Division of the Supreme Court of Mexico, ruled on the effectiveness of the administrative guarantee of the right to access to information. The Supreme Court recognized the duty of all parties subject to the Transparency and Access to Public Information Act, including the Office of the Attorney General, to “comply unconditionally with the resolutions issued by the Federal Institute for Access to Public Information in ruling on motions for review,” and added that “the use of de jure or de facto remedies aimed at blocking timely and effective access to public information” shall not be valid. This ruling addressed the fact that the Office of the Attorney General had refused to provide access to preliminary investigations, whether through legal channels (challenges to the decisions of the IFAI) or through the unlawful denial of fundamental rights (not turning over the information).

12. Case law on the duty of the State to justify a decision to deny access to information


55. In a decision dated June 5, 2012, the Supreme Court of Panama heard a *habeas data* action in which a request was made to the Research and Development Department of the Aquatic Resources Authority of Panama for access to a file that contained a request to research genetically modified salmon. The department’s reply was outside the legal time limit, and it denied access to the information on the grounds that it was “restricted.” The Court determined that “even when the public servant who receives a request for information does not possess it, or considers it to be restricted, that public servant has the obligation to communicate this to the petitioner, or specify where the petitioner can obtain the requested information in the event that it is an extensive or complicated request; for this, the public servant […] has a period of thirty (30) days.” The Court also underscored the duty of government bodies to justify in detail every refusal to turn over information: “the institutions of the State that refuse to provide information on the grounds that it is confidential or restricted, must do so in a well-founded decision, establishing the reasons for the denial, as well as the legal basis for those reasons.” In addition, the Supreme Court held that the government body must also explain in writing to the petitioner “the reasons for which it failed to respond to the request on time,” in those cases in which the reply is not issued within the legally established time period.

13. **Case law on affirmative administrative silence**

56. The Court of Civil Appeals of Uruguay (Third Rotation), in Judgment 354/11 of November 22, 2011, found that failing to reply to a request for information from an individual triggered the government’s obligation to turn over the requested information by virtue of the concept of affirmative administrative silence. On this point, it stated: “[t]he provision [Article 18 of Law 18.381] states that the interested party ‘shall be able to access,’ which, in conjunction with the aforementioned section (affirmative silence), leads to the conclusion that the absence of an express decision, unlike what is set forth in the Constitution of the Republic in relation to a common administrative petition, assumes that the petition is admitted—not denied.” The Court concluded that: “the legal system prioritizes the right to information over the government’s delay in rendering a decision.” This is in the application of “a type of ‘rule of admission’ similar to that established under our procedural law when there is no effective challenge.”

14. **Case law on the obligation to provide an appropriate and effective judicial remedy**

57. In a May 28, 2010 decision, the Third Chamber of the Civil and Commercial Appeals Division of the Province of Salta, Argentina ruled on a petition for *amparo* stemming from a request for access to information detailing government advertising expenditures in the Province of Salta. Before ruling on the merits, the Court considered the admissibility of *amparo* to address violations of fundamental rights, including the right to access to information, while administrative proceedings (seeking access to information) are still pending. The Court opined that: “preliminarily, it is necessary to establish that—by constitutional mandate—the action of *amparo* is admissible with respect to any decision, act, or omission
the rights and guarantees explicitly or implicitly recognized in the national and provincial constitutions, for purposes of putting a stop to the harm committed or the threat of harm (art. 87 of the Constitution of Salta).”

58. The case discussed whether the amparo was admissible, inasmuch as the act of authority (of the Office of the Governor of Salta) that denied the access was not a final decision but rather a “mere opinion.” In the Court’s view, “the preclusion of the amparo because of the existence of other appeals cannot be founded on a merely procedural appraisal, since the purpose of amparo is to effectively protect rights rather than to arrange or protect spheres of jurisdiction. Indeed, in principle, opinions—including those of which the parties have been notified—are not the proper basis for an amparo petition, as they are not administrative acts in themselves, but rather mere preparatory acts.” Nevertheless, the Court found that, “the argument in question is not worthy of consideration, given that the procedural position taken by the Office of the Governor on the record finds support in, and coincides with, the legal grounds of the opinion being challenged by the amparo petitioner. As such, referring the case to the conclusion of the pending administrative proceeding would amount to a solution that is merely procedural, and contrary to the proper service of justice.” Thus, according to the Court, “it is not necessary to go through administrative proceedings prior to filing an amparo petition if, it being filed directly, the public authority objects to the petitioner’s argument and upholds the legitimacy of the harmful act in the amparo proceedings; otherwise, the requirement of exhausting administrative proceedings would be transformed into a useless procedure.” In this respect, “the position taken in the instant case is the one that is most consistent with the jurisprudence of the Inter-American Court of Human Rights, inasmuch as the State must guarantee the existence of a simple, rapid, and effective judicial remedy to challenge the denial of information in violation of the right of the requesting party and, if appropriate, to allow for the pertinent body to be ordered to turn it over (Case of Claude Reyes et al. v. Chile). On the contrary, sending the petitioner to conclude the administrative proceedings that resulted from his request for information would violate the principles of simplicity, expediency, and effectiveness of the judicial remedy upheld by the Inter-American Court.”

59. The Constitutional Court of Guatemala, in an August 24, 2010 decision concerning the existence of an effective judicial mechanism for the protection of the right to access to information, held that “all government acts are public, with the exceptions contained in the Constitution. Interested parties have the right to obtain, at any time, the reports, copies, reproductions, and certifications they request, and to view the files they wish to consult, unless they pertain to military or diplomatic national security matters, or to information provided by individuals under a promise of confidentiality. Amparo as a guarantee against arbitrariness is viable in the prioritization of this constitutional right, which must be fully respected.”

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60. In a decision handed down on September 5, 2010, the Constitutional Court of Peru addressed the simplicity of the judicial proceeding of habeas data for purposes of guaranteeing access to public information. In its rejection of the lower court’s arguments regarding the supposed existence of special admissibility requirements, the Court found that, “[i]n a habeas data case, the only prerequisite for filing the complaint is that provided in Article 62 of the Code of Constitutional Procedure. An unsatisfactory response, or silence on the part of the requested party, are reasons for the court to act in order to reestablish the exercise of the violated right.” The Court also found that “in habeas data cases, the courts must adhere strictly to Article 62 of the Code of Constitutional Procedure, according to which the only prerequisite for filing the claim is the written, dated request and the respondent’s refusal to turn over the information requested.”

15. Case law on active transparency

61. The Constitutional Division of the Supreme Court of Costa Rica, in a March 18, 2011 decision, reiterated “the duty of public entities to provide information, [in view of which they] must provide facilities and eliminate existing obstacles. News professionals are intermediaries between public entities and the recipients of the information, and therefore they also have the right to obtain information and the duty to convey it as accurately as possible. The subject matter of the right to information is news, and therefore those events that may be of public significance must be understood as such.”

62. In Judgment 48 of September 11, 2009, the Trial Court of Mercedes, Uruguay (Second Rotation) ruled on a habeas data petition filed against the Departmental Board of Soriano, seeking the disclosure of information on the procurement of government advertising. In relation to the principle of active transparency, the Court found that the information on the procurement of government advertising should have been disclosed by the respective agency, not only upon request but also on its own initiative—to the extent that such information is not “turned over to the Board, but rather produced by the Board, and is public information from the moment it is [included] in the Board’s five-year budget.” Furthermore, according to Article 5 of the Access to Information Act, such information must be disseminated “on an ongoing basis” because it is “information about an allocated budget and its execution.”

16. Case law on the duty to disseminate truthful information on sexual and reproductive rights

63. In decision T-627 of 2012, handed down on August 10, 2012, the Constitutional Court of Colombia ruled on a special petition for a constitutional remedy (tutela) filed by a group of 1279 women

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against employees of the Office of the Attorney General of the Nation. In this case, the women stated that employees of the Attorney General’s Office, in various contexts and by various means, had failed to recognize their right to accurate information on sexual and reproductive rights. The women alleged that the Attorney General’s Office had misinterpreted decisions of the Constitutional Court relating to several of these rights, such as the voluntary termination of pregnancy under legally permissible circumstances, the mandatory nature of campaigns to promote those rights, the absence of institutional conscientious objection in such contexts, and others. The Constitutional Court found that the appropriate framework for examining the case was, in principle, sexual and reproductive rights, which include “reproductive self-determination, access to reproductive health services, and the right to information on reproductive matters.”

64. With respect to the right to access to information on reproductive issues, the Court found, consistent with the inter-American standards, that: “both Article 20 of the [Colombian] Constitution and Article 13 of the ACHR on the right to information, by not having any limitation in terms of subject matter, protect information on reproductive issues and, consequently, all of the rules on its content that were summarized in paragraphs 4 to 6 are also applicable here. Nevertheless, in the aforementioned thematic report [Access to Information on Reproductive Issues from a Human Rights Perspective]94, the IACHR identifies some of the international standards that are especially important on this issue and that the Court finds worth mentioning: (i) the obligation of active transparency, (ii) access to information, and (iii) the obligation to disclose timely, complete, accessible, and reliable information.”95

65. Later, the Court acknowledged the fundamental importance of the right to access to information in the context of sexual and reproductive rights. It held, in the following terms, that it was essential to the exercise of individual autonomy and to the eradication of discrimination against women: “If information is important for the exercise of all fundamental rights, insofar as it makes it possible to know their content and the mechanisms for asserting them, it becomes vital when it concerns reproductive rights, especially in the case of women. There are two reasons for this. First, […] this category of rights makes it easier […] to make decisions freely on different aspects of reproduction, and without information on the available options and the ways in which to make use of them, it is impossible to do so. The second reason is that one of the mechanisms for perpetuating the discrimination historically experienced by women has been—and continues to be—precisely to deny or hinder access to accurate and impartial information in this area, with the objective of denying them control over this type of decision. In its recent report on the issue, the IACHR recognized this, and thus noted that the States parties to the ACHR must permit access to information on those issues, and furthermore, must provide them on their own initiative (duty of active transparency).”96

66. The Court found that when the employees of the Attorney General’s Office express themselves—like all public servants acting in their official capacity—they do not do so in the exercise of their freedoms, but rather in the exercise of an authority governed by and subject to the principle of legality in government. The expressions of public servants are then, according to the Court, manifestations of the exercise of the “power/duty of communication with the public.” This power/duty is subject to certain limits, which, according to the Court, are as follows: “(i) accuracy and impartiality in conveying information; (ii) minimally sufficient factual justification and reasonableness of its opinions and, in all cases, (iii) respect for fundamental rights, especially of those subject to special constitutional protection.”97 In addition to these limits, the Court found that the abuse of the power/duty of

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communication or of a public servant's authority should be held to strict standards in light of the
"prominent status [of the public servant] vis-à-vis the public," especially "when the mass media are
used."

67. In this specific case, the Court evaluated three circumstances pertinent to the right to
access to information. First, it considered that the Attorney General, by changing the meaning of an order
of the Constitutional Court related to sexual and reproductive rights in an official statement "violated the
public's right to receive information or to be accurately informed of a matter of public interest." Indeed, the
Court affirmed that "this public servant changed the meaning of the order in the aforementioned judgment
by referring to 'the order […] to design and implement mass campaigns to promote abortion as a right,'
when in reality the operative part of the judgment ordered 'mass campaigns to promote sexual and
reproductive rights to help ensure that women throughout the country can freely and effectively exercise
these rights.' It is clear that the Court did not order the promotion of abortion, as the Attorney General
asserted in the statement […]. The Attorney General exceeded one of the limits that this Court has
imposed on the exercise of his power/duty of communication with the public, which is the accuracy of
information." Second, the Court found that one of the employees of the Attorney General's Office, by
publicly asserting the supposed unenforceability of Judgment T-388 of 2009 (in which the Court ordered
campaigns to promote sexual and reproductive rights), and suggesting the need to wait for the decision
on a motion to vacate that judgment, had "violated the fundamental right of the country's women to
information on reproductive matters," by delaying the execution of the campaigns to promote sexual and
reproductive rights. Finally, in relation to the scientific nature of emergency oral contraception, staff
members of the Attorney General's Office stated in the mass media that it was an "abortifacient." After
evaluating the scientific evidence in the case, the Court found that the official position of the Attorney
General's Office was inconsistent with the expert science, and therefore disregarded the limits of the
"power/duty of government employees to communicate with the public," and threatened the sexual and
reproductive rights of women. With respect to this issue, the Court ordered "the modification of the official
position of the Office of the Attorney General inasmuch as, in Colombia: (i) emergency oral contraception
prevents conception and does not cause abortion, (ii) its use is not restricted to the situations in which
abortion is decriminalized, (iii) women who avail themselves of it outside the decriminalized grounds for
abortion do not, in any case, commit the offense of abortion, and (iv) it is part of the reproductive health
services that Colombian women are free to choose. Furthermore, said modification must be made (i) by
the Attorney General, (ii) publicly, and (iii) as widely and with the same relevance as the statements given
to the newspaper El Espectador on December 7, 2009."

17. Case law on access to information consisting of personal data

68. In a decision of March 14, 2007, the Superior Court of Justice of Brazil ruled on a
habeas data petition, ordering the Commander of the Air Force to provide a Chief Petty Officer with
copies and certifications of all of the documents used to support the Air Force's decision to deny him the
right to enroll in a course for a promotion. The Court concluded that such information was not confidential,
notwithstanding the existence of laws that established it as such. It found that the disclosure of the
information requested did not entail a risk "to the security of the State or society." On this point, the Court
cited the opinion of the Prosecutor, who considered that the disclosure of the information did not affect
national security: “the concept of national security […] is not elastic; it should not be interpreted so broadly that it favors and promotes secrecy and authoritarianism, directly opposing the principle of democracy. […] The information contained [in the documents] is eminently private material that is unrelated to the concept of national security, which includes specific situations involving the defense of national borders, the keeping of the peace at home and abroad, and the preservation of democratic institutions.”

69. Decision T-1037 of 2008, handed down by the Constitutional Court of Colombia on October 23, 2008, dealt with the case of a journalist to whom a security team had been assigned—because of threats she had received—and then withdrawn. During the tutela (amparo) case, it was learned that the assigned bodyguard had been conducting intelligence activities unlawfully and without the journalist’s knowledge. On the issue of tutela, initially meant to address the reestablishment of the security team, the Court also observed the violation of the journalist’s right to know and control her personal data or habeas data. In this context, the Court recognized the right of access to one’s own personal information in State intelligence records, and ordered the State security agency to provide all personal information it had on the journalist. The Court stated, “in principle, and unless there is a law that establishes otherwise, the information contained in State records is public. However, if this information concerns the private, personal, or confidential data of an individual, and those data are not of public relevance, in principle, they can neither be captured and filed away nor disclosed, as they are protected by the right to privacy. Nonetheless, if the information is contained in an official record—unless it is expressly classified—the individual owner of that data has the fundamental right to access it.”

Later, the Court concluded: “indeed, a person who has requested and obtained the protection of the State because she is at extraordinary risk has a fundamental constitutional right to know all of the information about her contained in intelligence records and all of the reports prepared by the persons in charge of protecting her, with the exception of information that is part of a judicial investigation and is subject to confidentiality on that basis.”

18. Case law on the general system of limits to the right to access to information

70. The Constitutional Division of the Supreme Court of El Salvador, in a decision of December 5, 2012, held that the Regulations to the Public Information Access Act that introduced additional criteria to those established in the Act itself for the classification of confidential information constituted an excess of jurisdiction. On this point, the Court held that the regulations had failed to recognize the legal status of the right to access to information as a fundamental right. Indeed, the Court opined that, “one of the things regulations cannot do is to limit fundamental rights, and therefore it has been made clear that regulations only have the authority to regulate fundamental rights, while a limitation or restriction of rights can only be made by statute” (italics in the original). The Court continued, “Art. 29 RELAI [the challenged article] in fact adds other ‘grounds of confidentiality’ to the ones provided for in Art. 19 LAI [Access to Information Act], to wit: hindrance to the performance of the requested body’s duties, national security, political security, and national interest.” According to the Court, “the assumptions of confidential information operate as reasons to prevent individuals from accessing public information or, in other words, to limit the exercise of this fundamental right. This characterization of the reasons for confidentiality, which are added by the regulations, is the key to ruling on the alleged unconstitutionality, as (...) limitations to fundamental rights are typically the subject of the regulatory activity of the Legislative Assembly by statute.” The Court thus concluded that, “no regulation or regulatory instrument other than a statute can create or impose limitations to the right to access to information.”

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Also regarding the limits to the right to access to information, the March 18, 2011 decision of the Constitutional Division of the Supreme Court of Costa Rica reiterated the following: 

(1) The subject matter of the right is 'information on matters of public interest,' so that when the government information that is sought is not about such a matter, the right is diminished and the information cannot be accessed. 

(2) The second limit is established in Article 30(2) of the Constitution, which stipulates that, 'State secrets are exempt.' In the Court’s opinion, “the handling of State secrets, insofar as they are an exception to the constitutional principles or values of transparency and disclosure in government, must be interpreted and applied, at all times, restrictively. [...] As far as the restrictions or extrinsic limits to the right to access to government information are concerned, there are the following: (1) [...] public morals and public order; (2) the sphere of privacy that is inviolable by all other legal persons, so that the private, sensitive, or nominative information that a public entity or body has gathered, processed, and stored, and has in its physical or digital archives, records, and files, cannot be accessed by any person [...] ; and (3) the investigation of crimes.” 

Finally, in decision T-1037 of 2008, handed down on October 23, 2008, the Colombian Constitutional Court ruled on the right to access one’s own personal information contained in government files, and on the application of the so-called principles of habeas data recognized in Colombian case law. It held “that the information contained in State databases—including intelligence reports—cannot be kept confidential from the individual owner of the information, at least until and unless a statute consistent with the Constitution is passed. The exception to this is if there is express legal authorization for it—for example, if the information is part of a criminal investigation that, consequently, despite being confidential, is reviewed by a court. Indeed, at least for now, only this type of information can legally be kept confidential from its owner.” 

The Court later concluded, “given that intelligence data can only be kept confidential from its owner if so established by a law that is specific, clear, and compatible with the Constitution, and that the existing provisions support only the confidentiality of information that is part of a judicial investigation, only this information may be withheld from its owner.” Based on these arguments, the Constitutional Court ordered the security agency of the Colombian State to turn over all of the petitioner’s personal information that had been unlawfully obtained.
CHAPTER V
CONCLUSIONS AND RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its annual report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example in the area of respect, protection, and promotion of the right to freedom of expression.

A. Violence against journalists and media outlets

2. According to the information received by the Office of the Special Rapporteur, at least 26 people have been murdered in the region, while several others disappeared or were dislocated from the areas in which they worked, for reasons that could have been related with their exercise of freedom of expression. In addition to these tragic events, there were dozens of complaints of violence, attacks, threats, and intimidation against communicators and media outlets, presumably in connection with their exercise of freedom of expression.

3. It is important to highlight that during 2012 there was also important progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity.

4. On this point, as in previous years, the Office of the Special Rapporteur recommends that member States:
   a. Adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression.
   b. Adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals.
   c. Carry out serious, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.
   d. Bring to trial, before impartial and independent tribunals, all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, and provide adequate reparations to the victims and their family members.
   e. Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the States must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

B. Criminalization of expression and proportionality of subsequent liability

5. Some Member States witnessed criminal complaints filed by State officials in response to the publication of opinions or information related to matters in the public interest. It is true that in some of the cases studied, the criminal proceedings were dismissed. However, in others the judges issues
criminal convictions against the journalists. The Office of the Special Rapporteur verifies that there are still criminal codes that have yet to be adjusted to inter-American standards on the subject of freedom of expression, and that allow for the imposition of disproportionate measures that can have the kind of chilling effect that is incompatible with a democratic society. Similarly, the Office of the Special Rapporteur received information on the need to adjust civil laws to prevent the disproportionate use of pecuniary sanctions.

6. Likewise, the Office of the Special Rapporteur observes that it is necessary for States to design regulatory frameworks that respect the exercise of social protest. States must not fail to take into account that, when facing institutional frameworks that do not favor participation or that present serious barriers to accessing more traditional methods of mass communication, public protest can become the only method that truly permits sectors that are discriminated against or marginalized from the public discourse to make their points of view heard and considered.

7. In regard to statutes that criminally or civilly sanction expression, the Office of the Special Rapporteur recommends that Member States:
   a. Promote the repeal of contempt (desacato) laws, whatever their form, given that these norms are contrary to the American Convention on Human Rights and restrict public debate, an essential element of the practice of democracy.
   b. Promote the modification of laws on criminal defamation with the objective of eliminating the use of criminal proceedings to protect honor and reputation when information is disseminated about issues of public interest, about public officials, or about candidates for public office. Protecting the privacy or the honor and reputation of public officials or persons who have voluntarily become involved in issues of public interest, should be guaranteed only through civil law.
   c. Promote the inclusion of inter-American standards in civil legislation so that civil proceedings against individuals who have made statements about public officials or about matters of public interest apply the standard of actual malice, in accordance with principle 10 of the Declaration of Principles, and are proportionate and reasonable.
   d. Promote the modification of ambiguous or imprecise criminal laws that disproportionally limit the right to freedom of expression, such as those aimed at protecting the honor of ideas or institutions, with the aim of eliminating the use of criminal proceedings to inhibit free democratic debate about all issues of public interest.
   e. Establish clear regulations that guarantee the legitimate exercise of social protest and that impede the application of disproportionate restrictions that can be used to inhibit or suppress expressions that are critical or dissenting.

C. Statements of high-level State authorities

8. In 2012, the Office of the Special Rapporteur continued to receive information on statements made by high-ranking State officials discrediting the journalistic work of some communicators, media outlets and non-governmental organizations, accusing them of illicit acts based on the editorial slant of the media outlet or journalist or the watchdog activities of the organization. It is particularly concerning that in some of these cases, the statements were followed by violence or the opening of disciplinary procedures that threatened the permanent withdrawal of operating concessions, permits, or licenses of critical media outlets. The Office of the Special Rapporteur exhorts State authorities to contribute decisively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for them.

9. Regarding statements of high-level State officials, the Office of the Special Rapporteur recommends that member States:
a. Encourage democratic debate through public declarations, practices, and policies that promote tolerance and respect of all individuals, under equal conditions, whatever their thoughts or ideas.

b. Exhort the authorities to refrain from making public statements or using state media outlets to carry out public campaigns that can encourage violence against individuals because of their opinions. In particular, avoid statements that could stigmatize journalists, media outlets, and human rights defenders.

D. Prior censorship

10. The Office of the Special Rapporteur received information about judicial decisions that prohibited the circulation of information of public interest this year. Member States must take into account that Article 13.2 of the American Convention explicitly establishes that the exercise of the right to freedom of expression shall not be subject to prior censorship.

11. On this point, the Office of the Special Rapporteur recommends that member States:

a. Eliminate any norm that enables prior censorship by any state organ, and also any prior condition that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

E. Discriminatory distribution of government advertising

12. The Office of the Special Rapporteur received complaints pertaining to distribution of government advertising that was intended to punish or reward media outlets according to their editorial positions. It is necessary for member States to have statutory frameworks that establish clear, transparent, objective, and non-discriminatory criteria for determining the distribution of official advertising.

13. On this point, the Office of the Special Rapporteur recommends that member States:

a. Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or coverage of certain information, whether through the discriminatory and arbitrary assignment of government advertising or other indirect means aimed at impeding communication and the circulation of ideas and opinions.

b. Regulate these matters in accordance with the current inter-American standards on freedom of expression.

F. Progress on access to information

14. During this period, the Office of the Special Rapporteur once more noted the incorporation of the inter-American system's standards on access to information into the domestic legal regimes of several States, either through the approval of special access to information laws or through decisions by their domestic courts. However, it was noted that in several Member States there continue to be difficulties in regulating the exceptions to the exercise of this right and in the implementation of some laws.

15. With regard to access to information, the Office of the Special Rapporteur recommends that Member States:

a. Continue promulgating laws that permit effective access to information and complementary norms that guarantee its adequate implementation, in conformity with the international standards in this area.
b. Guarantee effectively, both de jure and de facto, the right of habeas data of all persons, this being an essential element of freedom of expression and the democratic system.

c. Encourage the effective and efficient implementation of norms on access to information, adequately training public employees and informing the citizenry in order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process.

G. Allocation of radio frequencies

16. During this period, the Office of the Special Rapporteur continued to emphasize the need for Member States to have a competent authority in charge of radio broadcasting that is technical, independent of the government, autonomous in the face of political pressure, and subject to due process guarantees and strict judicial review. Finally, the Office of the Special Rapporteur observed this year that in some States, processes of allocating licenses or frequencies that are open, public, and transparent, subject to clear and pre-established rules, and only those requirements that are strictly necessary, just, and equitable, have not been implemented.

17. On this point, the Office of the Special Rapporteur recommends that Member States:

a. Ensure the existence of transparent, public, and equitable criteria for the allocation of radio frequencies and the new digital dividend. These criteria must take into account the concentration of ownership or control of communications media, and assign the administration of the radio electric spectrum to an organ independent from political and economic interests, subject to due process and judicial oversight.

b. Promote effective policies and practices that permit access to information and the equal participation of all sectors of society so that their needs, opinions, and interests will be contemplated in the design and adoption of public policy decisions. Additionally, adopt legislative and other measures that are necessary to guarantee pluralism, including laws that prevent the existence of public or private monopolies.

c. Legislate in the area of community radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of equality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the “Joint Declaration on Diversity in Broadcasting.” (2007)

d. Launch regional efforts to regulate the State’s authority to control and supervise the allocation of public goods or resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust institutional frameworks with two central objectives: first, to eliminate the possibility that State authority is used to reward or punish media outlets according to their editorial positions, and second, to foster pluralism and diversity in the public debate.

18. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it during 2012, as well as and the IACHR and its Executive Secretariat for their constant support. The Office of the Special Rapporteur especially recognizes those independent journalists and media workers who, on a daily basis, carry out the important work of informing society. Finally, the Office of the Special Rapporteur profoundly laments the murders of journalists who lost their lives defending the right of every person to freedom of expression and information.
APPENDIX

A. AMERICAN CONVENTION ON HUMAN RIGHTS

(Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969)

Article 13

**Article 13. Freedom of Thought and Expression**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

   a) respect for the rights or reputations of others; or
   b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.
B. INTER-AMERICAN DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION

PREAMBLE

REAFFIRMING the need to ensure respect for and full enjoyment of individual freedoms and fundamental rights of human beings under the rule of law;

AWARE that consolidation and development of democracy depends upon the existence of freedom of expression;

PERSUADED that the right to freedom of expression is essential for the development of knowledge and understanding among peoples that will lead to a true tolerance and cooperation among the nations of the hemisphere;

CONVINCED that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process;

CONVINCED that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of governmental activities and the strengthening of democratic institutions;

RECALLING that freedom of expression is a fundamental right recognized in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59 (1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Covenant on Civil and Political Rights, as well as in other international documents and national constitutions;

RECOGNIZING that the member states of the Organization of American States are subject to the legal framework established by the principles of Article 13 of the American Convention on Human Rights;

REAFFIRMING Article 13 of the American Convention on Human Rights, which establishes that the right to freedom of expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication;

CONSIDERING the importance of freedom of expression for the development and protection of human rights, the important role assigned to it by the Inter-American Commission on Human Rights and the full support given to the establishment of the Office of the Special Rapporteur for Freedom of Expression as a fundamental instrument for the protection of this right in the hemisphere at the Summit of the Americas in Santiago, Chile;

RECOGNIZING that freedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information;

REAFFIRMING that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

CONSIDERING that the right to freedom of expression is not a concession by the States but a fundamental right;

RECOGNIZING the need to protect freedom of expression effectively in the Americas, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopts the following Declaration of Principles:
PRINCIPLES

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.

2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.

4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

5. Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.

8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.

9. The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.
12. Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.

13. The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.
C. JOINT DECLARATIONS

1. JOINT DECLARATION ON CRIMES AGAINST FREEDOM OF EXPRESSION


Having met in Paris on 13 September 2011 and in Tunis on 4 May 2012 and having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression and the Centre for Law and Democracy;


Emphasizing, once again, the fundamental importance of freedom of expression both in its own right and as an essential tool for the defense of all other rights, as a core element of democracy and for advancing development goals;

Expressing our abhorrence over the unacceptable rate of incidents of violence and other crimes against freedom of expression, including killings, death-threats, disappearances, abductions, hostage takings, arbitrary arrests, prosecutions and imprisonments, torture and inhuman and degrading treatment, harassment, intimidation, deportation, and confiscation of and damage to equipment and property;

Noting that violence and other crimes against those exercising their right to freedom of expression, including journalists, other media actors and human rights defenders, have a chilling effect on the free flow of information and ideas in society (‘censorship by killing’), and thus represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas;

Concerned about the particular challenges and danger faced by women exercising their right to freedom of expression, and denouncing gender specific crimes of intimidation including sexual assaults, aggression and threats;

Mindful of the important contribution to society made by those who investigate into and report on human rights abuses, organized crime, corruption, and other serious forms of illegal behavior, including journalists, media actors and human rights defenders, and of the fact that the nature of their professions makes them susceptible to criminal retribution, and that they may, as a result, be in need of protection;

Condemning the prevailing state of impunity for crimes against freedom of expression and the apparent lack of political will in some countries to address these violations, with the result that an unacceptable number of these crimes are never prosecuted, which emboldens the perpetrators and instigators and substantially increases the incidence of these crimes;

Noting that independent, speedy and effective investigations into and prosecutions of crimes against freedom of expression are essential to addressing impunity and ensuring the respect for the rule of law;

Stressing the fact that crimes against freedom of expression, if committed by State authorities, represent a particularly serious breach of the right to freedom of expression and the right to information, but that States also have an obligation to take both preventive and reactive measures in situations where non-
state actors commit crimes against freedom of expression, as part of States’ obligation to protect and promote human rights;

Aware of a number of root causes that contribute to crimes against freedom of expression, such as high prevailing rates of corruption and/or organized crime, the presence of armed conflict and lack of respect for the rule of law, as well as the particular vulnerability of some of those who investigate and report on these problems;

Cognizant of a number of international standards that are relevant to this issue, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949 and their Additional Protocols, the International Convention for the Protection of All Persons from Enforced Disappearance, UN Security Council Resolution 1738 (2006), UN Human Rights Council Resolution 12/16: Freedom of opinion and expression, the 2007 UNESCO Medellin Declaration and the 2010 UNESCO Decision on the Safety of Journalists and the Issue of Impunity;

Adopt, in Port of Spain, Trinidad and Tobago, on 25 June 2012, the following Joint Declaration on Crimes against Freedom of Expression:

1. **General Principles**
   
   a. State officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.

   b. States should reflect in their legal systems and practical arrangements, as outlined below, the fact that crimes against freedom of expression are particularly serious inasmuch as they represent a direct attack on all fundamental rights.

   c. The above implies, in particular, that States should:
      
      i. put in place special measures of protection for individuals who are likely to be targeted for what they say where this is a recurring problem;
      
      ii. ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions; and
      
      iii. ensure that victims of crimes against freedom of expression have access to appropriate remedies.

   d. In situations of armed conflict, States should respect the standards set out in Article 79 of Protocol I additional to the Geneva Conventions, 1977, which provides that journalists are entitled to the same protections as civilians, provided they take no action adversely affecting their status.

2. **Obligations to Prevent and Prohibit**
   
   a. States have an obligation to take measures to prevent crimes against freedom of expression in countries where there is a risk of these occurring and in specific situations where the authorities know or should have known of the existence of a real and immediate risk of such crimes, and not only in cases where those at risk request State protection.

   b. These obligations include the following legal measures:
      
      i. the category of crimes against freedom of expression should be recognized in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature; and
ii. crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e. the time beyond which prosecutions are barred).

c. These obligations include the following non-legal measures:
   i. appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel;
   ii. operation manuals and guidelines should be developed and implemented for law enforcement officials when dealing with crimes against freedom of expression;
   iii. training supported by the State should be available for individuals who may be at risk of becoming victims of crimes against freedom of expression and this issue should be covered in university courses on journalism and communications;
   iv. systems to ensure effective access to information about the circumstances, investigation and prosecution of crimes against freedom of expression, including media access to the courts, should be put in place, subject to appropriate guarantees of confidentiality; and
   v. consideration should be given to putting in place general measures of protection such as providing health care, insurance and other benefit programmes to individuals who may be at risk of becoming victims of crimes against freedom of expression.

3. Obligations to Protect

   a. States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression.

   b. Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression. These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.

   c. States should maintain detailed and disaggregated statistics on crimes against freedom of expression and the prosecution of these crimes, among other things to facilitate better planning of prevention initiatives.

4. Independent, Speedy and Effective Investigations

When a crime against freedom of expression takes place, States should launch an independent, speedy and effective investigation, with a view to bringing to trial, before impartial and independent tribunals, both perpetrators and instigators of these crimes.

Such investigations should meet the following minimum standards:

   a. Independent
      i. The investigation should be carried out by a body that is independent from those implicated in the events. This implies both formal hierarchical and institutional independence, and practical arrangements to secure independence.
      ii. When there are credible allegations of involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully.
iii. An effective system should be put in place for receiving and processing complaints regarding investigations by law enforcement officials of crimes against freedom of expression, which is sufficiently independent of those officials and their employers, and which operates in a transparent manner.

iv. Where the seriousness of the situation warrants it, in particular in cases of frequent and recurrent crimes against freedom of expression, consideration should be given to establishing specialized and dedicated investigative units – with sufficient resources and appropriate training to operate efficiently and effectively – to investigate crimes against freedom of expression.

b. Speedy
   i. The authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.

c. Effective
   i. Sufficient resources and training should be allocated to ensure that investigations into crimes against freedom of expression are thorough, rigorous and effective and that all aspects of such crimes are explored properly.
   ii. Investigations should lead to the identification and prosecution of all of those responsible for crimes against freedom of expression, including direct perpetrators and instigators, as well as those who conspire to commit, aid and abet, or cover up such crimes.
   iii. Where there is some evidence that a crime which has been committed may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is such a crime until proven otherwise, and relevant lines of enquiry related to the victim’s expressive activities have been exhausted.
   iv. Law enforcement bodies should take all reasonable steps to secure relevant evidence and all witnesses should be questioned with a view to ascertaining the truth.
   v. The victims, or in case of death, abduction or disappearance the next-of-kin, should be afforded effective access to the procedure. At the very least the victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests. In most instances, this will require giving access to certain parts of the proceedings and also to the relevant documents to ensure participation is effective.
   vi. Civil society organizations should be able to lodge complaints about crimes against freedom of expression – of particular importance in cases involving killings, abductions or disappearances where the next-of-kin are unwilling or unable to do so – and intervene to in the criminal proceedings.
   vii. Investigations should be conducted in a transparent manner, subject to the need to avoid prejudice to the investigation.
   viii. Restrictions on reporting on court cases involving prosecutions of crimes against freedom of expression should be limited to highly exceptional cases where clearly overriding interests prevail over the particularly strong need for openness in such cases.
   ix. In addition to criminal investigations, disciplinary proceedings should be carried out where there is evidence that public officials have committed crimes against freedom of expression in the course of their professional duties.

5. Redress for Victims

a. Where crimes against freedom of expression are committed, the victims should be able to pursue appropriate civil remedies, regardless of whether or not a criminal act has been established.
b. Where a conviction is entered for a crime against freedom of expression, a system should be in place to ensure that an adequate remedy is provided to the victims, without the need for them to pursue independent legal action. Such remedies should be proportionate to the gravity of the violations, and should include financial compensation, and a range of measures to rehabilitate the victims and to facilitate the return of victims to their homes in conditions of safety and/or to reinstate them in their work if they so desire.

6. **Role of other stakeholders**

a. Inter-governmental organisations should continue to prioritise the fight against impunity for crimes against freedom of expression and use available review mechanisms to monitor whether States are complying with their international obligations in this area.

b. State and non-state donors should be encouraged to fund projects which aim to prevent and combat crimes against freedom of expression.

c. Media organisations should be encouraged to provide adequate safety, risk awareness and self-protection training and guidance to both permanent and freelance employees, along with security equipment where necessary.

d. Relevant civil society organisations and media should be encouraged, as appropriate, to continue to monitor and report on crimes against freedom of expression, to coordinate global campaigns on crimes against freedom of expression, and to consolidate documentation, for example through a central website/portal.

Frank LaRue
UN Special Rapporteur on Freedom of Opinion and Expression

Dunja Mijatoviæ
OSCE Representative on Freedom of the Media

Catalina Botero Marino
OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula
ACHPR Special Rapporteur on Freedom of Expression and Access to Information
2. JOINT DECLARATION ABOUT FREE SPEECH ON THE INTERNET

The UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression.

Washington, D.C., January 20, 2012—The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue, today called on the United States to be vigorous in protecting freedom of speech on the Internet. The Special Rapporteurs recalled that legislation regulating the Internet should take into account the special characteristics of the Internet as a unique and transformative tool that enables billions of individuals to exercise their right to freedom of thought and expression as well as a range of other human rights.

The Special Rapporteurs have taken particular note of the discussions surrounding two Internet piracy bills currently pending in the United States Congress, the Stop Online Piracy Act (SOPA) and the PROTECT IP Act. While these bills pursue a legitimate objective in seeking to protect intellectual property rights, serious concerns have been raised regarding their impact on freedom of expression. In particular, versions of the draft legislation have the potential to silence a good deal of entirely lawful speech, for example by creating an extrajudicial 'notice-and-termination' procedure, by requiring websites to police their user-generated content for copyright infringement, and by allowing for an entire website to be targeted if even a small portion of its content is deemed to infringe. The Special Rapporteurs note with satisfaction that in recent days, certain Congressional leaders stated their intention to suspend debate on SOPA in order to pursue further discussion and consensus, while the Obama Administration announced that it "will not support legislation that reduces freedom of expression, increases cybersecurity risk, or undermines the dynamic, innovative global Internet."

In June 2011, the UN and IACHR Special Rapporteurs joined with their fellow special mandate holders from the Organization for Security and Co-operation in Europe (OSCE) and the African Commission on Human and Peoples’ Rights to issue a Joint Declaration on Freedom of Expression and the Internet. This Joint Declaration states that while freedom of expression, including on the Internet, is not absolute, tailored approaches must be developed that respond to illegal content while recognizing the Internet’s unique characteristics and its ability to deliver positive freedom of expression outcomes. The Declaration states that intermediaries should not be required to monitor user-generated content, and stresses the need to protect them from liability unless they specifically intervene in content or disobey a court order to remove such content. The Declaration further states that jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection.

In addition, all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect legitimate websites and services.

The UN and IACHR Special Rapporteurs call on the United States to uphold international free speech norms, including those reflected in the aforementioned Joint Declaration, which seeks to promote universal access to the Internet while preserving its role as a revolutionary medium for participatory information sharing and collaboration in the creation of content. In considering both domestic legislation and international treaties such as the Anti-Counterfeiting Trade Agreement, States should recall that while freedom of expression may be limited in the pursuit of legitimate objectives such as the prevention of crime or the protection of the rights of others, such limitations should be narrowly tailored and interfere to the least extent possible with the right to freedom of expression. Any measure that affects speech on the Internet should be specifically designed to preserve the Internet's unique capacity to promote freedom of expression by facilitating the free exchange of information and ideas instantaneously and inexpensively regardless of frontiers.
Frank LaRue  
United Nations Special Rapporteur  
On the Promotion and Protection of the Right to Freedom of Opinion and Expression

Catalina Botero Marino  
Special Rapporteur on Freedom of Expression  
Inter-American Commission on Human Rights
D. PRESS RELEASES

1. PRESS RELEASE R126/11

OFFICE OF THE SPECIAL RAPPORTEUR REGRETS DEATH OF JOURNALIST AND SHOOTING AGAINST A NEWSPAPER IN HONDURAS

Washington D.C., December 8, 2011− The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) deeply regrets the death of the journalist Luz Marina Paz, which took place on December 6, and the shooting against the newspaper La Tribuna, on the morning of December 5, and urges the Honduran State to investigate both crimes in an exhaustive, timely and diligent way.

According to the information received, two men on a motorcycle shot to death journalist Luz Marina Paz and a driver, in a neighborhood on the outskirts of Tegucigalpa, when they were heading to the radio station where she worked. The journalist was a host on the show “Tres en la Noticia,” at Cadena Hondureña de Noticias (CHN). Previously she had worked at Radio Globo for 8 years. Paz had a reputation of practicing investigative journalism and being a critic of the coup d’état that happened on June 28, 2009. The Office of the Special Rapporteur for Freedom of Expression had learned that authorities are analyzing different hypotheses about the causes underlying the killing of Luz Marina Paz. However, this office calls on the authorities not to rule out the possibility that the crime was connected to the journalist’s professional activities.

In the case of the shooting against La Tribuna, according to the available information, early on the morning of December 5, several men on a car shot at the building’s main entrance, injured a security employee and caused damages to the newspaper facade. According to the information received, in recent days the newspaper had received several threats after publishing articles about the operation of criminal groups and issues of corruption.

The Office of the Special Rapporteur considers it essential for the Honduran State to clarify the motive for these crimes; identify, prosecute, and punish those responsible; and adopt fair measures of reparation for the victim’s next of kin. The Office of the Special Rapporteur insists that the State needs to create special investigative bodies and protocols, as well as protection mechanisms designed to ensure the safety of those who are being threatened because of their work in journalism. In light of the series of murders committed against journalists in Honduras, it is critical that the State carry out a complete, effective, and impartial investigation of these crimes, which have a negative impact on all of Honduran society.

The Office of the Special Rapporteur reminds the State that Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”
OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER CRIMINAL VERDICT AGAINST JOURNALIST IN ECUADOR

Washington D.C., December 27, 2011—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern regarding the criminal conviction to three months in prison against the director of Diario Hoy, Jaime Mantilla Anderson, issued in Ecuador on December 21 by the Tenth Criminal Court of Pichincha.

According to the information received, the case arose out of a series of reports published in Diario Hoy in September and October of 2009 regarding the current Chairman of the Board of the Central Bank, Pedro Delgado, who sued the journalist. The reports questioned, among other things, the alleged power of Delgado in making important economic decisions. The sentence was issued after the director of Diario Hoy had refused to give the names of the journalists who had written said articles. In the trial, the Judicial Police of Pichincha were ordered to carry out the “immediate localization and capture” of Mantilla, and to transfer him to a prison in Quito. The decision did not establish the payment of damages because the complaint did not request them. According to the information received, after the sentence had been issued, Delgado forgave the journalist and desisted from continuing proceedings. Mantilla expressed his intention to challenge the sentence given that, in his opinion, his right to freedom of expression has been violated.

The existence and application of laws that criminalize expressions offensive to public officials, or desacato laws, in all of their forms, are contrary to inter-American standards in the area of freedom of expression. The Inter-American Commission on Human Rights, based on the American Convention on Human Rights, established more than a decade ago that the use of the criminal law to sanction expressions about public officials violates article 13 of the American Convention, which protects freedom of expression. Such sanctions are unnecessary, disproportionate, and cannot be justified by any imperative social interest; they also constitute a form of indirect censorship given their intimidating and chilling effect on the discussion of matters in the public interest.

Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression maintains that “Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.” Also, Principle 10 of this Declaration establishes that “the protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR), to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.
3. PRESS RELEASE R06/12

UN AND IACHR SPECIAL RAPPORTEURS FOR FREEDOM OF EXPRESSION RENEW CALL TO PROTECT FREE SPEECH ON THE INTERNET

Washington, D.C., January 20, 2012—The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue, today called on the United States to be vigorous in protecting freedom of speech on the Internet. The Special Rapporteurs recalled that legislation regulating the Internet should take into account the special characteristics of the Internet as a unique and transformative tool that enables billions of individuals to exercise their right to freedom of thought and expression as well as a range of other human rights.

The Special Rapporteurs have taken particular note of the discussions surrounding two Internet piracy bills currently pending in the United States Congress, the Stop Online Piracy Act (SOPA) and the PROTECT IP Act. While these bills pursue a legitimate objective in seeking to protect intellectual property rights, serious concerns have been raised regarding their impact on freedom of expression. In particular, versions of the draft legislation have the potential to silence a good deal of entirely lawful speech, for example by creating an extrajudicial ‘notice-and-termination’ procedure, by requiring websites to police their user-generated content for copyright infringement, and by allowing for an entire website to be targeted if even a small portion of its content is deemed to infringe. The Special Rapporteurs note with satisfaction that in recent days, certain Congressional leaders stated their intention to suspend debate on SOPA in order to pursue further discussion and consensus, while the Obama Administration announced that it "will not support legislation that reduces freedom of expression, increases cyber security risk, or undermines the dynamic, innovative global Internet."

In June 2011, the UN and IACHR Special Rapporteurs joined with their fellow special mandate holders from the Organization for Security and Co-operation in Europe (OSCE) and the African Commission on Human and Peoples’ Rights to issue a Joint Declaration on Freedom of Expression and the Internet. This Joint Declaration states that while freedom of expression, including on the Internet, is not absolute, tailored approaches must be developed that respond to illegal content while recognizing the Internet’s unique characteristics and its ability to deliver positive freedom of expression outcomes. The Declaration states that intermediaries should not be required to monitor user-generated content, and stresses the need to protect them from liability unless they specifically intervene in content or disobey a court order to remove such content. The Declaration further states that jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection.

In addition, all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect legitimate websites and services.

The UN and IACHR Special Rapporteurs call on the United States to uphold international free speech norms, including those reflected in the aforementioned Joint Declaration, which seeks to promote universal access to the Internet while preserving its role as a revolutionary medium for participatory information sharing and collaboration in the creation of content. In considering both domestic legislation and international treaties such as the Anti-Counterfeiting Trade Agreement, States should recall that while freedom of expression may be limited in the pursuit of legitimate objectives such as the prevention of crime or the protection of the rights of others, such limitations should be narrowly tailored and interfere to the least extent possible with the right to freedom of expression. Any measure that affects speech on the Internet should be specifically designed to preserve the Internet’s unique capacity to promote freedom of expression by facilitating the free exchange of information and ideas instantaneously and inexpensively regardless of frontiers.
4. PRESS RELEASE 13/12

IACHR URGES PANAMA TO GUARANTEE PROTESTERS’ PHYSICAL INTEGRITY AND SECURITY

Washington, D.C. February 7, 2012 – The Inter-American Commission on Human Rights (IACHR) urges the State of Panama to guarantee the physical integrity and security of leaders and members of the Ngöbe Buglé indigenous peoples, who protest against legislation related to the execution of investment projects in their territories.

According to publicly available information, members of the Ngöbe Buglé indigenous peoples blocked for several days the Inter-American highway in a protest related to the discussion in Congress of bill No. 415, “Which establishes a Special Regime for the Protection of Mineral, Water, and Natural Resources in the community of Ngöbe Buglé.”

According to information received, on February 5th the security forces of Panama conducted an operation in order to lift the blockade of the highway. In this context, information was received about the death of Jeronimo Rodriguez Tugri, and that other dozens of persons were allegedly injured. In addition, it was informed that inhabitants of the conflict area declared to local radio stations that armed police agents entered into several homes.

Also, the IACHR and its Special Rappourtership on Freedom of Expression received information that indicates that the Government has ordered to suspend cell phone services as a measure to control the protest. As a consequence, the area is allegedly incommunicated, seriously affecting the right to freedom of expression of the people in Panama.

The Inter-American Commission reminds the State of its obligation to conduct a judicial inquiry into these acts of violence and repair the consequences. In addition, the IACHR calls on the State to take the steps that are necessary to guarantee access to health care for all the injured. In the light of information received according to which several persons were allegedly detained during these incidents, the IACHR urges the State of Panama to respect the rights to personal integrity and to judicial guarantees.

Furthermore, the Inter-American Commission reminds that it is necessary to adopt mechanisms to prevent excessive use of force on the part of public agents in marches and protest demonstrations. In this regard, the IACHR calls on the State to urgently adopt all necessary measures for the due protection of the protesters within the framework of respect of inter-American human rights standards.

As the organs of the Inter-American Human Rights System have reiterated, States must guarantee that indigenous peoples are consulted on all matters that may affect them, taking into account that this consultation must be aimed at reaching agreement with regard to the administrative or legislative actions that have an impact upon their rights.

On February 5, 2012, the IACHR sent a request of information to the Government of Panama related to these events.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.
PRESS RELEASE R17/12

OFFICE OF THE SPECIAL RAPPORTEUR CONDEMN MURDER OF JOURNALIST IN BRAZIL

Washington D.C. February 13, 2012 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murders of Brazilian reporter Mário Randolfo Marques Lopes and his girlfriend, Maria Aparecida Guimarães, which took place in the early hours of February 9 in Barra do Piraí, state of Rio de Janeiro. The Office of the Special Rapporteur urges the authorities to conduct a prompt and diligent investigation to establish the motive of the crime, identify and appropriately punish the perpetrators, and provide adequate reparations to the victims' family members.

According to the information received, on the night of February 8 at least three unknown individuals apparently kidnapped the reporter and his girlfriend. The two dead bodies, both with gunshot wounds, were found on the street the next morning in a Barra do Piraí neighborhood. Mario Randolfo Marques Lopes was editor in chief of Vassouras na Net, an online newspaper of the town of Vassouras, where he used to strongly criticize and denounce local public officials. Marques Lopes had been the victim of another attack last July, when he was shot several times.

The Office of the Special Rapporteur calls upon the Brazilian authorities to adopt all necessary measures to avoid the repetition of these types of crimes, identify and punish all the direct perpetrators and masterminds, and ensure that the victims' families receive adequate reparation.

The ninth principle of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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PRESS RELEASE R18/12

OFFICE OF THE SPECIAL RAPPOREUR CONDEMNS A NEW MURDER OF A JOURNALIST IN BRAZIL

Washington D.C., February 15, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Brazilian journalist Paulo Roberto Cardoso Rodrigues, which took place on February 12 in Ponta Porá, Mato Grosso do Sul, on the border with Paraguay. The Office of the Special Rapporteur expresses its concern over this second murder of a journalist in less than a week and asks the authorities to conduct a prompt and diligent investigation to establish the motive of the crime, identify and appropriately punish the perpetrators.

According to the information received, on the evening of February 12, two men on a motorcycle fired gunshots at the vehicle driven by Cardoso Rodrigues, a.k.a. Paulo Rocaro, wounding him several times. The reporter was taken to a hospital where he died hours later. Cardoso Rodrigues had a long career in newspaper and was the editor in chief of the Jornal da Praça and founder of the Mercosul News website. The journalist was critical of his town’s local authorities.

The ninth principle of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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Washington D.C., February 16, 2012 – The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue, express deep concern over the decision of the National Court of Justice of Ecuador affirming the criminal and civil judgment against three executives and a journalist from *El Universo* newspaper to three years in jail and to pay $40 million, for the publication of a column that offended President Rafael Correa.

According to the information received, on February 16 the Specialized Criminal Chamber of the National Court of Justice affirmed the decision against the newspaper and its board members Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga for the offense of criminal defamation of an authority. On December 27, 2011, the same Chamber had rendered final the judgment against the column’s author and editor of the opinion section, Emilio Palacio.

The case arose from an opinion column published by Palacio on February 6, 2011, entitled “No a las Mentiras” [No to Lies], in which he harshly challenged decisions allegedly made by President Correa during the events of September 30, 2010. The President denied Palacio’s assertions and considered that they damaged his reputation. Accordingly, the President filed the complaint on March 21, 2011. On July 20, 2011, the trial court handed down its conviction. That judgment was affirmed in its entirety by the Second Criminal Chamber of the Provincial Court of Guayas last September 20.

Articles 489, 491, and 493 of TITLE VII of the Ecuadorian *Criminal Code*, entitled “CRIMES AGAINST HONOR,” establish, inter alia, enhanced penalties for persons who make “a false criminal accusation” or “any other expression made to discredit, dishonor, or disparage” an “authority.” In particular, under Article 493, persons who “make defamatory accusations against an authority” may be punished by a fine and one to three years in prison.

The Inter-American Commission on Human Rights, based on the American Convention on Human Rights, established more than a decade ago that the use of the criminal law to sanction expressions about public officials violates article 13 of the American Convention, which protects freedom of expression. Such sanctions are unnecessary, disproportionate, and cannot be justified by any imperative social interest; they also constitute a form of indirect censorship given their intimidating and chilling effect on the discussion of matters in the public interest.

Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression maintains that “Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.” Also, Principle 10 of this Declaration establishes that “the protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

The Inter-American Court has also established, with regard to eventual civil sanctions, that civil judgments in cases involving freedom of expression must be strictly proportional so as not to have a chilling effect on said freedom, since “the fear of a civil penalty, [in light of a] claim […] for […] very steep civil [damages], may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to [compromise] the personal and family life of an individual who accuses a public official, with the evident and very negative result of
self-censorship both in the affected party and in other potential critics of the actions taken by a public official."

The United Nations Rapporteur, for his part, has stated that in accordance with Article 19 of the International Covenant on Civil and Political Rights, public officials must be subject to a higher level of scrutiny and criticism in light of the public nature of their position.
8. PRESS RELEASE R24/12

OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER CRIMINAL CONVICTION OF JOURNALIST IN COLOMBIA

Washington, D.C., March 1, 2012 — The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern regarding the 18 month prison sentence given to journalist Luis Agustín González, handed down on February 29 by the Criminal Chamber of the Superior Court of Cundinamarca in Colombia.

According to the information received, Luis Agustín González was found guilty of defamation and acquitted of calumny. In addition to the prison sentence, González must pay the equivalent of 17 minimum-wage monthly salaries (around US$5,000) The journalist, who is the director of the newspaper Cundinamarca Democrática, had been sued by former governor Leonor Serrano de Camargo, who alleged that the publication of an editorial in the 44th edition of the paper in 2008, calling into question Serrano’s candidacy for the Senate, harmed her honor and good name.

In September 2012, the reporter had been convicted of both crimes by a judge of first instance. On October 15, 2011, President Juan Manuel Santos expressed that he opposed the verdict and strongly stated that the expression of critical opinions against public officials should not be a crime. Similarly, the Constitutional Court of Colombia has indicated that when judges consider cases involving alleged defamation and calumny that implicate public officials, they should interpret the offenses narrowly in a way that favors “an expansive view of the freedom of expression,” which has a privileged status in the Colombian legal order. González announced his intention to challenge the appellate decision by filing an extraordinary remedy of cassation.

The Office of the Special Rapporteur has expressed its concern over the application of the crime of defamation against individuals who have limited themselves to denouncing or expressing opinions critical of those who hold or have held public office. Individuals who hold or have held public office have a duty to withstand a higher degree of criticism and scrutiny, precisely because they voluntarily assume the administration of important public responsibilities.

Principle ten of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights establishes that: “The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

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OFFICE OF THE SPECIAL RAPPROUER CONDEMN MURDER OF JOURNALIST IN HAITI

Washington D.C. March 8, 2012–The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Haitian journalist Jean Liphète Nelson, which took place on March 5 in Cité Soleil. The Office of the Rapporteur urges the competent Haitian authorities to carry out a diligent, timely, and thorough investigation and not to rule out the possibility that this crime is related to the victim’s work in the media.

According to the information available, the reporter was traveling in a car when he was blocked by two individuals who fired several gunshots. Jean Liphète Nelson was taken to a hospital where he later died. He was the director of community radio Boukman (95.9 FM), a broadcast station created in 2006 that focuses on social issues, civic education and the promotion of human values.

The authorities have not determined the motives behind the killing and are investigating several hypotheses. The Office of the Special Rapporteur requests that the authorities not discount the possibility that the death was tied to the journalist’s professional activities and urges them to conduct a thorough investigation, to clarify the circumstances of the crime, to identify and punish those responsible, and to ensure just compensation for the victims’ next of kin.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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OFFICE OF THE SPECIAL RAPPOREUR CONDEMS MURDER OF JOURNALIST IN COLOMBIA

Washington D.C., March 19, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Colombian broadcast journalist Argemiro Cárdenas Agudelo, which took place on March 15 in Dosquebradas, department of Risaralda, and urges the competent authorities to carry out a diligent, timely, and thorough investigation and not to rule out the possibility that this crime is related to the victim’s work in the media.

According to the information received, when the communicator was at the radio station where he worked, he received a phone call requesting that he meet with someone. As he was on his way to the meeting, an unknown person approached him and shot him several times in plain view. Argemiro Cárdenas had been the mayor of Dosquebradas, and he was the founder and manager of the community radio station La Metro Radio 92.1 FM. He was the director of the Cafetera Radial Radio Network (Red Radial Cafetera) and representative of the western region of Colombia before the Consultative Committee of Radio of the Ministry of Information and Communication Technologies (MINTIC). On March 1, he had been nominated for the position of National Representative of the World Association of Community Radios (AMARC).

The authorities have not determined the causes behind the killing and are investigating several hypotheses. The Office of the Special Rapporteur urges them to clarify the motives of the crime, to identify and punish those responsible, and to ensure just compensation for the victims’ next of kin.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

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OFFICE OF THE SPECIAL RAPPOREUR CONDEMN MURDER OF JOURNALIST AND POLITICAL BLOGGER IN BRAZIL

Washington D.C., April 26, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Brazilian journalist and political blogger Décio Sá, which took place on April 23 in the city of São Luis, capital of the state of Maranhão.

According to reports, Sá was in a restaurant when a gunman entered the establishment and shot him several times in the back. Maranhão’s Minister of Public Safety, Aluízio Mendes, stated that the journalist’s murder was reportedly a contract killing. The Minister ordered the immediate creation of a special task force to investigate the attack and to identify the perpetrators, furthermore he said that all investigations would be expedited to avoid impunity in this case.

Sá worked as a political affairs journalist at the newspaper O Estado, and wrote a blog called Blog do Décio, through which he denounced acts of corruption. His blog had become one of the most widely read blogs in the region.

The Office of the Special Rapporteur asks the authorities to conduct a prompt and diligent investigation to establish the motives for the murder, identify and punish those responsible and to ensure that the victim’s relatives receive fair reparations from the perpetrators.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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OFFICE OF THE SPECIAL RAPPORTEUR CONDEMN MURDER OF JOURNALIST IN VERACRUZ

Washington, D.C., April 30, 2012 −The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Regina Martinez, whose body was found with signs of violence on April 28th at her home in Veracruz, Mexico. The Office of the Special Rapporteur urges the authorities to conduct a prompt and diligent investigation to identify and punish those responsible for this crime. According to the information received, the government of the state of Veracruz requested the collaboration of the Attorney General of the Republic in order to carry out the appropriate investigations.

According to the information received, Regina Martinez was a correspondent for the magazine Proceso in Veracruz, a publication with nationwide circulation devoted to analysis and investigation, and she wrote critical articles about state politics and organized crime. Proceso has been the target of massive buy-outs of its issues by parties that consider themselves to be affected by its reports, and on several occasions, it has withheld the name of its journalists covering security issues at the regional level. The murder of Regina Martinez adds to the 10 homicides of communicators that were committed in Mexico in 2011. In addition to the correspondent for Proceso, over the last 12 months, the murders of Miguel Ángel López Velasco, Misael López Solana, Yolanda Ordaz and Noel López Olguín have taken place in Veracruz.

The Office of the Special Rapporteur reiterates its concern for the persistent acts of violence against social communicators in Mexico and urgently calls on the authorities to strengthen the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE, in its Spanish acronym) and to implement both the Law for the Protection of Human Rights Defenders and Journalists and the constitutional reform that would give federal authorities the power to investigate and prosecute crimes affecting freedom of expression.

The Office of the Special Rapporteur insists that in order to ensure that this crime does not result in impunity and that similar crimes are not committed, it is of utmost importance that all parties who are responsible for the murders are identified, tried and punished, and that the perpetrators provide just reparations to the victims’ families.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.
OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN FOR KIDNAPPING OF FRENCH JOURNALIST IN COLOMBIA


According to reports, the journalist was covering an anti-narcotics operation carried out by an army unit when the unit was attacked by the FARC. Langlois was injured during the attack, and afterward, his whereabouts could not be determined. Colombian authorities have stated that there are indications that the reporter is in the custody of the FARC. At the beginning of April, this illegal organization had vowed to refrain from kidnapping.

The Office of the Special Rapporteur considers it vital that the life, integrity and liberty of the journalist be unconditionally respected, and it demands that he be released immediately.

The IACHR has specified that independent journalists who cover armed conflict do not lose their status as civilians, regardless of the risks to which they are exposed as a result of the conflict. As such, they continue to be protected by the applicable guarantees of international human rights law and international humanitarian law, particularly by the guarantees derived from the principle of distinction.

Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.
OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDERS OF FOUR MEDIA WORKERS IN VERACRUZ, MEXICO

Washington, D.C., May 4, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of three photographers and the administrative professional of a newspaper, whose bodies were discovered in Veracruz, Mexico, on May 3rd. The Office of the Special Rapporteur expresses its profound concern for the recurrence of extremely serious acts of violence against the press in Mexico, particularly in Veracruz, where at least nine media and communications workers have been killed in the last 12 months.

According to the information received, graphic reporters Gabriel Huge and Guillermo Luna, who covered the police beat for several media outlets in Veracruz, had been missing since the evening of May 2nd. The following day, their bodies appeared wrapped in plastic bags in a place known as Canal de la Zamorana 1 in the port of Veracruz. The journalists had worked for the newspaper Notiver until 2011. In addition to their bodies, the remains of Esteban Rodriguez, former photographer of the newspaper AZ and TV Azteca, and of Irasema Becerra, administrative professional of the newspaper El Dictamen, were also found in Veracruz. In 2011, Huge, Luna, and Rodriguez had abandoned the state of Veracruz in response to threats they had received.

These murders add to the toll of the other five homicides of journalists committed in Veracruz during the past year. On April 28th, journalist Regina Martinez was found dead at her house in Veracruz with signs of violence. She was a correspondent for the magazine Proceso, a publication with nationwide circulation devoted to analysis and investigation, and she wrote critical articles about state politics and organized crime. Noel Lopez Olguin, who disappeared on March 8, 2011 and was found on May 31, 2011, and who collaborated with different local media outlets; the columnist and assistant director of Notiver, Miguel Angel Lopez Velasco (known as Milo Vela) and his son, Misael Lopez Solana, who was a photographer for the same newspaper, were killed on June 20, 2011; and Yolanda Ordaz, a reporter for Notiver, who was found on July 26, 2011. In 2011, at least 8 communicators and media workers died in Mexico as part of crimes that could be related to the exercise of their profession. In its Annual Report of 2007, the Office of the Special Rapporteur documented that on May 3rd of that year, a human head was thrown in front of the headquarters of Notiver with a note saying “this is a gift for the journalists, more heads will roll as Milo Vela well knows.” The Office of the Special Rapporteur reiterates its concern for the persistent violence committed against social communicators in Mexico, particularly in Veracruz, and it calls attention to the fact that five of the victims have been linked to the newspaper Notiver. The Office of the Special Rapporteur exhorts the Mexican authorities to act urgently in investigating these crimes in a prompt and diligent manner, to identify, try, and punish all of the responsible parties, and to guarantee that the perpetrators provide just reparations to the victims’ families.

The Office of the Special Rapporteur takes note of the actions already taken by the authorities to investigate the crimes involving the journalist Regina Martinez and the photographers who were killed on May 3rd. These actions reportedly include the possible collaboration of the Attorney General of the Republic (PGR, in its Spanish acronym) and the designation of a special investigative commission comprised of 10 experts and led by the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym). Similarly, with respect to the murder of Regina Martinez, the government of Veracruz put together a Special Commission of investigation and requested the participation of the PGR, the State Human Rights Commission, the National Human Rights Commission, as well as the participation of a journalist from the magazine Proceso, among other measures. The PGR purportedly requested the case file from the Attorney General of Veracruz in order to determine the viability of collaborating in the investigation.

It is of utmost importance to halt this serious wave of violence against journalists through effective mechanisms of protection and investigation, which is why it is fundamental that the FEADLE be strengthened, that the recently passed Law for the Protection of Human Rights Defenders and Journalists
be implemented, and that the state legislatures pass the constitutional reform that would give federal authorities the power to investigate and prosecute crimes affecting freedom of expression.

The Office of the Special Rapporteur exhorts the Mexican authorities to prevent impunity from prevailing when crimes are committed against communicators. While the current process of federalization is being implemented, the Office of the Special Rapporteur believes it is necessary that urgent measures be adopted, so as to allow the activation of all existing mechanisms by which the federal authorities can assume control of the investigation of the homicides that have been committed.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.
Washington, D.C., May 11, 2012 – The Office of the Special Rapporteur for Freedom of Expression, the Rapporteur on Human Rights Defenders and the Unit for the rights of persons LGBTI of the Inter-American Commission on Human Rights (IACHR) condemn the murder of Erick Alex Martinez Ávila, a journalist and defender of the rights of the gay, lesbian, bisexual and transsexual population, who went missing on May 5th and was found dead two days later.

According to the information received, on May 7th, members of the community of Guasculile found the body of a young man that was later identified as belonging to Martinez Ávila alongside a highway between the cities of Olancho and Tegucigalpa.

Erick Alex Martinez Ávila worked in the area of public relations, monitoring and evaluation at the Kukulcán Association, an organization dedicated to defending the rights of lesbians, gays, and transsexual and bisexual persons. He was recently named as a candidate for local primary elections of the Libertad y Refundación party, and he was an active member of the Roundtable for Sexual Diversity of the National Resistance Front.

In its Second Report on the Situation of Human Rights Defenders in the Americas, the IACHR highlighted the vast amount of information received regarding murders, threats, and criminalization of the activities of defenders of the LGBTI community, as well as the lack of a gender-sensitive approach to the investigation of human rights violations. Also, in the report Honduras: Human Rights and Coup d'Etat, the IACHR noted the deepening of discrimination and risk situation against members of lesbians, gays, and bisexual, transgender and intersex people in Honduras. The IACHR urges the Honduran State to investigate this crime in a thorough, timely and diligent manner, without discarding the possibility that the homicide may be related to the exercise of the victim’s profession.

For the IACHR it is of fundamental importance that the Honduran State elucidates the cause of this crime, that it identifies, prosecute and sanction the responsible parties, and that it adopt measures to guarantee that the perpetrators provide just reparations to the victim’s family.
16. PRESS RELEASE 47/12

MEXICO: INTERNATIONAL AND REGIONAL EXPERTS URGE SWIFT ACTION TO PROTECT HUMAN RIGHTS DEFENDERS AND JOURNALISTS


Highlighting the immediacy of the threats facing defenders and journalists, the experts also urged the Government to implement existing protection mechanisms as a matter of urgency, in order to avoid further attacks and loss of life and to complement the new provisions when they come into effect.

The Bill, which has been approved by both chambers of the Federal Congress, seeks to guarantee and safeguard the life, integrity and security of human rights defenders and journalists by creating a mechanism with the authority to implement measures to protect those at risk, as well as at preventing such risks from arising in the future.

“Human rights defenders in Mexico desperately need the State’s effective protection now,” said Margaret Sekaggya, the United Nations Special Rapporteur on the situation of human rights defenders. “They continue to suffer killings, attacks, harassment, threats, stigmatization and other serious human rights violations.”

“The State has to implement, as a matter of priority, a global protection policy for human rights defenders. The lack of appropriate and effective systems for implementing specialized protection measures are related to the situation of defenselessness in which many human rights defenders find themselves, which has caused the death of many of them in recent years,” stressed Santiago A. Canton, the Executive Secretary of the Inter-American Commission on Human Rights on behalf of the Rapporteurship of Human Rights Defenders*.

“We have to break the cycle of impunity in Mexico, which is becoming an increasingly violent place for journalists,” said Frank La Rue, United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. “The recent killing of four press workers in Veracruz underscores the dire need for concrete steps to be taken to guarantee the safety of journalists and put an end to impunity.”

Catalina Botero, Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, stressed that “safeguarding journalists and human rights defenders is not only compatible with the fight against crime, it is an essential element of this struggle. The Mexican authorities should take immediate measures to protect those journalists and human rights defenders that are being threatened, as well as to make definitive advances in the struggle against impunity for the crimes that have been committed against them.”

The four experts commended the Federal Congress for approving the Bill, pointing out that it would provide added impetus and sustainability to existing protection frameworks, while also strengthening these frameworks.

The Bill was drafted in consultation with civil society organizations, and the Office of the High Commissioner for Human Rights in Mexico provided technical advice throughout the drafting process.

The human rights experts praised the consultative process which allowed multiple stakeholders to play an important role in the drafting of the Bill, and called for the same participatory approach throughout the implementation process. However, they emphasized the urgency of providing effective protection to those
at risk and ensuring that human rights violations against journalists and human rights defenders do not go unpunished.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly.

(*) In keeping with Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, of Mexican nationality, does not participate in matters concerning said country.
OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS ATTACK IN COLOMBIA

Washington, D.C., May 16, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the terrorist attack in Bogotá that targeted Fernando Londoño Hoyos, director of a morning show at the Super Radio Station, and the death of two of his bodyguards. The Office of the Special Rapporteur sends a message of condolence to the victims’ families and urges the competent authorities to carry out a diligent, timely, and thorough investigation that identifies the motives and the perpetrators of the criminal act.

According to the information received, on May 15th, a powerful explosive detonated in the vehicle where the ex-Minister of the Interior and of Justice was traveling, causing the death of two victims and injuries to at least 41 people, some of which were particularly serious. The motive for the attack is still unknown, although there are contradicting theories about the possible objectives of the criminals. The ex-Minister was being protected by a strong security detail provided by the Government in light of threats that he had received, and according to reports, the armored car that was given to him enabled him to survive this serious attack. Nevertheless, his driver, Ricardo Rodriguez, and one of his bodyguards, Rosemburg Burbano, were killed. The President of the Republic expressed his categorical rejection of the attack, offering a reward of up to 500 million pesos (US$ 280,000) for anyone who provides information leading to the capture of the responsible parties, and a special commission has been formed to identify the causes of the attack.

For the Office of the Special Rapporteur, it is necessary for the authorities to act in a timely manner to identify the masterminds and the causes of this crime, to prosecute and sanction the responsible parties, and to demand that they provide adequate reparations to the victims of this serious attack. Terrorist acts that seek to impede the exercise of freedom of expression of any person or to bypass democratic debate about matters of national interest should be met with strict punishment that is proportionate to the level of harm caused.

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.
18. PRESS RELEASE R52/12

THE OFFICE OF THE SPECIAL RAPPOREUR CONDEMNS MURDER OF JOURNALIST KIDNAPPED IN HONDURAS

Washington D.C., 17 May, 2012. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of radio journalist Alfredo Villatoro, who had been kidnapped on May 9 and was found dead in Tegucigalpa on May 15. The Office of the Special Rapporteur urges authorities to conduct a diligent, timely and thorough investigation that does not rule out the hypothesis that the journalist may have been killed because of his professional practice.

According to the information received, several armed men allegedly took Villatoro when he was on his way to work in the early hours of May 9, after blocking the vehicle he was in. Despite important police efforts, authorities were not able to find the media worker. On May 15, the Villatoro's body was found with two shots in the head in a vacant lot south of Tegucigalpa. Police made public that he appeared to have been murdered there a short time before his body was found. Villatoro was a well-known influential journalist that worked as news coordinator for the HRN radio network, one of the country's most important networks, and hosted a morning news broadcast show in that station.

The Office of the Special Rapporteur considers it essential for the Honduran State to clarify the motive for these crimes; identify, prosecute, and punish those responsible; and adopt fair measures of reparation for the victim's next of kin. The Office of the Special Rapporteur insists that the State needs to create special investigative bodies and protocols, as well as protection mechanisms designed to ensure the safety of those who are being threatened because of their work in journalism. In light of the series of murders committed against journalists in Honduras, it is critical that the State carry out a complete, effective, and impartial investigation of these crimes, which have a negative impact on all of Honduran society.

The Office of the Special Rapporteur reminds the State that Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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WASHINGTON D.C., May 21, 2012 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Marcos Ávila García, whose body was discovered in Sonora on May 18, the day after he was kidnapped. This Office expresses its deep concern over the repetition of extremely grave acts of violence against the press in Mexico, and requests from the authorities a diligent, timely and thorough investigation that adequately explores the hypothesis that the motive behind this crime could be the victim's professional activities.

According to the information received, at least three armed men with their faces covered kidnapped the media worker on the afternoon of Thursday, May 17, while he was at a carwash in Ciudad Obregón, state of Sonora. The authorities launched a significant police deployment to try to find him. On May 18, the reporter's body was found lying next to a highway, with signs of having been tortured and with an alleged message from organized crime. Marcos Avila covered police activities for the daily newspaper El Regional de Sonora from Ciudad Obregón. Mr. Avila was recognized as being a serious and very professional journalist.

The murder of Marcos Avila adds to at least another five crimes against media workers committed in Mexico this year that could have been motivated by the victims' professional activities. On April 28th, journalist Regina Martinez was found dead at her house in Veracruz with signs of violence. On May 3, the bodies of graphic reporters Gabriel Huge, Guillermo Luna and Esteban Rodríguez, as well as that of Irasema Becerra, an administrative professional for the newspaper El Dictamen, were also discovered in Veracruz.

The Office of the Special Rapporteur has been informed of the measures taken by the Mexican authorities to investigate the crimes against journalists. In the case of Marcos Ávila, the National Human Rights Commission started an investigation ex officio and ordered that the victim’s family and his supervisors be interviewed, and that the authorities’ investigation be supported in every way. Regarding the homicide of the photographers, actions taken reportedly include the possible collaboration of the Office of the Prosecutor General of the Republic (PGR, in its Spanish acronym) and the designation of a special investigative commission led by the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym). Similarly, with respect to the murder of Regina Martinez, the government of Veracruz put together a special commission of investigation and requested the participation of the PGR, the State Human Rights Commission, the National Human Rights Commission, as well as the participation of a journalist from the magazine Proceso, among other measures.

The attacks against the press in Mexico have forced many media outlets to stop publication of news about organized crime as a safety measure, depriving the Mexican society of vital information. The Mexican State must immediately do everything within its reach to stop the surge of violence against journalists, avoid impunity and impede the silencing of the media. It is of great urgency that Mexico implements protection policies for media workers, break the cycle of impunity that invites criminals to commit further crimes against journalists, and understand that protecting the press and human rights defenders is essential to the battle against crime and the protection of democracy.

Accordingly, it must be a priority to effectively and urgently apply the recently approved Law for the Protection of Human Rights Defenders and Journalists, strengthen the FEADLE, and get the states' legislatures to approve the constitutional reform that would enable the federal authorities to investigate and try crimes against the right to freedom of expression. While the ongoing federalization process takes place, activating the existing mechanisms for the federal authorities to conduct the investigation of the murders committed is necessary.
Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.
WASHINGTON D.C., MAY 31, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) celebrates the liberation of French journalist Roméo Langlois on May 30, who had been abducted by FARC in Caquetá, Colombia, on April 28th.

According to the information received, the guerilla group delivered Langlois in good physical condition in the town of San Isidro, Caquetá, to the International Committee of the Red Cross delegates. The reporter had been captured and wounded in a guerilla attack on April 28, while he was accompanying a military patrol to shoot footage of an antidrug raid.

As the Office of the Special Rapporteur has stated, independent journalists who cover armed conflict do not lose their status as civilians, regardless of the risks to which they are exposed as a result of the conflict. As such, they continue to be protected by the applicable guarantees of international human rights law and international humanitarian law, particularly by the guarantees derived from the principle of distinction. The Office of the Special Rapporteur urges the FARC guerilla group to respect the civilian status of the journalists who cover the armed conflict and to refrain from repeating such actions in the future.

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OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER CRIMINAL CONVICTION AGAINST TWO JOURNALISTS IN PERU

Washington, D.C., June 11, 2012—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over the criminal conviction for aggravated defamation issued on June 5th by a Peruvian judge against Juan Carlos Tafur and Roberto More, executive editor and reporter of the Diario 16 newspaper, stemmed from a news story that involved a former Director of the National Police and former Minister of Interior in alleged illegal activities.

According to the information received, the Twelfth Criminal Court of Lima had sentenced the media workers to 2 years in jail with suspended execution of the sentence and to the payment of 60,000 soles (approximately US$ 23,000) to Antonio Ketin Vidal Herrera, who felt offended by information published on January 12, 2011 by the newspaper, while he intended to run for vice-president of the Republic.

The Office of the Special Rapporteur acknowledges that this unfortunate court decision against journalists Tafur and More however, occurs in a context where Peruvian President Ollanta Humala has publicly declared several times that he will respect this right and will not resort to criminal proceedings to inhibit debate on issues of public interest. At the same time, the Congress of the Republic of Peru has analyzed various proposals that would eliminate the crime of defamation, at least for public servants, or replace jail sentences with fines or community service. Concurrently, the Supreme Court of Justice has established guidelines for this subject and in recent decisions has revised criminal convictions for defamation issued to current or former public servants.

This Office has expressed on numerous occasions its concern over the charges of criminal defamation brought against those who have denounced or criticized public officials. The tenth principle of the IACHR Declaration of Principles on Freedom of Expression states: “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news”.

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According to the information received, on May 31st the Specialized Court of Sentences A in San Salvador sentenced Jonathan Alexander Martinez Castro to 30 years in jail for the murder of Alfredo Hurtado. The same court ratified the arrest warrant against Marlon Stanley Abrego Rivas, who was allegedly also responsible for the murder and who has not yet been detained.

Alfredo Hurtado was on his way to work on the night of Monday, April 25, 2011, when two armed men boarded the bus in which he was riding and shot him several times. The killers did not steal any of his belongings. Hurtado worked as a cameraman on the night shift for the news program Teleprensa, on Channel 33, and had more than 20 years of work experience. On a daily basis, he covered criminal activity and information related to gang violence. According to the information available, Martinez and Abrego allegedly shot Hurtado because they believed that his work may have allowed him to identify a member of a gang involved in another murder. The Office of the Special Rapporteur condemned the murder of Hurtado on May 2, 2011, and asked the authorities to conduct a thorough investigation that took into account the possibility that the crime might have been motivated by the victim’s work in journalism.

Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER DISAPPEARANCE OF MEXICAN JOURNALIST AND HER SON

Washington, D.C., June 13, 2012 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over the disappearance of Mexican journalist Hypatia Stephania Rodríguez Cardoso and her 2-year-old son, which apparently happened in Saltillo, Coahuila, in the early hours of Friday, June 8th.

The Office of the Special Rapporteur asks the State to undertake all the necessary actions to find the reporter and her son alive, and to ensure the investigation looks into the possibility that the disappearance is connected to the reporter's professional activities.

According to the information that has been received, the reporter works for Zócalo, a newspaper of Saltillo, and usually covers news stories on police-related affairs.

On the night of June 7, the journalist went to a social gathering of journalists taking her son along. Once the gathering was over, in the early hours of June 8, she went back to her house and called some colleagues minutes later to say that she had arrived home safely. However, the next day she was discovered missing and her house showed signs of having been searched. Her camera was found destroyed and her car was not found.

Her disappearance was reported to the police on the morning of Saturday, June 9th, at the state’s Office of the Prosecutor General, but the investigation has apparently been transferred to the national Office of the Prosecutor General. The Office of the Special Rapporteur acknowledges the intervention of the federal authorities to try to resolve the case and urges all competent authorities to maintain and increase the measures adopted up to now to find the journalist and her son unharmed.

Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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OFFICE OF THE SPECIAL RAPPOREUR CONDEMNS MURDER OF JOURNALIST IN XALAPA, VERACRUZ

Washington D.C., June 18, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of police beat reporter Víctor Manuel Báez Chino, who was found dead in the early hours of June 14th in Xalapa, Veracruz. The federal and local authorities in Mexico are encouraged to take urgent measures to halt the wave of violence against journalists and to put into practice all of the available legal instruments to identify and sanction the perpetrators and masterminds of the latest crime.

According to the information received, three armed men in a van kidnapped the journalist on the night of June 13th when he was leaving his office in Xalapa. Police authorities reportedly conducted an immediate search that concluded when the body was found the following morning on a downtown street located near the Xalapa city hall and the offices of two local newspapers. Báez Chino was the editor of the police news section of the newspaper Milenio - El Portal of Veracruz, a publication of the Milenio Group, as well as editor of the news Web site Police Reporters.

The Office of the Special Rapporteur expresses its deep concern at the recurrence of extremely serious attacks against the press in Mexico, where at least seven media workers have been killed this year. Six of these deaths occurred in the state of Veracruz in circumstances that may be related to the victims' journalistic work. On April 28th, journalist Regina Martinez of the magazine Proceso was found dead at her house in Veracruz with signs of violence; on May 3rd, the bodies of graphic reporters Gabriel Hug, Guillermo Luna and Esteban Rodriguez, as well as that of Irasema Becerra, an administrative professional for the newspaper El Dictamen, were also discovered in Veracruz; and on May 18th the body of reporter Marcos Ávila García was found in Sonora one day after he had been kidnapped. Furthermore, on June 8th, police reporter Hypatia Stephanie Rodríguez Cardoso and her two-year-old son disappeared, later confirming that they are in hiding in order to protect their safety. The Office of the Special Rapporteur considers it essential that the reporter be given the necessary protective measures in an urgent manner.

As the Office of the Special Rapporteur stated in its Special Report on Freedom of Expression in México, the attacks against the press in this country have forced many media outlets to stop publication of news about corruption or organized crime as a safety measure, depriving the Mexican society of vital information. The Mexican State must immediately do everything within its reach to prevent new attacks motivated by the victim’s exercise of freedom of expression, to combat impunity for these crimes, and to prevent the silencing of the media. It is of great urgency that Mexico implements protection policies for media workers and break the cycle of impunity that invites criminals to commit further crimes against journalists. Protecting the press is essential to the battle against crime and the protection of democracy. To this end, it must be a priority for the Mexican state to apply the recently approved Law for the Protection of Human Rights Defenders and Journalists in an effective and urgent manner, to strengthen the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym), and to publish immediately in the Official Register the provisions of the constitutional reform that gives federal authorities jurisdiction to investigate and try crimes against the exercise of freedom of expression, and which was passed on June 6th in the Permanent Commission of the National Congress. While the ongoing federalization process takes place, it is necessary to activate existing mechanisms so that the federal authorities can conduct the investigation of the murders committed, apprehend and sanction the responsible parties, and guarantee that those responsible provide just reparations to the victims’ families.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of
expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.
25. PRESS RELEASE R74/12

SPECIAL RAPPOREURS FOR FREEDOM OF EXPRESSION LAUNCH JOINT DECLARATION ON CRIMES AGAINST FREEDOM OF EXPRESSION

Washington D.C., June 25, 2012 – The need to halt the alarming increase in violence against journalists and media workers is the subject of a joint declaration signed on June 25th by the four Special Rapporteurs for Freedom of Expression during a special meeting in Port of Spain, Trinidad and Tobago.

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Frank LaRue; the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), Catalina Botero Marino; the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Dunja Mijatoviæ; and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression, Faith Pansy Tlakula; issued a joint declaration in which they state their abhorrence over the unacceptable rate of crimes against freedom of expression, including killings, death threats, disappearances, prosecutions, and imprisonments, which target the media and individuals who play a crucial role in informing society.

In the Joint Declaration, the four rapporteurs maintain that crimes against journalists and other communicators represent attacks not only on the victims but on freedom of expression itself, as they have a chilling effect on the free flow of information and ideas and prejudice the rights of society as a whole. They highlight that the prevailing state of impunity increases the incidence of these crimes. As a result, the Declaration outlines the measures that states should take pursuant to their duty to ensure that crimes against freedom of expression are prosecuted and punished and that victims receive appropriate remedies. The four rapporteurs call on states to carry out independent, speedy, and efficient investigations into these crimes, as well as to foster greater transparency in the investigations. The rapporteurs also observe that independent journalists covering situations of armed conflict do not lose their status as civilians, regardless of the risks to which they are exposed as a result of the conflict. As such, they continue to be protected by the applicable guarantees of international human rights law and international humanitarian law.

According to the Declaration, when crimes against freedom of expression are a recurring problem, state authorities should take special steps to prevent them from taking place, such as imposing heavier penalties for these crimes or increasing the applicable statutory limitations periods. In certain circumstances, the creation of specialized investigative units may be warranted. Furthermore, the Declaration stresses the important contribution that individuals who investigate human rights abuses and corruption make to society, and the fact that they are often susceptible to criminal retribution. As such, the rapporteurs urge states to create specialized protection programs where there is an ongoing and serious risk of crimes against freedom of expression and to tailor the protection measures to the needs of the person at risk, taking into account factors such as gender.

With regard to this subject, Catalina Botero stated, “The increase in violence against journalists is truly alarming. The circumstances make it urgent for States to take responsibility for developing more and better measures of prevention, protection, and prosecution in order to stop the recurrence of these crimes, to sanction the responsible parties and to guarantee the right of society to be informed.”

According to Frank LaRue, ”Any effective action by the State to protect journalists and media workers and outlets begins with the diligent investigation of the crimes against them and the identification, prosecution, and punishment of those responsible, as well as the reparation of the victims.”

Dunja Mijatoviæ indicated, “Journalists across the OSCE region and beyond are targeted daily for their critical coverage of politics, the economy, and social affairs, and for investigating crime and corruption. This comprehensive declaration focuses on universal solutions to this modern plague and encourages all
governments and other stakeholders to help counter the killings of journalists, as well as the threats and physical attacks they systematically face.”

For her part, Pansy Tlakula remarked, “The Declaration is timely because it is adopted at a moment when crimes against freedom of expression are increasing in Africa. This Declaration will assist in eradicating the ever-increasing phenomenon of impunity enjoyed by those who commit crimes against freedom of expression, and it will hopefully also enable States to take action against non-State actors.”

The text of the Joint Declaration is available at: Joint declaration 2012-2 EN
OFFICE OF THE SPECIAL RAPPORTEUR CONDEMS MURDER OF PHOTOGRAPHER IN ECUADOR


According to the information received, two armed men on a motorcycle shot the photographer several times on the afternoon of July 1st as he arrived home. In May, while exercising his profession, Baldeon had taken photographs of the scene of a robbery. The criminal investigation revealed that several policemen were involved in the robbery. Later, Baldeon was subpoenaed as a witness to the crime. The photographer was as a freelance collaborator of the newspaper Extra, where the pictures were published.

The Office of the Special Rapporteur urges the authorities to act in a timely manner to identify the masterminds and the causes of this crime, to prosecute and sanction the responsible parties, and to demand that they provide adequate reparations to the victim’s next of kin. Violence against journalists and other communicators represents an unacceptable attack not only on the victims but on society as a whole, as it has a chilling effect on the free flow of information and ideas.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system.
27. PRESS RELEASE R86/12

OFFICE OF THE SPECIAL RAPPOREUR CONDEMNS KILLING OF SPORTS COMMENTATOR IN BRAZIL

Washington, D.C, July 11, 2012 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of the sports journalist Valério Luiz de Oliveira, which took place on July 5 in Goiania, capital city of Goiás state, in Brazil.

According to the information received, a motorcyclist shot the journalist several times as he was coming out of the broadcast station where worked, Rádio Jornal 820. According to this information, Valério Luz was considered a controversial and critical figure within the sports journalism community of his region. Because of his commentary, he was not allowed to enter the stadium of a local soccer team and he was reported to have recently received death threats. Luiz also worked at the PUC-TV station. Police authorities in Goiás launched an immediate investigation.

The Office of the Special Rapporteur calls upon the Brazilian authorities to adopt all necessary measures to avoid the repetition of these types of crimes, identify and punish all the direct perpetrators and masterminds, and to demand that they provide adequate reparations to the victim’s next of kin.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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Washington, D.C., August 3, 2012. – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over three attacks against El Norte newspaper that have taken place in less than a month in the state of Nuevo León, and several other threats against journalists in different parts of the country. The Office of the Special Rapporteur urges the Mexican authorities to immediately take the necessary measures to protect the newspaper and the journalists that have been threatened, to investigate the incidents thoroughly, to identify and prosecute the responsible parties, and to prevent new aggressions.

According to the information received, in the early hours of July 10, 2012, a person detonated a fragmentation grenade outside the offices of La Silla, a supplement of El Norte newspaper, in the city of Monterrey. In the afternoon, a branch office of the same newspaper, where the Linda Vista supplement is headquartered in the municipality of Guadalupe, north of Monterrey, was allegedly attacked with bullets and a grenade. On the afternoon of Sunday, July 29, several attackers broke into the offices of the Sierra Madre supplement, in the municipality of San Pedro, immobilized the security guard, and set the first floor on fire. None of the three attacks caused any injuries.

The Office of the Special Rapporteur also regrets the threats allegedly received by several media workers over the last weeks. On July 16, unidentified individuals broke into the house of Hiram González Machi, a journalist for the Nuevo Dia newspaper and Channel 7, both in Nogales, and left a note that read “You’re going to die, reporter.” The journalist Cecilia Cota Carrasco from El Diario newspaper in Sinaloa claimed last weekend that she was threatened by a former candidate for the Federal Congress, who warned her that he was capable of committing violent acts against her and her family. Finally, on July 29, journalist Lydia Cacho, who is the beneficiary of precautionary measures of the IACHR, received new and serious death threats that are directly related to the exercise of her profession.

As the Office of the Special Rapporteur stated in its Special Report on Freedom of Expression in México, the attacks against freedom of expression in this country have forced many journalists and media outlets to refrain from publishing news about corruption or organized crime as a safety measure, depriving Mexican society of vital information.

Protecting the press is essential to the battle against crime and the protection of democracy. To this end, it must be a priority to apply the recently approved Law for the Protection of Human Rights Defenders and Journalists in an effective and urgent manner; to strengthen the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym); and to complete the necessary steps to implement the constitutional reform that gives federal authorities jurisdiction to investigate and try crimes against the exercise of freedom of expression, which was passed on June 6th in the Permanent Commission of the National Congress.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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OFFICE OF THE SPECIAL RAPPOREUR CONDEMNS MURDER OF NEWSPAPER OWNER IN BRAZIL

Washington, D.C., October 16, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Luiz Henrique Georges, owner of the newspaper *Jornal da Praça*, which took place on October 4 in Ponta Porã, Mato Grosso do Sul in Brazil. The Office of the Special Rapporteur expresses its concern over the second murder of a person linked to this newspaper and requests that the authorities conduct a prompt and diligent investigation to establish the motive of the crime, identify and appropriately punish the perpetrators.

According to the information received, unknown individuals fired gunshots at the vehicle in which Georges and two of his employees were driving. Georges and Nery Gordo Veras were apparently killed immediately, while the other passenger is in the hospital in critical condition. The information available indicates that Georges recently assumed control of *Jornal da Praça*, which had published articles that were critical of candidates for the municipal elections celebrated in Ponta Porã on October 7. On February 12, 2012, Paulo Roberto Cardoso Rodrigues, a journalist for Jornal da Praça, was also killed in Ponta Porã.

The ninth principle of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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OFFICE OF THE SPECIAL RAPPORTEUR WELCOMES IMPORTANT ADVANCES IN FREEDOM OF EXPRESSION IN THE REGION

Washington, D.C., October 26, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) welcomes the important advances in the area of freedom of expression in the region, with particular regard to the emblematic decisions taken by the Parliament of Grenada and the Constitutional Plurinational Court of Bolivia. The Office of the Special Rapporteur congratulates these States for the aforementioned decisions and will disseminate them extensively in the framework of its mandate to promote freedom of expression in the Americas.

According to information received, in July, the Parliament of Grenada passed the Criminal Code (Amendment) Act of 2012, which repealed the offenses of intentional and negligent libel contained in sections 252 and 253 of the Code. These crimes carried a penalty of between six months and two years of imprisonment. The Office of the Special Rapporteur considers this to be a positive legislative achievement, which contributes decisively to the protection of freedom of expression and promotes the strengthening of debate on matters of public interest. The Office of the Special Rapporteur observes that the offenses of seditious libel and defamation of Her Majesty, established in sections 327 and 328 of the Code, remain part of the criminal law of Grenada, and it hopes that these offenses can be reviewed in conformity with the important reforms already adopted.

Furthermore, the Constitutional Plurinational Court of Bolivia declared unconstitutional Article 162 of the Criminal Code (desacato). By means of Sentence 1250/2012 of September 20, 2012, the Court indicated that the provisions of the article were unconstitutional because they disproportionately affected freedom of expression. According to the Constitutional Court, the crime of desacato creates an unconstitutional situation of inequality between public officials and citizens and is incompatible with international human rights commitments. Similarly, it emphasized that public officials must be the subject of special and widespread scrutiny, as this promotes vigorous debate about matters of public relevance. The Constitutional Tribunal reaffirmed the binding nature of the judgments of the Inter-American Court of Human Rights and cited extensively to the doctrine of the inter-American system in the area of freedom of expression, including the IACHR’s 1994 Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. The aforementioned sentence constitutes an emblematic advancement in the area of freedom of expression and underscores the importance of bringing domestic legislation into conformity with international standards in this area. The Office of the Special Rapporteur considers that the judgment represents a significant step forward in the protection and strengthening of freedom of expression in the region.

Today, the crime of desacato does not exist in the majority of States in the Americas. Furthermore, a number of States have derogated laws that criminalize defamation against public officials. Mexico, for example, repealed the federal norms that permitted individuals who offended the honor of a public official to be tried for criminal defamation, and a number of the states of the Mexican federation have done the same. In 2007, the National Assembly of Panama similarly decriminalized defamation in relation to criticism or opinions regarding official acts or omissions of high-ranking public servants. In April 2009, the Supreme Court of Brazil declared the Press Law incompatible with the Brazilian Constitution; the Law had imposed severe prison and pecuniary penalties on journalists for the crime of defamation. In June 2009, the Legislature of Uruguay eliminated from the Criminal Code the sanctions for the dissemination of information or opinions about public officials and matters of public interest, with the exception of those cases where the person allegedly affected could demonstrate the existence of “actual malice”. In November 2009, the legislature of Argentina passed a reform to the Criminal Code doing away with prison terms for the crime of defamation, and decriminalizing speech about matters of public interest. Following this trend, in December of 2009, the Supreme Court of Costa Rica derogated a provision of the Press Law that established a prison penalty for crimes against honor. Similarly, in December of 2011 the Legislative Assembly of El Salvador approved a reform that substituted fines for prison sentences where
crimes against honor are concerned and established greater protection for expressions dealing with public figures or matters of public interest. In States including Colombia, Jamaica and Peru, important initiatives aimed at reforming the respective Criminal Codes have also been presented.

The Office of the Special Rapporteur calls on OAS Member States to follow these important advances and to bring their national legal frameworks into conformity with inter-American freedom of expression standards.

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Washington D.C., November 20, 2012. - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Adrián Silva Moreno, which took place on November 14 in Tehuacán, Puebla, and urges federal and local Mexican authorities to take urgent action and activate all legal instruments available for identifying and punishing both the perpetrators of and the masterminds behind this crime.

According to the information received, Adrián Silva Moreno and his companion, identified as Misrael López González, were murdered on November 14. The crime could be connected to information the reporter had on gasoline theft in the region. Adrián Silva Moreno contributed to a number of local media outlets, including: Diario Puntual, Radio 11.70 of Tehuacán and Global México.

The Office of the Special Rapporteur expresses its deep concern over the repetition of extremely serious attacks on the media in Mexico. This year, at least eight journalists and media employees have been murdered. On April 28, journalist Regina Martínez with the magazine Proceso was found dead in her house in Veracruz, with the evidence indicating violence. On May 3, the lifeless bodies of photographers Gabriel Hugé, Guillermo Luna and Esteban Rodríguez, and of Irasema Becerra, an administrative employee with newspaper El Dictámen, were found, also in Veracruz. On May 18, the lifeless body of reporter Marcos Ávila García was found in Sonora, one day after he was kidnapped. Likewise, in the early morning hours of June 14, in Veracruz, Víctor Manuel Báez Chino was found dead. He was the editor responsible for the police report section of Diario Milenio - El Portal in Veracruz, as well as editor of news site Reporteros Policíacos.

As the Office of the Special Rapporteur expressed in its Special Report on Freedom of Expression in Mexico, attacks on the media in that country have forced numerous media outlets to stop publishing news on corruption and organized crime as a security measure, thereby depriving Mexican society of basic information. The Mexican State must immediately do everything in its power to prevent new attacks in response to the exercise of freedom of expression, combat impunity and prevent the silencing of the media. It is urgently necessary for the State to implement a policy to protect communicators, thereby breaking the cycle of impunity that encourages criminals to commit new crimes against journalists.

Protecting the media is essential for comprehensively combating crime and protecting democracy. To do this, the following must be priorities for the State: the effective and urgent application of the Law to Protect Human Rights Defenders and Journalists, recently passed; the strengthening of the Office for the Specialized Public Prosecutor for Addressing Crimes committed against Freedom of Expression (FEADLE in its Spanish acronym); and the expediting and full implementation of new legislation allowing a constitutional reform that gives federal authorities the power to investigate and try crimes against the exercise of freedom of expression.

Principle 9 of the Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS KILLING OF JOURNALIST IN BRAZIL

Washington, D.C., November 27, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of Eduardo Carvalho, owner and editor of the news website UH News (Última Hora News), which took place on November 21 in Campo Grande, capital of Mato Grosso do Sul in Brazil. The Office of the Special Rapporteur expresses its concern and requests that the authorities conduct a prompt and diligent investigation to establish the motive of the crime, identify and appropriately punish the perpetrators.

According to the information received, an unidentified man shot Carvalho to death while he was outside his home in Campo Grande. The information available indicates that the journalist had received serious threats for publishing allegations against the police and local officials of Mato Grosso do Sul.

The ninth principle of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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OFFICE OF THE SPECIAL RAPPORTEUR URGES THE AUTHORITIES TO INVESTIGATE DEATH OF A JOURNALIST IN COLOMBIA

Washington, D.C., December 4, 2012 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern for the death of journalist Guillermo Quiroz, which took place on November 27 in Sincelejo, department of Sucre, and asks the authorities to carry out a diligent, timely and exhaustive investigation.

According to the information received, Quiroz was covering a protest against the company Pacific Rubiales in San Pedro, Sucre, when members of the National Police impounded his motorcycle. According to declarations made by Quiroz in a televised interview, members of the police put him into an official vehicle and allegedly beat him and pushed him out while it was in motion. After spending seven days in the intensive care unit of a local hospital, the journalist died. Although some local police authorities originally denied that brutality took place, authorities at the highest levels later reported that the agents who allegedly participated in the events were suspended and that criminal and disciplinary actions were opened.

Reports indicate that prior to these events Quiroz had received threats that were related to his journalistic work.

The Office of the Special Rapporteur urges the competent authorities to clarify the cause of death of Guillermo Quiroz, to identify and sanction the responsible parties, and to ensure that his family receives proper reparations.

Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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